IN THE

COURT OF APPEALS OF MARYLAND

September Term, 2010

No. 84

MONTGOMERY COUNTY, MARYLAND, et al.,

Appellants

v.

EDWARD SHROPSHIRE, et al.,

Appellees

On Writ of Certiorari to the Court of Special Appeals
On Appeal From the Circuit Court for Montgomery County, Maryland
(Michael D. Mason, Judge)

BRIEF OF APPELLANTS

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TABLE OF CONTENTS

TABLE OF CITATIONS

Cases (cont'd.) Page

Statutes and Rules

STATEMENT OF THE CASE

This appeal derives from a complaint filed by Edward A. Shropshire and Willie E. Parker-Loan, both non-probationary police officers with the Montgomery County Police Department. (E. 6-11) The two officers requested a declaratory judgment as to whether the Police Department could release records that were in the control of the Internal Affairs Division of the Police Department to the Montgomery County Inspector General (Inspector General). (E. 7-10) They also sought mandamus to prevent the disclosure of the materials to the Inspector General. (E. 10-11) The question became one of whether the documents could be disclosed under the Maryland Public Information Act (MPIA) as investigatory records, or were protected from disclosure as personnel records. (E. 151-153) In addition, the officers requested protection of the records based on their rights under the Law Enforcement Officers' Bill of Rights (LEOBR)[1] that the investigation be confidential. (E. 152)

The parties filed cross-motions for summary judgment, and the circuit court heard argument in March 2010. (E. 2, 12-13, 130-131) Although the court ruled that the internal affairs records generally could be released to the Inspector General, the court concluded that the disclosure of the information should not include personal information, unless it was directly related to the investigation. (E. 161-162, 164-165)

The County noted an appeal to the Court of Special Appeals based on its view that the entire record should be disclosed to the Inspector General. (E. 5) The officers also appealed to the Court of Special Appeals, asserting that the internal affairs records were

[1] Md. Code Ann., Public Safety, § 3-101 through § 3-113 (2003).

entirely non-disclosable based on the MPIA and the LEOBR—the records were protected either as personnel records or were confidential by law. (E. 5) Before any briefs were filed, the officers filed a petition for writ of certiorari, which this Court granted. *Montgomery County v. Shropshire*, 4 A.3d 512 (2010).

QUESTIONS PRESENTED[2]

I. Does the MPIA permit the disclosure of a completed police internal affairs investigation to the County's Inspector General, because the custodian of records must disclose those records to the Inspector General under County law?

II. Does the MPIA permit disclosure of police personnel records to the County's Inspector General, because he has a need to review the personnel records to carry out the official duties of the Inspector General?

STATUTES, ORDINANCES, AND CONSTITUTIONAL PROVISIONS

The full text of all relevant statutes, ordinances, and constitutional provisions appears in the appendix to this brief.

STATEMENT OF FACTS

In November 2008, a motor vehicle accident occurred involving a member of the Montgomery County Fire and Rescue Service. The handling of the incident by the police came into question, and the Internal Affairs Division conducted an investigation of the officers' conduct regarding the accident. (E. 8, 15) The investigation "found no evidence of wrongdoing" by either Officer Shropshire or Officer Parker-Loan. (E. 8, 18,

[2] Although the officers filed the petition for writ of certiorari, the County had filed the first appeal in the Court of Special Appeals, and retains the appellant position, because no decision had been issued by the intermediate appellate court. Md. Rule 8-111. Despite the unusual posture of the case, this brief addresses all of the issues presented in the petition.

19) Subsequently, the Inspector General initiated an investigation into the events relating to the accident and the internal affairs investigation. The Inspector General's investigation focused on whether the methods used to investigate the accident met generally accepted standards of practice and accountability. (E. 9, 135)

During the course of his investigation, the Inspector General requested access to the investigative records in the custody of the Internal Affairs Division of the Montgomery County Police Department. (E. 8) The records sought by the Inspector General included the internal affairs investigation into whether Edward Shropshire (a police sergeant) and Willie Parker-Loan (a police captain) violated departmental administrative rules. (E. 7-8; 134-135) After requesting information from the Chief Administrative Officer, the Inspector General submitted a request to the Chief of Police, J. Thomas Manger, as the custodian of police records, including the internal affairs investigation. (E. 7-8, 145-147) Upon review of the materials in relation to the MPIA and County law, the Chief determined that the internal affairs records were disclosable to the Inspector General. (E. 9)

Before the documents were released, the officers objected to the disclosure of the records and filed suit. (E. 6-11) The officers assert that the Police Chief must deny the Inspector General access to the records, because the records are personnel records under the MPIA, and are confidential under the LEOBR. (E. 8-9)

ARGUMENT

In an appeal from the grant of summary judgment, this Court reviews the matter de novo and seeks to determine whether the trial court's decision was legally correct. *O'Connor v. Baltimore County*, 382 Md. 102, 110, 854 A.2d 1191, 1196 (2004); *Remsburg v. Montgomery*, 376 Md. 568, 579, 831 A.2d 18, 24 (2003). Summary judgment is appropriate when the motion and response show that no genuine dispute as to any material fact exists and the moving party is entitled to judgment as a matter of law. Md. Rule 2-501(e); *O'Connor*, 382 Md. at 110, 854 A.2d at 1196. The material facts before this Court are not in dispute. Rather, the parties disagree as to the interpretation and application of the legal principles governing the disclosure of internal affairs investigation records under the MPIA and the LEOBR.

I. The MPIA permits the disclosure of a completed internal affairs investigation to the Inspector General, because the records are investigation records that must be disclosed by the custodian of records when doing so is mandated by a County law.

The General Assembly enacted the MPIA to provide citizens with "wide-ranging access to public information concerning the operation of their government." *A.S. Abell Publishing Co. v. Mezzanote*, 297 Md. 26, 32, 464 A.2d 1068, 1071 (1983). The Act must be broadly construed and favors permitting access to public records. State Gov't §10-612 (2004). The MPIA defines a public record as "the original or any copy of any documentary material that . . . is made by a unit or instrumentality of the State government or of a political subdivision or received by the unit or instrumentality in connection with the transaction of public business. . . ." State Gov't § 10-611(g).

Despite the emphasis on broad disclosure, the Act delineates several items that a custodian may not or must not disclose (hereinafter permissible denial or mandatory denial, respectively). State Gov't § 10-615 through § 10-618. Personnel records are within the mandatory denials category, while investigative records are within the permissible denials category. State Gov't § 10-616(i) and § 10-618(f), respectively. Permissible denials involve records that the custodian may elect not to disclose to the public, if the custodian finds that disclosure would be "contrary to the public interest." State Gov't § 10-618.

The records of an internal affairs investigation performed by the police department fall under the general definition of a public record. The internal affairs records sought by the Inspector General in the present case are disclosable under the MPIA as investigative records. They do not constitute personnel records, as that provision has been interpreted. Moreover, the protections afforded to an internal affairs investigation under the LEOBR do not preclude disclosure of the records as privileged or confidential by law.

Internal affairs investigations are not personnel records, but fall within the investigatory file category.

To determine whether internal affairs investigations can be disclosed under the MPIA, a court must identify the category that applies to the documents. In this case, the possibilities have been narrowed to investigatory files or personnel records. Upon review of the statute and the interpretations provided by the Maryland appellate courts, it becomes clear that the internal affairs records fall within the investigations category.

The MPIA gives a custodian of records the discretion to deny inspection of records of investigations conducted by a police department, if the custodian believes that inspection of the record would be contrary to the public interest. State Gov't § 10-618(f)(l)(i). On the other hand, personnel records fall under the mandatory denial provisions of the MPIA. Generally, personnel records include an employment application, performance rating, or scholastic achievement information. State Gov't §10-616(i)(1). The purpose of treating personnel records as confidential is "to preserve the privacy of personal information about a public employee that is accumulated during his or her employment." 78 Op. Att'y Gen. 291, 293 (1993) (quoting 65 Op. Att'y Gen. 365, 367 (1980)).

This Court analyzed the nature of a personnel record in *Kirwan v. The Diamondback*, 352 Md. 74, 721 A.2d 196 (1998). In addition to the three categories of documents that the statute contemplated as personnel records (application, performance rating, and scholastic achievement), the Court noted that the legislative intent was to treat as personnel records those "documents that directly pertain to employment and an employee's ability to perform a job." 352 Md. at 83, 721 A.2d at 200. The Court rejected the notion that any record that identified an employee would be exempt under the personnel records provision. 352 Md. at 84, 721 A.2d at 200.

Based upon this logic, the newspaper's request for parking tickets issued to Coach Williams did not fall within the personnel records exemption—the tickets did not have anything to do with his employment status or abilities. 352 Md. at 83, 721 A.2d at 200. When the issue arose in relation to a request for telephone records of the Governor, this

Court used the same analysis to conclude that those records also did not amount to a personnel record. *Office of the Governor v. Washington Post Co*., 360 Md. 520, 548, 759 A.2d 249, 264 (2000). Once again, the Court reviewed whether the requested information related to job performance or abilities and determined that it did not. *Id*.[3] Similarly, internal affairs records that do not become the basis for a personnel action against a police officer do not relate to job performance or abilities.

In addition to the generally limited scope of the personnel records category, this Court has specifically analyzed the release of a police department's internal investigations under the portion of the MPIA dealing with investigatory records. In *Mayor and City Council of Baltimore v. Maryland Committee Against the Gun Ban*, 329 Md. 78, 617 A.2d 1040 (1993), the issue involved whether records generated through an investigation conducted by the Internal Investigation Division of the Baltimore City Police Department into the conduct of police officers during the service of a subpoena *duces tecum* could be disclosed under the MPIA. 329 Md. at 80, 617 A.2d at 1041. As in the present case, the Baltimore City investigative report involved an investigation of alleged misconduct of police officers who were subject to the LEOBR and in which the allegations were not sustained. 329 Md. at 84-85, 617 A.2d at 1043. (E. 7-8) This Court analyzed the records under the investigations provision and emphasized the discretion of

[3] The Court of Special Appeals recently relied on the logic used by this Court in *Kirwan* and *Washington Post* when it concluded that the internal affairs investigation records of the Maryland State Police were not personnel records—the records did not deal directly with the employee's employment or ability to perform the job. *Maryland Department of State Police v. Maryland State Conference of NAACP Branches*, 190 Md. App. 359, 374, 988 A.2d 1075, 1084 (2010), *cert. granted*, 415 Md. 38 (2010). This Court heard argument on November 5, 2010.

the custodian of records in evaluating the criteria for disclosure. 329 Md. at 81-82, 617 A.2d at 1042; State Gov't § 10-618(f). In fact, this Court noted that the circumstances listed in the statute that permit denial of the records are illustrative, but not exhaustive of all reasons for denial. 329 Md. at 96, 617 A.2d at 1048; *see also, Kirwan*, 352 Md. at 83, 721 A.2d at 200. The Court ultimately determined that the custodian of the records could permissibly deny inspection of the records on public interest grounds under the investigatory file provisions of the MPIA, because the Committee was a third party to the investigation and its interests did not outweigh the public interest in maintaining the confidentiality of internal affairs investigations. *Mayor and City Council,* 329 Md. at 97, 617 A.2d at 1049.

Consistent with this Court's view, the Court of Special Appeals explored the confidentiality of internal police investigations under the investigatory records section of the MPIA. The case involved a police officer, who had been disciplined, and sought discovery about discipline imposed on other officers in similar situations in order to support a claim of discriminatory treatment. *Blades v. Woods*, 107 Md. App. 178, 180, 667 A.2d 917, 918 (1995). Ultimately, the Court remanded the case to the trial court to balance the requesting officer's legitimate need for the information against the other officers' rights to privacy and the custodian's duty to maintain confidentiality.[4] 107 Md. App. at 186-187, 667 A.2d at 921. The Court of Special Appeals explained that the officers who had been disciplined did not have an absolute right to keep their records out

[4] In the present case, the officers already have disclosed the results of the investigation in their complaint, which undermines their asserted privacy interest.

of the hands of those who could demonstrate a need to review those records. The Court recognized that internal police investigations are generally confidential, but noted the possible disclosure of the documents under the investigations criteria of the MPIA.[5] *Blades*, 107 Md. App. at 185-186, 667 A.2d at 921; State Gov't § 10-618(f).

More recently, the Court of Special Appeals again followed the lead of this Court and determined that internal affairs files related to allegations of racial profiling by state police officers constituted investigatory records and not personnel files under the MPIA. *See Maryland Department of State Police v. Maryland State Conference of NAACP Branches*, 190 Md. App. at 362, 988 A.2d at 1076. The Court explained that the complaints of racial profiling do not involve private matters detailing the officer's private life, but instead, concern public actions by the officer—"exactly the types of material the Act was designed to allow the public to see." 190 Md. App. at 368, 988 A.2d at 1080 (citing *A.S. Abell Publishing Co.*, 297 Md. at 32, 464 A.2d at 1071). Quoting extensively from this Court's opinions in *Kirwan* and *Washington Post*, the Court of Special Appeals concluded that the internal affairs records were not personnel records under the MPIA, but were governed by the investigations section of the MPIA. 190 Md. App. at 369-378, 988 A.2d at 1080-1086.

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[5] On at least one occasion, the Court of Special Appeals treated internal investigation records as personnel records, but did so solely because both the police department and the officers agreed that they were personnel records. *Baltimore City Police Department v. State of Maryland*, 158 Md. App. 274, 282-283, 857 A.2d 148, 153 (2004). The case differs from the present situation, because a criminal defendant sought access to the files of an officer who was disciplined for dishonesty. As a result, the interpretation of the MPIA was not before the Court.

As this Court has explained, an internal affairs record does not fall within the ambit of a personnel matter, but must be evaluated under the provisions relating to investigations. For purposes of the present case, the practice in Montgomery County reflects that the internal affairs investigations are not personnel records. All internal affairs files are maintained at the Internal Affairs Division of the Police Department. (E. 141) When an internal affairs investigation does not result in disciplinary action, no documentation about the investigation is placed in the investigated officer's personnel file. (E. 141) Only when the investigation results in a "sustained" ruling and the punishment implemented is more than an oral admonishment does a copy of the statement of charges of the internal affairs investigation become part of the investigated officer's personnel file. (E. 141)

In the present case, the investigation yielded no evidence that the officers were involved in any wrongdoing, so no disciplinary action ensued and no documentation was placed in their personnel files about the investigation. (E. 8, 18-19). The internal affairs files are investigation records under the MPIA—the internal affairs records constitute records of an investigation conducted by a police department. State Gov't §10-618(f)(1).

This Court has recognized the validity of the need to provide documents in accordance with a statutory duty.

This Court has recognized that the County may adopt a local law that directs its employees who serve as a custodians of records how to exercise their discretion with respect to records governed under the permissible denial provisions of the MPIA. Although the local law cannot permit the public release of documents that the MPIA

explicitly mandates not be disclosed, there is room for local regulation of the permissible denial provisions. Two decisions of this Court are instructive on this interplay between the MPIA and local law.

In *Caffrey v. Department of Liquor Control*, 370 Md. 272, 805 A.2d 268 (2002), the issue involved whether the Montgomery County Charter could waive the right to assert certain privileges under the permissible denial provisions of the MPIA. This Court held that the permissible denials of the MPIA could be waived by the County and, in fact, had been waived. 370 Md. at 305, 805 A.2d at 287. The general theme of the Court's analysis focused on the principle that a local government law that conflicts with a public general law is preempted and invalid. This meant that, if the MPIA explicitly prohibited releasing certain documents, the County Charter could not permit the public release of those documents. 370 Md. at 302, 805 A.2d at 286. Because the County Charter specifically identified documents that were within the permissible denial provisions of the MPIA, however, the County could waive the protection of those documents. 370 Md. at 303, 805 A.2d at 286.

In another case, this Court applied similar principles when reviewing a local law that attempted to protect certain information, without a comparable provision existing in State law. In *Police Patrol Security Systems v. Prince George's County,* 378 Md. 702, 838 A.2d 1191 (2003), a Virginia corporation that installs, maintains, and monitors electronic security and alarm systems in buildings requested information about Prince George's County residents or businesses that maintained electronic security or alarms. 378 Md. at 706, 838 A.2d at 1193. Prince George's County law made the information

confidential, and the County denied the request for access to the records. This Court concluded that the County law was invalid, because it conflicted with the MPIA. 378 Md. at 714, 838 A.2d at 1198. Initially, the Court acknowledged that access to public records that are subject to the permissible denials under the MPIA could be affected by local law:

> [T]he 'permissible denial' provisions of the MPIA authorize custodians to exercise discretion in granting or denying requests for certain information. Therefore, home rule counties may direct or guide the exercise of this discretion, or even eliminate it entirely, by local enactment.

378 Md. at 712, 838 A.2d at 1197. On the other hand, when "the mandatory denial provisions in the MPIA requires a custodian of records to refuse inspection of certain records. . . . [a] county ordinance or charter that requires a custodian to act differently is preempted." 378 Md. at 712, 838 A.2d at 1197.

Inasmuch as Montgomery County is a chartered home rule county, the principles enunciated in *Caffrey* and *Police Patrol Security Systems*, permit the limited disclosure achieved here with the Inspector General. The County Code gives the Inspector General access to departmental files, including investigatory files, and operates separately from the discretion of a custodian to deny access to documents under the MPIA. Moreover, the disclosure of these materials to the Inspector General remains consistent with the analysis used by this Court in *Caffrey* and *Patrol Security Systems*. Both cases addressed local laws that regulated public access to government records—in *Caffrey*, the information was subject to a permissive denial in State law, and in *Patrol Security Systems*, no State law provided protection for the information that the county sought to

deny disclosing when the County enacted its law. *See* 370 Md. at 302, 805 A.2d at 286, and 378 Md. at 714, 838 A.2d at 1198, respectively.

In the present case, public disclosure is not at issue, because the Inspector General is prohibited by law from public disclosure of records that the MPIA protects under an umbrella of confidentiality. Montg. Co. Code § 2-151(l)(1) (2004). Instead, this provision requires a County custodian of records to give the County Inspector General access to those records and reaffirms the Inspector General's responsibility regarding public disclosure:

> [E]ach department or office in County government . . . must promptly give the Inspector General, any document or other information concerning its operations . . . that the Inspector General requests. The Inspector General must comply with any restrictions on public disclosure of the document or information that are required by federal or state law.

Montg. Co. Code § 2-151(l)(1). The Chief of Police, therefore, was obligated to disclose the internal affairs records to the Inspector General. The use of a local government law to dictate to a local official how to use the permissible denial provisions of the MPIA is consistent with this Court's analysis in *Caffrey, supra*.

The protections established by the LEOBR do not make the internal affairs records confidential under the law.

Although the officers seek to fit the protections of the LEOBR into the required denials of the MPIA, the records are not privileged or confidential by virtue of the LEOBR for purposes of the MPIA. Instead, the records are reviewed by the custodian, who has the discretion to decide whether disclosure is contrary to the public interest. *See Maryland Committee Against the Gun Ban*, 329 Md. at 94, 617 A.2d at 1047. The effect

of the LEOBR is to provide an additional consideration for the custodian to review in deciding whether to permit or deny the disclosure of internal affairs documents. The interplay between the LEOBR and the MPIA can result in disclosure of the documents.

The purpose of the LEOBR is "to guarantee law enforcement officers certain procedural safeguards during any investigation and subsequent hearing which could lead to disciplinary action, demotion, or dismissal." *Ocean City Police Department v. Marshall*, 158 Md. App. 115, 123, 854 A.2d 299, 304 (2004) (quoting *Hagerstown v. Moats*, 81 Md. App. 623, 624-25, 568 A.2d 1180, 1181-1182 (1990)). The central focus of the LEOBR is on protections for law enforcement officers during an investigation or interrogation, but the law also expressly recognizes the police chief's authority "to regulate the competent and efficient operation and management of a law enforcement agency by any reasonable means. . . ." Public Safety § 3-102(c) and § 3-104(a). In this way, the LEOBR "strik[es] the appropriate balance between protecting the private interests of an officer accused of misconduct and a law enforcement agency's interest in maintaining internal discipline." *Coleman v. Anne Arundel County Police Department*, 369 Md. 108, 149, 797 A.2d 770, 795 (2002).

The section that the officers rely upon to assert the confidentiality of the internal affairs file does not lead to a different result. The LEOBR limits access to internal affairs investigations, and an officer has a limited period of time in which to see the file before a hearing, and must agree to maintain the record's confidentiality. Public Safety § 3-104(n). This Court has acknowledged that the LEOBR addresses only the officers' rights and protections relating to the disciplinary process, but that the confidentiality of those

same records may have to yield to other concerns. *Robinson v. State*, 354 Md. 287, 308, 730 A.2d 181, 192 (1999) (due process rights of a criminal defendant may lead to disclosure of an internal affairs investigation file).

From the perspective of the MPIA, the investigation into an officer's behavior fits within the general investigation category. Not all investigations performed under the auspices of the LEOBR result in discipline. Much like a criminal investigation, there may come a time when the materials may be released to the public, because there is no interference with a proceeding or prejudice that would result from releasing the information. By treating these records as investigation files, they become subject to the discretion of the custodian to determine whether the circumstances require denial of the request for disclosure. In the present case, there was no reason to withhold the documents from the Inspector General—the investigation was complete, resulted in no discipline, and the Inspector General was not an uninterested third party.

II. Even if internal affairs investigation records are personnel records, the MPIA permits disclosure of those records to the Inspector General, because he has a need to review the personnel records to carry out the official duties of the Inspector General.

Regardless of whether the internal affairs records are personnel records, the MPIA permits a County official, like the Inspector General, to have access to personnel records, if the access is necessary for the official to perform his duties. The Inspector General requires access to the internal affairs records to conduct a statutorily authorized investigation. Doing so undermines neither the protections of personnel records, nor the

confidentiality of disciplinary proceedings. In fact, the access is consistent with the Inspector General's statutory duties.

The Inspector General is created by County law and has specific statutory responsibilities.

The Montgomery County Code charges the Inspector General with preventing and detecting "fraud, waste and abuse in government activities." Montg. Co. Code § 2-151(a)(2). To achieve this goal, the Inspector General is given certain powers, including the ability to "conduct investigations, budgetary analyses, and financial, management or performance audits and similar reviews." Montg. Co. Code § 2-151(h). When carrying out these duties, the Inspector General "is legally entitled to any document or other information concerning a department or agency's operations, budget, or programs," and each County department "must promptly give the Inspector General, any document or other information concerning its operations . . . that the Inspector General requests." Montg. Co. Code § 2-151(l). The broad requirement that County departments (including the Police Department) disclose to the Inspector General any documents or other information he requests is not without limits—the Inspector General must maintain the confidentiality of those records if disclosure is not authorized under the MPIA or any other federal or State law prohibiting further disclosure. Montg. Co. Code § 2-151(l)(1).

In this case, the Inspector General requested internal affairs files as part of his investigation into the November 30, 2008, traffic accident, which included review of County policies and procedures related to the accident and the handling of the aftermath of the accident. (E. 134, 145-147) The objective of the Inspector General's investigation

is to determine whether the actions of County personnel, when they investigated the November 30, 2008, accident, were consistent with generally accepted investigative standards. (E. 134-135) Accordingly, the request for the internal affairs records concerning Officer Shropshire and Officer Parker-Loan falls within the Inspector General's authority under County law. *See* Montg. Co. Code § 2-151. (E. 135)

The Attorney General has recognized the need for access to personnel records by certain individuals within government.

The Attorney General of Maryland recognized the principle of "statutory duties" when considering whether a law other than the MPIA authorizes access to documents otherwise protected from disclosure under the MPIA. 60 Op. Att'y Gen. 554 (1975). In that opinion, the Personnel Division of the Department of Health and Mental Hygiene (DHMH) asked if investigators from several agencies, including the State Legislative Auditor, could access personnel records of DHMH employees. The Attorney General explained that it was "necessary to examine the laws under which [an investigating agency or officer] operate[s] in order to decide whether they either explicitly or impliedly grant authority to inspect the files in question." *Id*. at 556. Because the Legislative Auditor required access to personnel files to "effectively perform the duties imposed upon him," the Legislative Auditor was entitled to the files—inspection of the files is allowed under the "otherwise provided by law" provision of the MPIA. *Id*. at 556-557.

The duties of the State's Legislative Auditor were strikingly similar to the duties of the County's Inspector General. *See* State Gov't § 2-1217 et seq. The function of the Inspector General, like that of the Legislative Auditor, is to engage in performance and

financial audits of government agencies. State Gov't § 2-1207(5) and § 2-1220(2)(i); Montg. Co. Code § 2-151(a)(1) and § 2-151(h). The Auditor is authorized to investigate an allegation of "fraud, waste, or abuse in the obligation, expenditure, receipt, or use of State funds." State Gov't § 2-1220(a)(2)(iv). And the Inspector General is charged with the duty to "prevent and detect fraud, waste, and abuse in government activities." Montg. Co. Code § 2-151(a)(2). In order to implement these missions, both the Legislative Auditor and the Inspector General are provided with broad access to all files and, if necessary, may issue a subpoena that is enforceable by the courts. State Gov't § 2-1223; Montg. Co. Code § 2-151(l). Just as the MPIA's mandatory denial provisions present insurmountable barriers if applied to the Legislative Auditor, they also would effectively prevent the Inspector General from carrying out similar duties under local law. The General Assembly did not intend to prohibit the ability of a county official with duties similar to the State Auditor (like the County's Inspector General) to access personnel records or investigation records when that access is necessary to carry out official responsibilities.

Subsequent amendments to the State Legislative Auditor statute led the Attorney General to conclude that the MPIA no longer applies to the Auditor. 76 Op. Att'y Gen. 287, 294 (1991). In doing so, the Attorney General made clear that the earlier opinion "correctly treated the questions actually presented in them" (i.e., agencies must allow the Auditor access to personnel files in the performance of his duties). And the Attorney General has since confirmed that the "otherwise provided by law" provision of the MPIA authorizes access to confidential personnel and other records when the requestor has

statutory duties that cannot be executed effectively without access to the records. *See* 78 Op. Att'y Gen. at 294 ; *see also*, 79 Op. Att'y Gen. 366, 372 (1994).

In 2001, the Attorney General again applied the statutory duties test to determine that a municipal ordinance could authorize a civilian review panel to access personnel files. 86 Op. Att'y Gen. 94 (2001). The issue involved whether a city ordinance that created a Citizen Police Review and Advisory Board (Review Board) consisting of nine private citizens could enable those citizens to examine records of the internal investigations unit of the Police Department. Although a local ordinance could not constitute "other law" under the MPIA, the Review Board could review a summary report of the investigation under the MPIA, because the Review Board had become part of the City's internal process for reviewing and responding to complaints of personnel misconduct. *Id*. at 108-110. The analysis included the reiteration of the Attorney General's earlier position:

> "[A]ny exception to the general prohibition against public access to personnel records must be supported by a clear legal basis . . . as when 'the requesting agency has statutory duties which demonstrably cannot be effectively executed without access . . . .'"
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> * * *
>
> [I]t is implicit in the personnel records exemption that a City agency charged under a municipal ordinance with responsibilities related to personnel administration have access to those records necessary to carry out its duties.

Id. at 108-109 (quoting 60 Op. Att'y Gen. at 559). Similarly, the Inspector General's duty to investigate fraud, waste, and abuse in County government cannot be executed effectively without access to all documents within the County government necessary to

complete the Inspector General's investigations, regardless of whether they involve personnel records or investigatory files.

Providing the internal affairs file to the Inspector General is consistent with the intent of the MPIA.

This Court has frequently pointed out that it will avoid adopting an interpretation of a statute that leads to illogical consequences that are inconsistent with common sense. *Pak v. Hoang*, 378 Md. 315, 323, 835 A.2d 1185, 1189 (2003). Although some portions of the MPIA contain a blanket prohibition on the disclosure of certain records, to read these provisions as prohibiting individuals who have an official need to review the records would be unreasonable and illogical.

For example, the MPIA prohibits the disclosure of a letter of reference. State Gov't § 10-616(d). Preventing all access to letters of reference by those within the employer's office would be illogical and inconsistent with common sense. Surely, a hiring committee could have access to letters of reference even though the MPIA does not contain express authority for those individuals to review those records. In the same way, it is illogical to conclude that, simply because the Inspector General is not expressly listed as someone who can view personnel records, the Inspector General cannot view those records when he is conducting an investigation pursuant to his statutory duties under the Montgomery County Code. The release of the records to an individual within the government, who has a statutory duty to review those records, differs significantly from providing access to the general public.

Applying § 10-616(i) of the MPIA literally would lead to several absurd results as: 1) prohibiting a first-line supervisor from reviewing an employee's personnel file; 2) prohibiting a benefits clerk from obtaining information from an employee's personnel file; 3) prohibiting an attorney representing management in a grievance filed by an employee from obtaining access to the employee's personnel file; and 4) prohibiting the County from sharing records of employee misconduct used in a disciplinary proceeding against an employee with the State's Attorney's Office, even if the records revealed criminal activity. The General Assembly could not have intended such an "unreasonable, illogical, [or] unjust" construction of the MPIA. Instead, the MPIA must be construed to allow employees of the government holding the records to access the records on a need-to-know basis. This common-sense interpretation permits the local government to operate within its authority without conflicting with the privacy provisions of the MPIA, which were intended to forestall *public* disclosure of information that the General Assembly deemed worthy of protection.

CONCLUSION

The Chief of Police may release the internal affairs investigation records to the Inspector General, because the documents are investigatory and County law requires the custodian of records to disclose the records to the Inspector General. The MPIA, by necessary implication, authorizes a custodian of County records to share records that are subject to the mandatory denial provisions of the MPIA with other County officials on a need-to-know basis. The circuit court properly ordered disclosure of the records in this

case, but should not have directed any redaction of information, because the documents were being released to a government official—not the general public.

Respectfully submitted,

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Division Chief

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Associate County Attorney

Statement pursuant to Maryland Rule 8-504(a)(8): This brief was prepared with proportionally spaced type, using Times New Roman font and 13pt type size.

APPENDIX

Excerpts from Maryland Annotated Code:

Public Safety (2003)

§ 3-102. Effect of subtitle

(a) Conflicting law superseded. -- Except for the administrative hearing process under Title 3, Subtitle 2 of this article that relates to the certification enforcement power of the Police Training Commission, this subtitle supersedes any other law of the State, a county, or a municipal corporation that conflicts with this subtitle.

(b) Preemption of local law. -- Any local law is preempted by the subject and material of this subtitle.

(c) Authority of chief not limited. -- This subtitle does not limit the authority of the chief to regulate the competent and efficient operation and management of a law enforcement agency by any reasonable means including transfer and reassignment if:

(1) that action is not punitive in nature; and

(2) the chief determines that action to be in the best interests of the internal management of the law enforcement agency.

§ 3-104. Investigation or interrogation of law enforcement officer

(a) In general. -- The investigation or interrogation by a law enforcement agency of a law enforcement officer for a reason that may lead to disciplinary action, demotion, or dismissal shall be conducted in accordance with this section.

(b) Interrogating or investigating officer. -- For purposes of this section, the investigating officer or interrogating officer shall be:

(1) a sworn law enforcement officer; or

(2) if requested by the Governor, the Attorney General or Attorney General's designee.

(c) Complaint that alleges brutality. –

(1) A complaint against a law enforcement officer that alleges brutality in the execution of the law enforcement officer's duties may not be investigated unless the complaint is sworn to, before an official authorized to administer oaths, by:

(i) the aggrieved individual;

(ii) a member of the aggrieved individual's immediate family;

(iii) an individual with firsthand knowledge obtained because the individual was present at and observed the alleged incident; or

(iv) the parent or guardian of the minor child, if the alleged incident involves a minor child.

(2) Unless a complaint is filed within 90 days after the alleged brutality, an investigation that may lead to disciplinary action under this subtitle for brutality may not be initiated and an action may not be taken.

(d) Disclosures to law enforcement officer under investigation. –

(1) The law enforcement officer under investigation shall be informed of the name, rank, and command of:

(i) the law enforcement officer in charge of the investigation;

(ii) the interrogating officer; and

(iii) each individual present during an interrogation.

(2) Before an interrogation, the law enforcement officer under investigation shall be informed in writing of the nature of the investigation.

(e) Disclosures to law enforcement officer under arrest. -- If the law enforcement officer under interrogation is under arrest, or is likely to be placed under arrest as a result of the interrogation, the law enforcement officer shall be informed completely of all of the law enforcement officer's rights before the interrogation begins.

(f) Time of interrogation. -- Unless the seriousness of the investigation is of a degree that an immediate interrogation is required, the interrogation shall be conducted at a reasonable hour, preferably when the law enforcement officer is on duty.

(g) Place of interrogation. –

(1) The interrogation shall take place:

(i) at the office of the command of the investigating officer or at the office of the local precinct or police unit in which the incident allegedly occurred, as designated by the investigating officer; or

(ii) at another reasonable and appropriate place.

(2) The law enforcement officer under investigation may waive the right described in paragraph (1)(i) of this subsection.

(h) Conduct of interrogation. –

(1) All questions directed to the law enforcement officer under interrogation shall be asked by and through one interrogating officer during any one session of interrogation consistent with paragraph (2) of this subsection.

(2) Each session of interrogation shall:

(i) be for a reasonable period; and

(ii) allow for personal necessities and rest periods as reasonably necessary.

(i) Threat of transfer, dismissal, or disciplinary action prohibited. -- The law enforcement officer under interrogation may not be threatened with transfer, dismissal, or disciplinary action.

(j) Right to counsel. –

(1) (i) On request, the law enforcement officer under interrogation has the right to be represented by counsel or another responsible representative of the law enforcement officer's choice who shall be present and available for consultation at all times during the interrogation.

(ii) The law enforcement officer may waive the right described in subparagraph (i) of this paragraph.

(2) (i) The interrogation shall be suspended for a period not exceeding 10 days until representation is obtained.

(ii) Within that 10-day period, the chief for good cause shown may extend the period for obtaining representation.

(3) During the interrogation, the law enforcement officer's counsel or representative may:

(i) request a recess at any time to consult with the law enforcement officer;

(ii) object to any question posed; and

(iii) state on the record outside the presence of the law enforcement officer the reason for the objection.

(k) Record of interrogation. –

(1) A complete record shall be kept of the entire interrogation, including all recess periods, of the law enforcement officer.

(2) The record may be written, taped, or transcribed.

(3) On completion of the investigation, and on request of the law enforcement officer under investigation or the law enforcement officer's counsel or representative, a copy of the record of the interrogation shall be made available at least 10 days before a hearing.

(l) Tests and examinations -- In general. –

(1) The law enforcement agency may order the law enforcement officer under investigation to submit to blood alcohol tests, blood, breath, or urine tests for controlled dangerous substances, polygraph examinations, or interrogations that specifically relate to the subject matter of the investigation.

(2) If the law enforcement agency orders the law enforcement officer to submit to a test, examination, or interrogation described in paragraph (1) of this subsection and the law enforcement officer refuses to do so, the law enforcement agency may commence an action that may lead to a punitive measure as a result of the refusal.

(3) If the law enforcement agency orders the law enforcement officer to submit to a test, examination, or interrogation described in paragraph (1) of this subsection, the results of the test, examination, or interrogation are not admissible or discoverable in a criminal proceeding against the law enforcement officer.

(m) Same -- Polygraph examinations. –

(1) If the law enforcement agency orders the law enforcement officer to submit to a polygraph examination, the results of the polygraph examination may not be used as evidence in an administrative hearing unless the law enforcement agency and the law enforcement officer agree to the admission of the results.

(2) The law enforcement officer's counsel or representative need not be present during the actual administration of a polygraph examination by a certified polygraph examiner if:

(i) the questions to be asked are reviewed with the law enforcement officer or the counsel or representative before the administration of the examination;

(ii) the counsel or representative is allowed to observe the administration of the examination; and

(iii) a copy of the final report of the examination by the certified polygraph examiner is made available to the law enforcement officer or the counsel or representative within a reasonable time, not exceeding 10 days, after completion of the examination.

(n) Information provided on completion of investigation. –

(1) On completion of an investigation and at least 10 days before a hearing, the law enforcement officer under investigation shall be:

(i) notified of the name of each witness and of each charge and specification against the law enforcement officer; and

(ii) provided with a copy of the investigatory file and any exculpatory information, if the law enforcement officer and the law enforcement officer's representative agree to:

1. execute a confidentiality agreement with the law enforcement agency not to disclose any material contained in the investigatory file and exculpatory information for any purpose other than to defend the law enforcement officer; and

2. pay a reasonable charge for the cost of reproducing the material.

(2) The law enforcement agency may exclude from the exculpatory information provided to a law enforcement officer under this subsection:

(i) the identity of confidential sources;

(ii) nonexculpatory information; and

(iii) recommendations as to charges, disposition, or punishment.

(o) Adverse material. –

(1) The law enforcement agency may not insert adverse material into a file of the law enforcement officer, except the file of the internal investigation or the intelligence division, unless the law enforcement officer has an opportunity to review, sign, receive a copy of, and comment in writing on the adverse material.

(2) The law enforcement officer may waive the right described in paragraph (1) of this subsection.

State Gov't (2004)

§ 2-1207. Duties of the Department

In addition to any duties set forth elsewhere, the Department shall provide:

(1) budget and fiscal review, analysis, research, studies, and reports;

(2) legislative drafting and statutory revision services;

(3) legal research, review, analysis, studies, and reports;

(4) general research and policy analysis;

(5) fiscal/compliance, financial statement, and performance audits of units of the State government;

(6) legislative research, legislative document and material collection and preservation, and other library services;

(7) public information services about legislative activities;

(8) document preparation and publication services;

(9) legislative information systems maintenance, development, and support; and

(10) administrative support services for the Department and, where appropriate, for the General Assembly relating to finance, personnel, distribution, telecommunications, printing and copying, supplies, housekeeping, and maintenance.

§ 2-1217. Office of Legislative Audits established

There is an Office of Legislative Audits in the Department.

§ 2-1220. Required and authorized audits

(a) State units. –

(1) In this subsection, "unit" includes each State department, agency, unit, and program, including each clerk of court and each register of wills.

(2) (i) At least once every 3 years, the Office of Legislative Audits shall conduct a fiscal/compliance audit of each unit of the State government, except for units in the Legislative Branch.

(ii) In determining the audit schedule for a unit, the Office of Legislative Audits shall take into consideration:

1. the materiality and risk of the unit's fiscal activities with respect to the State's fiscal activities;

2. the complexity of the unit's fiscal structure; and

3. the nature and extent of audit findings in the unit's prior audit reports.

(iii) Each agency or program may be audited separately or as part of a larger organizational unit of State government.

(3) Performance audits or financial statement audits shall be conducted when authorized by the Legislative Auditor, when directed by the Joint Audit Committee or the Executive Director, or when otherwise required by law.

(4) (i) In addition to the audits required under paragraph (2) of this subsection, the Office of Legislative Audits may conduct a review when the objectives of the work to be performed can be satisfactorily fulfilled without conducting an audit as prescribed in § 2-1221 of this subtitle.

(ii) 1. The Office of Legislative Audits has the authority to conduct a separate investigation of an act or allegation of fraud, waste, or abuse in the obligation, expenditure, receipt, or use of State resources.

2. The Legislative Auditor shall determine whether an investigation shall be conducted in conjunction with an audit undertaken in accordance with this subsection or separately.

(5) If, on request of the Comptroller, the Joint Audit Committee so directs, the Office of Legislative Audits shall audit or review a claim that has been presented to the Comptroller for payment of an expenditure or disbursement and that is alleged to have been made by or for an officer or unit of the State government.

(6) The Office of Legislative Audits shall conduct an audit or review to determine the accuracy of information about or procedures of a unit of the State government, as directed by the Joint Audit Committee or the Executive Director.

(b) Corporations and associations. -- If the General Assembly, by resolution, or the Joint Audit Committee so directs, the Office of Legislative Audits shall conduct an audit or review of a corporation or association to which the General Assembly has appropriated money or that has received funds from an appropriation from the State Treasury.

(c) County officers and units. -- The Office of Legislative Audits may audit any county officer or unit that collects State taxes.

(d) Taxing districts; community colleges; boards of education; library boards. –

(1) The Office of Legislative Audits shall review any audit report prepared under the

authority of:

(i) Article 19, § 40 of the Code, with respect to a county, municipal corporation, or taxing district; or

(ii) § 16-315 of the Education Article, with respect to a community college.

(2) The results of any review made by the Office of Legislative Audits under paragraph (1) of this subsection shall be reported as provided in § 2-1224 of this subtitle.

(e) Local school systems. –

(1) At least once every 6 years, the Office of Legislative Audits shall conduct an audit of each local school system to evaluate the effectiveness and efficiency of the financial management practices of the local school system.

(2) The audits may be performed concurrently or separately.

(3) The Office of Legislative Audits shall provide information regarding the audit process to the local school system before the audit is conducted.

§ 2-1223. Audit procedures

(a) Access to records. –

(1) Except as prohibited by the federal Internal Revenue Code, during an examination, the employees or authorized representatives of the Office of Legislative Audits shall have access to and may inspect the records, including those that are confidential by law, of any unit of the State government or of a person or other body receiving State funds, with respect to any matter under the jurisdiction of the Office of Legislative Audits.

(2) In conjunction with an examination authorized under this subtitle, the access required by paragraph (1) of this subsection shall include the records of contractors and subcontractors that perform work under State contracts.

(3) The employees or authorized representatives of the Office of Legislative Audits shall have access to and may inspect the records, including those that are confidential by law, of any local school system to perform the audits authorized under § 2-1220 of this subtitle or in accordance with a request for information as provided in § 5-114(d) of the Education Article.

(b) Provision of information. -- Each officer or employee of the unit or body that is subject to examination shall provide any information that the Legislative Auditor determines to be needed for the examination of that unit or body, or of any matter under the authority of the Office of Legislative Audits, including information that otherwise would be confidential under any provision of law.

(c) Enforcement. –

(1) The Legislative Auditor may issue process that requires an official who is subject to examination to produce a record that is needed for the examination.

(2) The process shall be sent to the sheriff for the county where the official is located.

(3) The sheriff promptly shall serve the process.

(4) The State shall pay the cost of process.

(5) If a person fails to comply with process issued under this subsection or fails to provide information that is requested during an examination, a circuit court may issue an order directing compliance with the process or compelling that the information requested

be provided.

§ 10-611. Definitions

(a) In general. -- In this Part III of this subtitle the following words have the meanings indicated.

(b) Applicant. -- "Applicant" means a person or governmental unit that asks to inspect a public record.

(c) Custodian. -- "Custodian" means:

(1) the official custodian; or

(2) any other authorized individual who has physical custody and control of a public record.

(d) Official custodian. -- "Official custodian" means an officer or employee of the State or of a political subdivision who, whether or not the officer or employee has physical custody and control of a public record, is responsible for keeping the public record.

(e) Person in interest. -- "Person in interest" means:

(1) a person or governmental unit that is the subject of a public record or a designee of the person or governmental unit;

(2) if the person has a legal disability, the parent or legal representative of the person; or

(3) as to requests for correction of certificates of death under § 5-310 (d) (2) of the Health - General Article, the spouse, adult child, parent, adult sibling, grandparent, or guardian of the person of the deceased at the time of the deceased's death.

(f) Personal information. –

(1) Except as otherwise provided in this Part III, "personal information" means information that identifies an individual including an individual's address, driver's license number or any other identification number, medical or disability information, name, photograph or computer generated image, Social Security number, or telephone number.

(2) "Personal information" does not include an individual's driver's status, driving offenses, 5-digit zip code, or information on vehicular accidents.

(g) Public record. –

(1) "Public record" means the original or any copy of any documentary material that:

(i) is made by a unit or instrumentality of the State government or of a political subdivision or received by the unit or instrumentality in connection with the transaction of public business; and

(ii) is in any form, including:

1. a card;
2. a computerized record;
3. correspondence;
4. a drawing;
5. film or microfilm;
6. a form;
7. a map;
8. a photograph or photostat;

9. a recording; or

10. a tape.

(2) "Public record" includes a document that lists the salary of an employee of a unit or instrumentality of the State government or of a political subdivision.

(3) "Public record" does not include a digital photographic image or signature of an individual, or the actual stored data thereof, recorded by the Motor Vehicle Administration.

(h) Telephone solicitation. –

(1) "Telephone solicitation" means the initiation of a telephone call to an individual or to the residence or business of an individual for the purpose of encouraging the purchase or rental of or investment in property, goods, or services.

(2) "Telephone solicitation" does not include a telephone call or message:

(i) to an individual who has given express permission to the person making the telephone call;

(ii) to an individual with whom the person has an established business relationship; or

(iii) by a tax-exempt, nonprofit organization.

§ 10-612. General right to information

(a) General right to information. -- All persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees.

(b) General construction. -- To carry out the right set forth in subsection (a) of this section, unless an unwarranted invasion of the privacy of a person in interest would result, this Part III of this subtitle shall be construed in favor of permitting inspection of a public record, with the least cost and least delay to the person or governmental unit that requests the inspection.

(c) General Assembly. -- This Part III of this subtitle does not preclude a member of the General Assembly from acquiring the names and addresses of and statistical information about individuals who are licensed or, as required by a law of the State, registered.

§ 10-615. Required denials -- In general

A custodian shall deny inspection of a public record or any part of a public record if:

(1) by law, the public record is privileged or confidential; or

(2) the inspection would be contrary to:

(i) a State statute;

(ii) a federal statute or a regulation that is issued under the statute and has the force of law;

(iii) the rules adopted by the Court of Appeals; or

(iv) an order of a court of record.

§ 10-616. Required denials -- Specific records

(a) In general. -- Unless otherwise provided by law, a custodian shall deny inspection of a public record, as provided in this section.

(b) Adoption records. -- A custodian shall deny inspection of public records that relate to

the adoption of an individual.
(c) Welfare records. -- A custodian shall deny inspection of public records that relate to welfare for an individual.
(d) Letters of reference. -- A custodian shall deny inspection of a letter of reference.
(e) Circulation records, or other item, collection, or grouping of information about an individual. --

(1) Subject to the provisions of paragraph (2) of this subsection, a custodian shall prohibit inspection, use, or disclosure of a circulation record of a public library or other item, collection, or grouping of information about an individual that:

(i) is maintained by a library;

(ii) contains an individual's name or the identifying number, symbol, or other identifying particular assigned to the individual; and

(iii) identifies the use a patron makes of that library's materials, services, or facilities.

(2) A custodian shall permit inspection, use, or disclosure of a circulation record of a public library only in connection with the library's ordinary business and only for the purposes for which the record was created.

(f) Gifts. -- A custodian shall deny inspection of library, archival, or museum material given by a person to the extent that the person who made the gift limits disclosure as a condition of the gift.

(g) Retirement records. –

(1) Subject to paragraphs (2) through (7) of this subsection, a custodian shall deny inspection of a retirement record for an individual.

(2) A custodian shall permit inspection:

(i) by the person in interest;

(ii) by the appointing authority of the individual;

(iii) after the death of the individual, by a beneficiary, personal representative, or other person who satisfies the administrators of the retirement and pension systems that the person has a valid claim to the benefits of the individual; and

(iv) by any law enforcement agency in order to obtain the home address of a retired employee of the agency when contact with a retired employee is documented to be necessary for official agency business.

(3) A custodian shall permit inspection by the employees of a county unit that, by county law, is required to audit the retirement records for current or former employees of the county. However, the information obtained during the inspection is confidential, and the county unit and its employees may not disclose any information that would identify a person in interest.

(4) On request, a custodian shall state whether the individual receives a retirement or pension allowance.

(5) A custodian shall permit release of information as provided in § 21-504 or § 21-505 of the State Personnel and Pensions Article.

(6) On written request, a custodian shall:

(i) disclose the amount of that part of a retirement allowance that is derived from employer contributions and that is granted to:

1. a retired elected or appointed official of the State;

2. a retired elected official of a political subdivision; or

3. a retired appointed official of a political subdivision who is a member of a separate system for elected or appointed officials; or

(ii) disclose the benefit formula and the variables for calculating the retirement allowance of:

1. a current elected or appointed official of the State;

2. a current elected official of a political subdivision; or

3. a current appointed official of a political subdivision who is a member of a separate system for elected or appointed officials.

(7) (i) This paragraph applies to Anne Arundel County.

(ii) On written request, a custodian of retirement records shall disclose:

1. the total amount of that part of a pension or retirement allowance that is derived from employer contributions and that is granted to a retired elected or appointed official of the county;

2. the total amount of that part of a pension or retirement allowance that is derived from employee contributions and that is granted to a retired elected or appointed official of the county, if the retired elected or appointed official consents to the disclosure;

3. the benefit formula and the variables for calculating the retirement allowance of a current elected or appointed official of the county; or

4. the amount of the employee contributions plus interest attributable to a current elected or appointed official of the county, if the current elected or appointed official consents to the disclosure.

(iii) A custodian of retirement records shall maintain a list of those elected or appointed officials of the county who have consented to the disclosure of information under subparagraph (ii)2 or 4 of this paragraph.

(h) Certain police records; criminal charging documents. –

(1) This subsection applies only to public records that relate to:

(i) police reports of traffic accidents;

(ii) criminal charging documents prior to service on the defendant named in the document; and

(iii) traffic citations filed in the Maryland Automated Traffic System.

(2) A custodian shall deny inspection of a record described in paragraph (1) of this subsection to any of the following persons who request inspection of records for the purpose of soliciting or marketing legal services:

(i) an attorney who is not an attorney of record of a person named in the record; or

(ii) a person who is employed by, retained by, associated with, or acting on behalf of an attorney described in this paragraph.

(i) Personnel records. –

(1) Subject to paragraph (2) of this subsection, a custodian shall deny inspection of a personnel record of an individual, including an application, performance rating, or scholastic achievement information.

(2) A custodian shall permit inspection by:

(i) the person in interest; or

(ii) an elected or appointed official who supervises the work of the individual.

(j) Hospital records. -- A custodian shall deny inspection of a hospital record that:

(1) relates to:

(i) medical administration;

(ii) staff;

(iii) medical care; or

(iv) other medical information; and

(2) contains general or specific information about 1 or more individuals.

(k) Student records. –

(1) Subject to paragraphs (2) and (3) of this subsection, a custodian shall deny inspection of a school district record about the home address, home phone number, biography, family, physiology, religion, academic achievement, or physical or mental ability of a student.

(2) A custodian shall permit inspection by:

(i) the person in interest; or

(ii) an elected or appointed official who supervises the student.

(3) (i) A custodian may permit inspection of the home address or home phone number of a student of a public school by:

1. an organization of parents, teachers, students, or former students, or any combination of those groups, of the school;

2. an organization or force of the military;

3. a person engaged by a school or board of education to confirm a home address or home phone number;

4. a representative of a community college in the State; or

5. the Maryland Higher Education Commission.

(ii) The Commission or a person, organization, or community college that obtains information under this paragraph may not:

1. use this information for a commercial purpose; or

2. disclose this information to another person, organization, or community college.

(iii) When a custodian permits inspection under this paragraph, the custodian shall notify the Commission, person, organization, or community college of the prohibitions under subparagraph (ii) of this paragraph regarding use and disclosure of this information.

(l) RBC records. -- Subject to the provisions of § 4-310 of the Insurance Article, a custodian shall deny inspection of all RBC reports and RBC plans and any other records that relate to those reports or plans.

(m) Maryland Transportation Authority records. –

(1) Subject to the provisions of paragraph (2) of this subsection, a custodian shall deny inspection of all photographs, videotapes or electronically recorded images of vehicles, vehicle movement records, personal financial information, credit reports, or other personal or financial data created, recorded, obtained by or submitted to the Maryland Transportation Authority or its agents or employees in connection with any electronic toll

collection system or associated transaction system.

(2) A custodian shall permit inspection of the records enumerated in paragraph (1) of this subsection by:

(i) an individual named in the record;

(ii) the attorney of record of an individual named in the record;

(iii) employees or agents of the Maryland Transportation Authority in any investigation or proceeding relating to a violation of speed limitations or to the imposition of or indemnification from liability for failure to pay a toll in connection with any electronic toll collection system;

(iv) employees or agents of a third party that has entered into an agreement with the Maryland Transportation Authority to use an electronic toll collection system for nontoll applications in the collection of revenues due to the third party; or

(v) employees or agents of an entity in another state operating or having jurisdiction over a toll facility.

(n) Higher education investment contracts. –

(1) Subject to paragraph (2) of this subsection, a custodian shall deny inspection of any record disclosing:

(i) the name of an account holder or qualified beneficiary of a prepaid contract under Title 18, Subtitle 19 of the Education Article; and

(ii) the name of an account holder or qualified designated beneficiary of an investment account under Title 18, Subtitle 19A of the Education Article.

(2) A custodian:

(i) shall permit inspection by a person in interest; and

(ii) may release information to an eligible institution of higher education designated:

1. by an account holder of a prepaid contract or qualified beneficiary under Title 18, Subtitle 19A of the Education Article; or

2. by an account holder or qualified designated beneficiary under Title 18, Subtitle 19A of the Education Article.

(o) Recorded images from traffic control signal monitoring systems. –

(1) In this subsection, "recorded images" has the meaning stated in § 21-202.1, § 21-809, or § 21-810 of the Transportation Article.

(2) Except as provided in paragraph (3) of this subsection, a custodian of recorded images produced by a traffic control signal monitoring system operated under § 21-202.1 of the Transportation Article, a speed monitoring system operated under § 21-809 of the Transportation Article, or a work zone speed control system operated under § 21-810 of the Transportation Article shall deny inspection of the recorded images.

(3) A custodian shall allow inspection of recorded images:

(i) as required in § 21-202.1, § 21-809, or § 21-810 of the Transportation Article;

(ii) by any person issued a citation under § 21-202.1, § 21-809, or § 21-810 of the Transportation Article, or an attorney of record for the person; or

(iii) by an employee or agent of an agency in an investigation or proceeding relating to the imposition of or indemnification from civil liability pursuant to § 21-202.1, § 21-809, or § 21-810 of the Transportation Article.

(p) Motor Vehicle Administration records containing personal information. –

(1) Except as provided in paragraphs (2) through (5) of this subsection, a custodian may not knowingly disclose a public record of the Motor Vehicle Administration containing personal information.

(2) A custodian shall disclose personal information when required by federal law.

(3) (i) This paragraph applies only to the disclosure of personal information for any use in response to a request for an individual motor vehicle record.

(ii) The custodian may not disclose personal information without written consent from the person in interest.

(iii) 1. At any time the person in interest may withdraw consent to disclose personal information by notifying the custodian.

2. The withdrawal by the person in interest of consent to disclose personal information shall take effect as soon as practicable after it is received by the custodian.

(4) (i) This paragraph applies only to the disclosure of personal information for inclusion in lists of information to be used for surveys, marketing, and solicitations.

(ii) The custodian may not disclose personal information for surveys, marketing, and solicitations without written consent from the person in interest.

(iii) 1. At any time the person in interest may withdraw consent to disclose personal information by notifying the custodian.

2. The withdrawal by the person in interest of consent to disclose personal information shall take effect as soon as practicable after it is received by the custodian.

(iv) The custodian may not disclose personal information under this paragraph for use in telephone solicitations.

(v) Personal information disclosed under this paragraph may be used only for surveys, marketing, or solicitations and only for a purpose approved by the Motor Vehicle Administration.

(5) Notwithstanding the provisions of paragraphs (3) and (4) of this subsection, a custodian shall disclose personal information:

(i) for use by a federal, state, or local government, including a law enforcement agency, or a court in carrying out its functions;

(ii) for use in connection with matters of:

1. motor vehicle or driver safety;

2. motor vehicle theft;

3. motor vehicle emissions;

4. motor vehicle product alterations, recalls, or advisories;

5. performance monitoring of motor vehicle parts and dealers; and

6. removal of nonowner records from the original records of motor vehicle manufacturers;

(iii) for use by a private detective agency licensed by the Secretary of State Police under Title 13 of the Business Occupations and Professions Article or a security guard service licensed by the Secretary of State Police under Title 19 of the Business Occupations and Professions Article for a purpose permitted under this paragraph;

(iv) for use in connection with a civil, administrative, arbitral, or criminal proceeding in a federal, state, or local court or regulatory agency for service of process, investigation in anticipation of litigation, and execution or enforcement of judgments or orders;

(v) for purposes of research or statistical reporting as approved by the Motor Vehicle Administration provided that the personal information is not published, redisclosed, or used to contact the individual;

(vi) for use by an insurer, insurance support organization, or self-insured entity, or its employees, agents, or contractors, in connection with rating, underwriting, claims investigating, and antifraud activities;

(vii) for use in the normal course of business activity by a legitimate business entity, its agents, employees, or contractors, but only:

1. to verify the accuracy of personal information submitted by the individual to that entity; and

2. if the information submitted is not accurate, to obtain correct information only for the purpose of:

A. preventing fraud by the individual;

B. pursuing legal remedies against the individual; or

C. recovering on a debt or security interest against the individual;

(viii) for use by an employer or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. § 31101 et seq.);

(ix) for use in connection with the operation of a private toll transportation facility;

(x) for use in providing notice to the owner of a towed or impounded motor vehicle;

(xi) for use by an applicant who provides written consent from the individual to whom the information pertains if the consent is obtained within the 6-month period before the date of the request for personal information;

(xii) for use in any matter relating to:

1. the operation of a Class B (for hire), Class C (funeral and ambulance), or Class Q (limousine) vehicle; and

2. public safety or the treatment by the operator of a member of the public;

(xiii) for a use specifically authorized by the law of this State, if the use is related to the operation of a motor vehicle or public safety;

(xiv) for use by a hospital to obtain, for hospital security purposes, information relating to ownership of vehicles parked on hospital property; and

(xv) for use by a procurement organization requesting information under § 4-512 of the Estates and Trusts Article for the purposes of organ, tissue, and eye donation.

(6) (i) A person receiving personal information under paragraph (4) or (5) of this subsection may not use or redisclose the personal information for a purpose other than the purpose for which the custodian disclosed the personal information.

(ii) A person receiving personal information under paragraph (4) or (5) of this subsection who rediscloses the personal information shall:

1. keep a record for 5 years of the person to whom the information is redisclosed and the purpose for which the information is to be used; and

2. make the record available to the custodian on request.

(7) (i) The custodian shall adopt regulations to implement and enforce the provisions of this subsection.

(ii) 1. The custodian shall adopt regulations and procedures for securing a person in interest's waiver of privacy rights under this subsection when an applicant requests personal information about the person in interest that the custodian is not authorized to disclose under paragraphs (2) through (5) of this subsection.

2. The regulations and procedures adopted under this subparagraph shall:

A. state the circumstances under which the custodian may request a waiver; and

B. conform with the waiver requirements in the federal Driver's Privacy Protection Act of 1994 and other federal law.

(8) The custodian may develop and implement methods for monitoring compliance with this section and ensuring that personal information is used only for purposes for which it is disclosed.

(q) Records pertaining to arrest warrants. –

(1) Except as provided in paragraph (4) of this subsection and subject to the provisions of paragraph (5) of this subsection, unless otherwise ordered by the court, files and records of the court pertaining to an arrest warrant issued pursuant to Maryland Rule 4-212(d)(1) or (2) and the charging document upon which the arrest warrant was issued may not be open to inspection until either:

(i) the arrest warrant has been served and a return of service has been filed in compliance with Maryland Rule 4-212(g); or

(ii) 90 days have elapsed since the arrest warrant was issued.

(2) Except as provided in paragraph (4) of this subsection and subject to the provisions of paragraph (5) of this subsection, unless otherwise ordered by the court, files and records of the court pertaining to an arrest warrant issued pursuant to a grand jury indictment or conspiracy investigation and the charging document upon which the arrest warrant was issued may not be open to inspection until all arrest warrants for any co-conspirators have been served and all returns of service have been filed in compliance with Maryland Rule 4-212(g).

(3) Subject to the provisions of paragraphs (1) and (2) of this subsection, unless sealed pursuant to Maryland Rule 4-201(d), the files and records shall be open to inspection.

(4) (i) Subject to subparagraph (ii) of this paragraph, the name, address, birth date, driver's license number, sex, height, and weight of an individual contained in an arrest warrant issued pursuant to Maryland Rule 4-212(d)(1) or (2) or issued pursuant to a grand jury indictment or conspiracy investigation may be released to the Motor Vehicle Administration for use by the Administration for purposes of § 13-406.1 or § 16-204 of the Transportation Article.

(ii) Except as provided in subparagraph (i) of this paragraph, information contained in a charging document that identifies an individual may not be released to the Motor Vehicle Administration.

(5) The provisions of paragraphs (1) and (2) of this subsection may not be construed to prohibit:

(i) the release of statistical information concerning unserved arrest warrants;

(ii) the release of information by a State's Attorney or peace officer concerning an unserved arrest warrant and the charging document upon which the arrest warrant was issued; or

(iii) inspection of files and records, of a court pertaining to an unserved arrest warrant and the charging document upon which the arrest warrant was issued, by:

1. a judicial officer;

2. any authorized court personnel;

3. a State's Attorney;

4. a peace officer;

5. a correctional officer who is authorized by law to serve an arrest warrant;

6. a bail bondsman, surety insurer, or surety who executes bail bonds who executed a bail bond for the individual who is subject to arrest under the arrest warrant;

7. an attorney authorized by the individual who is subject to arrest under the arrest warrant;

8. the Department of Public Safety and Correctional Services or the Department of Juvenile Services for the purpose of notification of a victim under the provisions of § 11-507 of the Criminal Procedure Article; or

9. a federal, State, or local criminal justice agency described under Title 10, Subtitle 2 of the Criminal Procedure Article.

(r) Maryland Transit Administration records. –

(1) Except as provided in paragraph (2) of this subsection, a custodian shall deny inspection of all records of persons created, generated, obtained by, or submitted to the Maryland Transit Administration, its agents, or employees in connection with the use or purchase of electronic fare media provided by the Maryland Transit Administration, its agents, employees, or contractors.

(2) A custodian shall permit inspection of the records enumerated in paragraph (1) of this subsection by:

(i) an individual named in the record; or

(ii) the attorney of record of an individual named in the record.

(s) Department of Natural Resources' records containing personal information. –

(1) Except as provided in paragraph (2) of this subsection, a custodian may not knowingly disclose a public record of the Department of Natural Resources containing personal information.

(2) Notwithstanding paragraph (1) of this subsection, a custodian shall disclose personal information for use in the normal course of business activity by a financial institution, as defined in § 1-101(i) of the Financial Institutions Article, its agents, employees, or contractors, but only:

(i) to verify the accuracy of personal information submitted by the individual to that financial institution; and

(ii) if the information submitted is not accurate, to obtain correct information only for the purpose of:

1. preventing fraud by the individual;

2. pursuing legal remedies against the individual; or

3. recovering on a debt or security interest against the individual.

(t) Application for renewable energy credit certification or claim for credits. -- A custodian shall deny inspection of an application for renewable energy credit certification or a claim for renewable energy credits under Title 10, Subtitle 15 of the Agriculture Article.

(u) Surveillance images. –

(1) In this subsection, "surveillance image" has the meaning stated in § 10-112 of the Criminal Law Article.

(2) Except as provided in paragraph (3) of this subsection, a custodian of a surveillance image shall deny inspection of the surveillance image.

(3) A custodian shall allow inspection of a surveillance image:

(i) as required in § 10-112 of the Criminal Law Article;

(ii) by any person issued a citation under § 10-112 of the Criminal Law Article, or an attorney of record for the person; or

(iii) by an employee or agent of the Baltimore City Department of Public Works in an investigation or proceeding relating to the imposition of or indemnification from civil liability under § 10-112 of the Criminal Law Article.

§ 10-617. Required denials -- Specific information

(a) In general. -- Unless otherwise provided by law, a custodian shall deny inspection of a part of a public record, as provided in this section.

(b) Medical and psychological information. –

(1) In this subsection, "disability" has the meaning stated in § 20-701 of this article.

(2) Subject to paragraph (3) of this subsection, a custodian shall deny inspection of the part of a public record that contains:

(i) medical or psychological information about an individual, other than an autopsy report of a medical examiner;

(ii) personal information about an individual with a disability or an individual perceived to have a disability; or

(iii) any report on human immunodeficiency virus or acquired immunodeficiency syndrome submitted in accordance with Title 18 of the Health - General Article.

(3) A custodian shall permit the person in interest to inspect the public record to the extent permitted under § 4-304(a) of the Health - General Article.

(4) Except for paragraph (2)(iii) of this subsection, this subsection does not apply to:

(i) a nursing home as defined in § 19-1401 of the Health - General Article; or

(ii) an assisted living facility as defined in § 19-1801 of the Health - General Article.

(c) Sociological information. -- If the official custodian has adopted rules or regulations that define sociological information for purposes of this subsection, a custodian shall deny inspection of the part of a public record that contains sociological information, in accordance with the rules or regulations.

(d) Commercial information. -- A custodian shall deny inspection of the part of a public record that contains any of the following information provided by or obtained from any

person or governmental unit:

(1) a trade secret;

(2) confidential commercial information;

(3) confidential financial information; or

(4) confidential geological or geophysical information.

(e) Public employees. -- Subject to § 21-504 of the State Personnel and Pensions Article, a custodian shall deny inspection of the part of a public record that contains the home address or telephone number of an employee of a unit or instrumentality of the State or of a political subdivision unless:

(1) the employee gives permission for the inspection; or

(2) the unit or instrumentality that employs the individual determines that inspection is needed to protect the public interest.

(f) Financial information. –

(1) This subsection does not apply to the salary of a public employee.

(2) Subject to paragraph (3) of this subsection, a custodian shall deny inspection of the part of a public record that contains information about the finances of an individual, including assets, income, liabilities, net worth, bank balances, financial history or activities, or creditworthiness.

(3) A custodian shall permit inspection by the person in interest.

(g) Information systems. -- A custodian shall deny inspection of the part of a public record that contains information about the security of an information system.

(h) Licensing records. –

(1) Subject to paragraphs (2) through (4) of this subsection, a custodian shall deny inspection of the part of a public record that contains information about the licensing of an individual in an occupation or profession.

(2) A custodian shall permit inspection of the part of a public record that gives:

(i) the name of the licensee;

(ii) the business address of the licensee or, if the business address is not available, the home address of the licensee after the custodian redacts all information, if any, that identifies the location as the home address of an individual with a disability as defined in subsection (b) of this section;

(iii) the business telephone number of the licensee;

(iv) the educational and occupational background of the licensee;

(v) the professional qualifications of the licensee;

(vi) any orders and findings that result from formal disciplinary actions; and

(vii) any evidence that has been provided to the custodian to meet the requirements of a statute as to financial responsibility.

(3) A custodian may permit inspection of other information about a licensee if:

(i) the custodian finds a compelling public purpose; and

(ii) the rules or regulations of the official custodian permit the inspection.

(4) Except as otherwise provided by this subsection or other law, a custodian shall permit inspection by the person in interest.

(5) A custodian who sells lists of licensees shall omit from the lists the name of any

licensee, on written request of the licensee.

(i) Suspected collusive or anticompetitive activity. -- A custodian shall deny inspection of the part of a public record that contains information, generated by the bid analysis management system, concerning an investigation based on a transportation contractor's suspected collusive or anticompetitive activity submitted to the Department by:

(1) the United States Department of Transportation; or

(2) another state.

(j) Notary publics. –

(1) Subject to paragraphs (2) through (5) of this subsection, a custodian shall deny inspection of the part of a public record that contains information about the application and commission of a person as a notary public.

(2) A custodian shall permit inspection of the part of a public record that gives:

(i) the name of the notary public;

(ii) the home address of the notary public;

(iii) the home and business telephone numbers of the notary public;

(iv) the issue and expiration dates of the notary public's commission;

(v) the date the person took the oath of office as a notary public; or

(vi) the signature of the notary public.

(3) A custodian may permit inspection of other information about a notary public if the custodian finds a compelling public purpose.

(4) A custodian may deny inspection of a record by a notary public or any other person in interest only to the extent that the inspection could:

(i) interfere with a valid and proper law enforcement proceeding;

(ii) deprive another person of a right to a fair trial or an impartial adjudication;

(iii) constitute an unwarranted invasion of personal privacy;

(iv) disclose the identity of a confidential source;

(v) disclose an investigative technique or procedure;

(vi) prejudice an investigation; or

(vii) endanger the life or physical safety of an individual.

(5) A custodian who sells lists of notaries public shall omit from the lists the name of any notary public, on written request of the notary public.

(k) License application containing Social Security number; exceptions. –

(1) Except as provided in paragraph (2) of this subsection, a custodian shall deny inspection of the part of an application for a marriage license under § 2-402 of the Family Law Article or a recreational license under Title 4 of the Natural Resources Article that contains a Social Security number.

(2) A custodian shall permit inspection of the part of an application described in paragraph (1) of this subsection that contains a Social Security number to:

(i) a person in interest; or

(ii) on request, the State Child Support Enforcement Administration.

(l) Public record containing personal information. –

(1) Except as provided in paragraph (2) of this subsection, a custodian shall deny inspection of the part of a public record that identifies or contains personal information

about a person, including a commercial entity, that maintains an alarm or security system.

(2) a custodian shall permit inspection by:

(i) the person in interest;

(ii) an alarm or security system company if the company can document that it currently provides alarm or security services to the person in interest;

(iii) law enforcement personnel; and

(iv) emergency services personnel, including:

1. a career firefighter;

2. an emergency medical services provider, as defined in § 13-516 of the Education Article;

3. a rescue squad employee; and

4. a volunteer firefighter, rescue squad member, or advanced life support unit member.

§ 10-618. Permissible denials

(a) In general. -- Unless otherwise provided by law, if a custodian believes that inspection of a part of a public record by the applicant would be contrary to the public interest, the custodian may deny inspection by the applicant of that part, as provided in this section.

(b) Interagency and intra-agency documents. -- A custodian may deny inspection of any part of an interagency or intra-agency letter or memorandum that would not be available by law to a private party in litigation with the unit.

(c) Examinations. –

(1) Subject to paragraph (2) of this subsection, a custodian may deny inspection of test questions, scoring keys, and other examination information that relates to the administration of licenses, employment, or academic matters.

(2) After a written promotional examination has been given and graded, a custodian shall permit a person in interest to inspect the examination and the results of the examination, but may not permit the person in interest to copy or otherwise to reproduce the examination.

(d) Research projects. –

(1) Subject to paragraph (2) of this subsection, a custodian may deny inspection of a public record that contains the specific details of a research project that an institution of the State or of a political subdivision is conducting.

(2) A custodian may not deny inspection of the part of a public record that gives only the name, title, expenditures, and date when the final project summary will be available.

(e) Real property. –

(1) Subject to paragraph (2) of this subsection or other law, until the State or a political subdivision acquires title to property, a custodian may deny inspection of a public record that contains a real estate appraisal of the property.

(2) A custodian may not deny inspection to the owner of the property.

(f) Investigations. –

(1) Subject to paragraph (2) of this subsection, a custodian may deny inspection of:

(i) records of investigations conducted by the Attorney General, a State's Attorney, a

city or county attorney, a police department, or a sheriff;

(ii) an investigatory file compiled for any other law enforcement, judicial, correctional, or prosecution purpose; or

(iii) records that contain intelligence information or security procedures of the Attorney General, a State's Attorney, a city or county attorney, a police department, a State or local correctional facility, or a sheriff.

(2) A custodian may deny inspection by a person in interest only to the extent that the inspection would:

(i) interfere with a valid and proper law enforcement proceeding;

(ii) deprive another person of a right to a fair trial or an impartial adjudication;

(iii) constitute an unwarranted invasion of personal privacy;

(iv) disclose the identity of a confidential source;

(v) disclose an investigative technique or procedure;

(vi) prejudice an investigation; or

(vii) endanger the life or physical safety of an individual.

(g) Site-specific location of certain plants, animals or property. –

(1) A custodian may deny inspection of a public record that contains information concerning the site-specific location of an endangered or threatened species of plant or animal, a species of plant or animal in need of conservation, a cave, or a historic property as defined in § 5A-301 of the State Finance and Procurement Article.

(2) A custodian may not deny inspection of a public record described in paragraph (1) of this subsection if requested by:

(i) the owner of the land upon which the resource is located; or

(ii) any entity that could take the land through the right of eminent domain.

(h) Inventions owned by State public institutions of higher education. –

(1) Subject to paragraph (2) of this subsection, a custodian may deny inspection of that part of a public record that contains information disclosing or relating to an invention owned in whole or in part by a State public institution of higher education for 4 years to permit the institution to evaluate whether to patent or market the invention and pursue economic development and licensing opportunities related to the invention.

(2) A custodian may not deny inspection of a part of a public record described in paragraph (1) of this subsection if:

(i) the information disclosing or relating to an invention has been published or disseminated by the inventors in the course of their academic activities or disclosed in a published patent;

(ii) the invention referred to in that part of the record has been licensed by the institution for at least 4 years; or

(iii) 4 years have elapsed from the date of the written disclosure of the invention to the institution.

(i) Trade secrets, confidential commercial information, confidential financial information of the Maryland Technology Development Corporation. -- A custodian may deny inspection of that part of a public record that contains information disclosing or relating to a trade secret, confidential commercial information, or confidential financial

information owned in whole or in part by:

(1) the Maryland Technology Development Corporation; or

(2) a public institution of higher education, if the information is part of the institution's activities under § 15-107 of the Education Article.

(j) Denial of inspection. –

(1) Subject to paragraphs (2), (3), and (4) of this subsection, a custodian may deny inspection of:

(i) response procedures or plans prepared to prevent or respond to emergency situations, the disclosure of which would reveal vulnerability assessments, specific tactics, specific emergency procedures, or specific security procedures;

(ii) 1. building plans, blueprints, schematic drawings, diagrams, operational manuals, or other records of ports and airports and other mass transit facilities, bridges, tunnels, emergency response facilities or structures, buildings where hazardous materials are stored, arenas, stadiums, waste and water systems, and any other building, structure, or facility, the disclosure of which would reveal the building's, structure's or facility's internal layout, specific location, life, safety, and support systems, structural elements, surveillance techniques, alarm or security systems or technologies, operational and transportation plans or protocols, or personnel deployments; or

2. records of any other building, structure, or facility, the disclosure of which would reveal the building's, structure's, or facility's life, safety, and support systems, surveillance techniques, alarm or security systems or technologies, operational and evacuation plans or protocols, or personnel deployments; or

(iii) records prepared to prevent or respond to emergency situations identifying or describing the name, location, pharmaceutical cache, contents, capacity, equipment, physical features, or capabilities of individual medical facilities, storage facilities, or laboratories.

(2) The custodian may deny inspection of a part of a public record under paragraph (1) of this subsection only to the extent that the inspection would:

(i) jeopardize the security of any building, structure, or facility;

(ii) facilitate the planning of a terrorist attack; or

(iii) endanger the life or physical safety of an individual.

(3) (i) Subject to subparagraph (ii) of this paragraph, a custodian may not deny inspection of a public record under paragraph (1) or (2) of this subsection that relates to a building, structure, or facility that has been subjected to a catastrophic event, including a fire, explosion, or natural disaster.

(ii) This paragraph does not apply to the records of any building, structure, or facility owned or operated by the State or any of its political subdivisions.

(4) (i) Subject to paragraphs (1) and (2) of this subsection and subparagraph (ii) of this paragraph, a custodian may not deny inspection of a public record that relates to an inspection of or issuance of a citation concerning a building, structure, or facility by an agency of the State or any political subdivision.

(ii) This paragraph does not apply to the records of any building, structure, or facility owned or operated by the State or any of its political subdivisions.

(k) Denial of inspection of public record. –

(1) A custodian may deny inspection of any part of a public record that contains:

(i) stevedoring or terminal services or facility use rates or proposed rates generated, received, or negotiated by the Maryland Port Administration or any private operating company created by the Maryland Port Administration;

(ii) a proposal generated, received, or negotiated by the Maryland Port Administration or any private operating company created by the Maryland Port Administration for use of stevedoring or terminal services or facilities to increase waterborne commerce through the ports of the State; or

(iii) except as provided in paragraph (2) of this subsection, research or analysis related to maritime businesses or vessels compiled for the Maryland Port Administration or any private operating company created by the Maryland Port Administration to evaluate its competitive position with respect to other ports.

(2) (i) A custodian may not deny inspection of any part of a public record under paragraph (1)(iii) of this subsection by the exclusive representative identified in Section 1 of the memorandum of understanding, or any identical section of a successor memorandum, between the State and the American Federation of State, County and Municipal Employees dated June 28, 2000 or the memorandum of understanding, or any identical section of a successor memorandum, between the State and the Maryland Professional Employees Council dated August 18, 2000 if the part of the public record:

1. is related to State employees; and

2. would otherwise be available to the exclusive representative under Article 4, Section 12 of the memorandum of understanding or any identical section of a successor memorandum of understanding.

(ii) Before the inspection of any part of a public record under subparagraph (i) of this paragraph, the exclusive representative shall enter into a nondisclosure agreement with the Maryland Port Administration to ensure the confidentiality of the information provided.

(l) Inspection of public records of University of Maryland University College. –

(1) A custodian may deny inspection of any part of a public record that relates to the University of Maryland University College's competitive position with respect to other providers of education services and that contains:

(i) fees, tuition, charges, and any information supporting fees, tuition, and charges, proposed, generated, received, or negotiated for receipt by the University of Maryland University College, except fees, tuition, and charges published in catalogues and ordinarily charged to students;

(ii) a proposal generated, received, or negotiated by the University of Maryland University College, other than with its students, for the provision of education services; or

(iii) any research, analysis, or plans compiled by or for the University of Maryland University College relating to its operations or proposed operations.

(2) A custodian may not deny inspection of any part of a public record under paragraph (1) of this subsection if:

(i) the record relates to a procurement by the University of Maryland University College;

(ii) the University of Maryland University College is required to develop or maintain the record by law or at the direction of the Board of Regents of the University System of Maryland; or

(iii) 1. the record is requested by the exclusive representative of any bargaining unit of employees of the University of Maryland University College;

2. the record relates to a matter that is the subject of collective bargaining negotiations between the exclusive representative and the University of Maryland University College; and

3. the exclusive representative has entered into a nondisclosure agreement with the University of Maryland University College to ensure the confidentiality of the information provided.

(m) Denial of inspection of public record -- Public institutions of higher education. –

(1) (i) In this subsection the following words have the meanings indicated.

(ii) "Directory information" has the same meaning as provided in 20 U.S.C. § 1232g.

(iii) "Personal information" means:

1. an address;

2. a phone number;

3. an electronic mail address; or

4. directory information.

(2) A custodian of a record kept by a public institution of higher education that contains personal information relating to a student, former student, or applicant may:

(i) require that a request to inspect a record containing personal information be made in writing and sent by first-class mail; and

(ii) if the information is requested for commercial purposes, deny inspection of the part of the record containing the personal information.

Montgomery County Code (2004)

Sec. 2-151. Inspector General.

(a) Goals. The goals of the Inspector General are to:

(1) review the effectiveness and efficiency of programs and operations of County government and independent County agencies;

(2) prevent and detect fraud, waste, and abuse in government activities; and

(3) propose ways to increase the legal, fiscal, and ethical accountability of County government departments and County-funded agencies.

(b) Appointment. The County Council must appoint an Inspector General for a term of 4 years, as provided in subsection (c). Unless the Council reappoints the incumbent, the Council must select the Inspector General from a list of at least 3 qualified persons submitted by an Inspector General nominating panel, consisting of no less than 3 and no more than 5 County residents designated by the Council by resolution. If the Council does not select one of the persons submitted by the nominating panel, the panel must

submit another list of at least 3 other qualified persons. The members of the nominating panel must not be employed by the County or any independent County agency during their service on the panel.

(c) Term. The term of each Inspector General begins on July 1 of the third year after an Executive and Council are elected, and ends on June 30 of the third year after the next Executive and Council are elected. An Inspector General must not serve more than two full 4-year terms, not including any time served as Inspector General to complete an unexpired term. The Council must appoint an Inspector General to complete a term if the Inspector General resigns, dies, or is removed from office. If the term of the Inspector General expires or the position is otherwise vacant, the senior professional staff member, if any, in the Office of the Inspector General serves as acting Inspector General until an Inspector General is appointed.

(d) Qualifications. The Inspector General must be professionally qualified, by experience or education, in auditing, government operations, or financial management, and must be selected solely on the basis of professional ability and personal integrity, without regard to political affiliation.

(e) Removal. The Council may remove the Inspector General by resolution adopted by the affirmative vote of six Councilmembers for neglect of duty, malfeasance, conviction of a felony, or other good cause. Before the Council adopts a resolution of removal, the Council or its designee must hold a public hearing if the Inspector General requests a hearing within 10 days after receiving notice of proposed removal from the Council.

(f) Budget. By 4 months after the Inspector General is appointed, the Inspector General must submit to the Executive and Council a projected budget for the Office of the Inspector General for the entire 4-year term. In the resolution approving the operating budget for the next fiscal year, the Council must also recommend a projected budget for the Office of the Inspector General for the 3 following fiscal years. The Council must specify in any later budget resolution how the Office budget for that fiscal year differs from the projected budget the Council previously recommended.

(g) Staff; Legal Counsel.

(1) The Inspector General may, subject to appropriation and all applicable merit system laws and regulations, appoint as term employees the staff of the Office of the Inspector General. The term of each employee should end when the next Inspector General takes office unless the Inspector General specifies a shorter term when appointing the employee. The Inspector General may also, subject to appropriation, retain project staff or other consultants by contract. The Inspector General may, with the agreement of the head of any other government department or agency, temporarily detail an employee of that department or agency to the Office of the Inspector General.

(2) The County Attorney must provide legal services to the Inspector General, and may employ special legal counsel for the Inspector General under Section 213 of the Charter.

(3) The Inspector General may employ and be represented by a special legal counsel who is not subject to the authority of the County Attorney, or may obtain legal

services from persons outside the Office of the County Attorney, without the approval of the County Attorney if:

(A) the Inspector General finds that obtaining independent legal services is necessary to effectively perform his or her duties;

(B) the County Attorney has had a reasonable opportunity to comment on the qualifications of the person or firm that the Inspector General has selected to provide those services; and

(C) the County Council approves the Inspector General's decision to obtain independent legal servcies and appropriates sufficient funds to cover the cost of the legal services.

(h) Powers and Duties. The Inspector General must attempt to identify actions which would enhance the productivity, effectiveness, or efficiency of programs and operations of County government and independent County agencies. In developing recommendations, the Inspector General may:

(1) conduct investigations, budgetary analyses, and financial, management, or performance audits and similar reviews; and

(2) seek assistance from any other government agency or private party, or undertake any project jointly with any other governmental agency or private body.

In each project of the Office, the Inspector General should uphold the objective of complying with applicable generally accepted government auditing standards.

(i) Work plan. The Inspector General must direct the activities of the Office of the Inspector General, subject to a work plan for the Inspector General's 4-year term which the Inspector General must adopt within 6 months after being appointed. The Inspector General may amend the plan during a term. The Inspector General must consider recommendations and may seek suggestions for the work plan from the Executive, the County Council, the head of each independent County agency, employees of County government and independent County agencies, employee organizations, and individual citizens. The Inspector General must release the work plan to the public but may treat any item or suggestion for an item as confidential when advance public or agency knowledge of that item or suggestion would frustrate or substantially impede the work of the Office.

(j) Coordination. The Inspector General should consult with the Director of the Office of Legislative Oversight to assure that the work of the Inspector General complements but does not duplicate the work assigned by the Council to the Office of Legislative Oversight, as well as audits and other evaluations conducted by other departments and agencies. The Inspector General may review any audit or program evaluation performed by any County department or agency, and may seek comments from the same or any other department or agency.

(k) Reports.

(1) The Inspector General must submit by October 1 each year an annual report to the Council and the Executive on the activities of the Office and its major findings and recommendations during the previous fiscal year.

(2) When the Inspector General completes a workplan item, the Inspector General must submit a written report on that item to the County Council, the Executive

and the chief operating officer of each affected department or agency. The report must describe the purpose of the project, the research methods used, and the Inspector General's findings and recommendations. Each affected department or agency must be given a reasonable opportunity to respond to the Inspector General's final draft of each report. After giving the Executive and the Council a reasonable opportunity to review the report, the Inspector General must release the report to the public, subject to the state public information act. The public report must include the agency's response. The Inspector General may keep any report prepared under this paragraph, and any information received in connection with that report, confidential until the report is released to the public.

(l) Access to information.

(1) The Inspector General is legally entitled to, and each department or office in County government and each independent County agency must promptly give the Inspector General, any document or other information concerning its operations, budget, or programs that the Inspector General requests. The Inspector General must comply with any restrictions on public disclosure of the document or information that are required by federal or state law. The Inspector General must immediately notify the Chief Administrative Officer, the County Attorney, and the President of the Council if any department, office, or agency does not provide any document or information within a reasonable time after the Inspector General requests it. The Chief Administrative Officer (for departments and offices in the Executive branch of County government), the County Attorney (for independent County agencies), and the Council President (for offices in the legislative branch of County government) must then take appropriate action (including legal action if necessary) to require the department, office, or agency to provide the requested document or information.

(2) If the Inspector General does not receive all necessary information under paragraph (1), the Inspector General may issue a subpoena to require any person to appear under oath as a witness or produce any record or other material in connection with an audit or investigation under this Section. The Inspector General may enforce any subpoena issued under this Section in any court with jurisdiction.

(3) The Inspector General may administer an oath or affirmation or take an affidavit from any person as necessary to perform the Inspector General's duties.

(4) Each employee of a County department or agency should report any fraud, waste, or abuse, to the Office of the Inspector General. After receiving a report or other information from any person, the Inspector General must not disclose that person's identity without the person's consent unless that disclosure is necessary to complete an audit or investigation.

(5) An employee of the County government or any instrumentality of the County, and an employee of any contractor or subcontractor with the County or any instrumentality of the County, must not be retaliated against or penalized, or threatened with retaliation or penalty, for providing information to, cooperating with, or in any way assisting the Inspector General in connection with any activity of that Office under this Section.

(m) Compliance. Each of the following acts is a Class A violation:

(1) withholding or refusing to respond to a valid request for documents or information under this Section;

(2) giving false or misleading information in connection with any audit, study, or investigation under this Section;

(3) retaliating or threatening to retaliate against any person for filing a complaint with the Inspector General, furnishing information, or cooperating in any audit, study, or investigation under this Section.

(n) Definition. As used in this Section, "independent County agency" means:

(1) the County Board of Education and the County school system;

(2) The Maryland-National Capital Park and Planning Commission;

(3) the Washington Suburban Sanitary Commission;

(4) Montgomery College;

(5) the Housing Opportunities Commission;

(6) the County Revenue Authority; and

(7) any other governmental agency (except a municipal government or a state-created special taxing district) for which the County Council appropriates or approves funding, sets tax rates, makes levies, or approves programs or budgets.