

Chapter 536

(Senate Bill 740)

AN ACT concerning

State Government – Access to Public Records – Electronic Documents

FOR the purpose of requiring a custodian of a public record to provide certain applicants with a copy of the public record in a certain electronic format under certain circumstances; establishing a certain exception; authorizing a custodian to remove certain metadata from certain documents; providing for the construction of certain provisions of this Act; clarifying that a certain act does not constitute ~~creating, compiling, or programming~~ a new public record; authorizing a custodian to charge an applicant a certain fee for producing a copy of a public record in an electronic format under certain circumstances; defining a certain term; providing for the termination of this Act; and generally relating to access to public records.

BY repealing and reenacting, with amendments,

Article – State Government

Section 10–611, 10–620, and 10–621

Annotated Code of Maryland

(2009 Replacement Volume and 2010 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – State Government

10–611.

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

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

(c) “Custodian” means:

(1) the official custodian; or

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

(D) (1) “METADATA” MEANS INFORMATION, GENERALLY NOT VISIBLE WHEN AN ELECTRONIC DOCUMENT IS PRINTED, DESCRIBING THE HISTORY, TRACKING, OR MANAGEMENT OF THE ELECTRONIC DOCUMENT, INCLUDING INFORMATION ABOUT DATA IN THE ELECTRONIC DOCUMENT THAT DESCRIBES HOW, WHEN, AND BY WHOM THE DATA IS COLLECTED, CREATED, ACCESSED, OR MODIFIED AND HOW IT IS FORMATTED.

(2) “METADATA” DOES NOT INCLUDE:

- (I) A SPREADSHEET FORMULA;**
- (II) A DATABASE FIELD;**
- (III) AN EXTERNALLY OR INTERNALLY LINKED FILE; OR**
- (IV) A REFERENCE TO AN EXTERNAL FILE OR HYPERLINK.**

[(d)] (E) “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)] (F) “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)] (G) (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)] (H) (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)] (I) (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.

10-620.

(a) (1) Except as otherwise provided in this subsection, an applicant who is authorized to inspect a public record may have:

(i) a copy, printout, or photograph of the public record; or

(ii) if the custodian does not have facilities to reproduce the public record, access to the public record to make the copy, printout, or photograph.

(2) (1) ~~THE~~ EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE CUSTODIAN OF A PUBLIC RECORD SHALL PROVIDE AN APPLICANT WITH A COPY OF THE PUBLIC RECORD IN A SEARCHABLE AND ANALYZABLE ELECTRONIC FORMAT IF:

1. THE PUBLIC RECORD IS IN A SEARCHABLE AND ANALYZABLE ELECTRONIC FORMAT;

2. THE APPLICANT REQUESTS A COPY OF THE PUBLIC RECORD IN A SEARCHABLE AND ANALYZABLE ELECTRONIC FORMAT; AND

3. THE CUSTODIAN IS ABLE TO PROVIDE A COPY OF THE PUBLIC RECORD, IN WHOLE OR IN PART, IN A SEARCHABLE AND ANALYZABLE ELECTRONIC FORMAT THAT DOES NOT DISCLOSE:

A. CONFIDENTIAL OR PROTECTED INFORMATION FOR WHICH THE CUSTODIAN IS REQUIRED TO DENY INSPECTION IN ACCORDANCE WITH §§ 10-615 THROUGH 10-617 OF THIS SUBTITLE; OR

B. INFORMATION FOR WHICH A CUSTODIAN HAS CHOSEN TO DENY INSPECTION IN ACCORDANCE WITH § 10-618 OF THIS SUBTITLE.

(II) THE DEPARTMENT OF ASSESSMENTS AND TAXATION IS NOT REQUIRED TO PROVIDE AN APPLICANT WITH A COPY OF THE PUBLIC RECORD IN A SEARCHABLE AND ANALYZABLE ELECTRONIC FORMAT IF THE DEPARTMENT OF ASSESSMENTS AND TAXATION HAS PROVIDED THE PUBLIC RECORD TO A CONTRACTOR THAT WILL PROVIDE THE APPLICANT A COPY OF

THE PUBLIC RECORD IN A SEARCHABLE AND ANALYZABLE ELECTRONIC FORMAT FOR A REASONABLE COST.

~~(H)~~ (III) A CUSTODIAN MAY REMOVE METADATA FROM AN ELECTRONIC DOCUMENT BEFORE PROVIDING THE ELECTRONIC DOCUMENT TO AN APPLICANT BY:

- 1. USING A SOFTWARE PROGRAM OR FUNCTION; OR
- 2. CONVERTING THE ELECTRONIC DOCUMENT INTO A DIFFERENT SEARCHABLE AND ANALYZABLE FORMAT.

~~(H)~~ (IV) THIS PARAGRAPH MAY NOT BE CONSTRUED TO:

- 1. REQUIRE THE CUSTODIAN TO RECONSTRUCT A PUBLIC RECORD IN AN ELECTRONIC FORMAT IF THE CUSTODIAN NO LONGER HAS THE PUBLIC RECORD AVAILABLE IN ELECTRONIC FORMAT;
- 2. ALLOW A CUSTODIAN TO MAKE A PUBLIC RECORD AVAILABLE ONLY IN AN ELECTRONIC FORMAT;
- 3. REQUIRE A CUSTODIAN TO CREATE, COMPILE, OR PROGRAM A NEW PUBLIC RECORD; OR
- 4. REQUIRE A CUSTODIAN TO RELEASE AN ELECTRONIC RECORD IN A FORMAT THAT WOULD JEOPARDIZE OR COMPROMISE THE SECURITY OR INTEGRITY OF THE ORIGINAL RECORD OR OF ANY PROPRIETARY SOFTWARE IN WHICH IT IS MAINTAINED.

~~(IV)~~ (V) ~~THE~~ IF A PUBLIC RECORD EXISTS IN A SEARCHABLE AND ANALYZABLE ELECTRONIC FORMAT, THE ACT OF EXTRACTING OR EXPORTING DATA FROM A SPREADSHEET OR DATABASE OR CONVERTING DATA FROM ONE AVAILABLE FORMAT TO ANOTHER A CUSTODIAN PROVIDING A PORTION OF THE PUBLIC RECORD IN A SEARCHABLE AND ANALYZABLE ELECTRONIC FORMAT DOES NOT CONSTITUTE CREATING, COMPILING, OR PROGRAMMING A NEW PUBLIC RECORD.

~~(2)~~ (3) An applicant may not have a copy of a judgment until:

- (i) the time for appeal expires; or
- (ii) if an appeal is noted, the appeal is dismissed or adjudicated.

(b) (1) The copy, printout, or photograph shall be made:

(i) while the public record is in the custody of the custodian;
and

(ii) whenever practicable, where the public record is kept.

(2) The official custodian may set a reasonable time schedule to make copies, printouts, or photographs.

10-621.

(a) In this section, “reasonable fee” means a fee bearing a reasonable relationship to the recovery of actual costs incurred by a governmental unit.

(b) Subject to the limitations in this section, the official custodian may charge an applicant a reasonable fee for the search for, preparation of, and reproduction of a public record.

(c) The official custodian may not charge a fee for the first 2 hours that are needed to search for a public record and prepare it for inspection.

(d) (1) If another law sets a fee for a copy, **ELECTRONIC COPY**, printout, or photograph of a public record, that law applies.

(2) The official custodian otherwise may charge any reasonable fee for making or supervising the making of a copy, **ELECTRONIC COPY**, printout, or photograph of a public record.

(3) The official custodian may charge for the cost of providing facilities for the reproduction of the public record if the custodian did not have the facilities.

(e) The official custodian may waive a fee under this section if:

(1) the applicant asks for a waiver; and

(2) after consideration of the ability of the applicant to pay the fee and other relevant factors, the official custodian determines that the waiver would be in the public interest.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011. It shall remain effective for a period of 2 years and, at the end of September 30, 2013, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.

Approved by the Governor, May 19, 2011.