

HOUSE BILL 53

P3

4lr0343

(PRE-FILED)

By: **Delegates Vitale and Carr**

Requested: July 24, 2013

Introduced and read first time: January 8, 2014

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Public Records – Provision of Copies, Printouts, and Photographs – Required**

3 FOR the purpose of requiring a custodian of a public record to provide a copy, printout,
4 or photograph of a public record to an applicant under certain circumstances;
5 authorizing a person or governmental unit that is not provided with a copy,
6 printout, or photograph of a public record to file a complaint with a certain
7 circuit court; providing that the defendant has the burden of sustaining a
8 certain decision; authorizing the court to take certain action regarding the
9 failure to provide a copy, printout, or photograph of a public record; providing
10 that a defendant governmental unit is liable for certain damages under certain
11 circumstances; requiring the court to send a certain copy of its finding regarding
12 the failure to provide a copy, printout, or photograph of a public record to the
13 appointing authority of the custodian of the public record; and generally
14 relating to the provision of copies, printouts, and photographs of public records
15 by custodians.

16 BY repealing and reenacting, with amendments,
17 Article – State Government
18 Section 10–620 and 10–623
19 Annotated Code of Maryland
20 (2009 Replacement Volume and 2013 Supplement)

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

23 **Article – State Government**

24 10–620.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (a) (1) Except as otherwise provided in this subsection, **IF** an applicant
2 who is authorized to inspect a public record [may have] **REQUESTS A COPY,**
3 **PRINTOUT, OR PHOTOGRAPH OF THE PUBLIC RECORD, THE CUSTODIAN SHALL**
4 **PROVIDE THE APPLICANT WITH:**

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

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

8 (2) (i) Except as provided in subparagraph (ii) of this paragraph,
9 the custodian of a public record shall provide an applicant with a copy of the public
10 record in a searchable and analyzable electronic format if:

11 1. the public record is in a searchable and analyzable
12 electronic format;

13 2. the applicant requests a copy of the public record in a
14 searchable and analyzable electronic format; and

15 3. the custodian is able to provide a copy of the public
16 record, in whole or in part, in a searchable and analyzable electronic format that does
17 not disclose:

18 A. confidential or protected information for which the
19 custodian is required to deny inspection in accordance with §§ 10–615 through 10–617
20 of this subtitle; or

21 B. information for which a custodian has chosen to deny
22 inspection in accordance with § 10–618 of this subtitle.

23 (ii) The Department of Assessments and Taxation is not
24 required to provide an applicant with a copy of the public record in a searchable and
25 analyzable electronic format if the Department of Assessments and Taxation has
26 provided the public record to a contractor that will provide the applicant a copy of the
27 public record in a searchable and analyzable electronic format for a reasonable cost.

28 (iii) A custodian may remove metadata from an electronic
29 document before providing the electronic document to an applicant by:

30 1. using a software program or function; or

31 2. converting the electronic document into a different
32 searchable and analyzable format.

33 (iv) This paragraph may not be construed to:

- 1 1. require the custodian to reconstruct a public record in
2 an electronic format if the custodian no longer has the public record available in
3 electronic format;
- 4 2. allow a custodian to make a public record available
5 only in an electronic format;
- 6 3. require a custodian to create, compile, or program a
7 new public record; or
- 8 4. require a custodian to release an electronic record in a
9 format that would jeopardize or compromise the security or integrity of the original
10 record or of any proprietary software in which it is maintained.

11 (v) If a public record exists in a searchable and analyzable
12 electronic format, the act of a custodian providing a portion of the public record in a
13 searchable and analyzable electronic format does not constitute creating a new public
14 record.

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

16 (i) the time for appeal expires; or

17 (ii) if an appeal is noted, the appeal is dismissed or adjudicated.

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

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

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

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

24 10-623.

25 (a) Whenever a person or governmental unit is denied inspection of a public
26 record **OR IS NOT PROVIDED WITH A COPY, PRINTOUT, OR PHOTOGRAPH OF A**
27 **PUBLIC RECORD AS REQUESTED**, the person or governmental unit may file a
28 complaint with the circuit court for the county where:

29 (1) the complainant resides or has a principal place of business; or

30 (2) the public record is located.

1 (b) (1) Unless, for good cause shown, the court otherwise directs and
2 notwithstanding any other provision of law, the defendant shall serve an answer or
3 otherwise plead to the complaint within 30 days after service of the complaint.

4 (2) The defendant:

5 (i) has the burden of sustaining a decision to:

6 1. deny inspection of a public record; **OR**

7 2. **DENY THE PERSON OR GOVERNMENTAL UNIT A**
8 **COPY, PRINTOUT, OR PHOTOGRAPH OF A PUBLIC RECORD;** and

9 (ii) in support of the decision, may submit a memorandum to
10 the court.

11 (c) (1) Except for cases that the court considers of greater importance, a
12 proceeding under this section, including an appeal, shall:

13 (i) take precedence on the docket;

14 (ii) be heard at the earliest practicable date; and

15 (iii) be expedited in every way.

16 (2) The court may examine the public record in camera to determine
17 whether any part of it may be withheld under this Part III of this subtitle.

18 (3) The court may:

19 (i) enjoin the State, a political subdivision, or a unit, official, or
20 employee of the State or of a political subdivision from:

21 1. withholding the public record; **OR**

22 2. **WITHHOLDING A COPY, PRINTOUT, OR**
23 **PHOTOGRAPH OF THE PUBLIC RECORD;**

24 (ii) pass an order for the production of the public record **OR A**
25 **COPY, PRINTOUT, OR PHOTOGRAPH OF THE PUBLIC RECORD** that was withheld
26 from the complainant; and

27 (iii) for noncompliance with the order, punish the responsible
28 employee for contempt.

1 (d) (1) A defendant governmental unit is liable to the complainant for
2 actual damages that the court considers appropriate if the court finds by clear and
3 convincing evidence that any defendant knowingly and willfully failed to:

4 (I) disclose or fully to disclose a public record that the
5 complainant was entitled to inspect under this Part III of this subtitle; OR

6 (II) **PROVIDE A COPY, PRINTOUT, OR PHOTOGRAPH OF A**
7 **PUBLIC RECORD THAT THE COMPLAINANT REQUESTED UNDER § 10-620 OF**
8 **THIS SUBTITLE.**

9 (2) An official custodian is liable for actual damages that the court
10 considers appropriate if the court finds that, after temporarily denying inspection of a
11 public record, the official custodian failed to petition a court for an order to continue
12 the denial.

13 (e) (1) Whenever the court orders the production of a public record **OR A**
14 **COPY, PRINTOUT, OR PHOTOGRAPH OF A PUBLIC RECORD** that was withheld from
15 the applicant and, in addition, finds that the custodian acted arbitrarily or
16 capriciously in withholding the public record **OR THE COPY, PRINTOUT, OR**
17 **PHOTOGRAPH OF THE PUBLIC RECORD**, the court shall send a certified copy of its
18 finding to the appointing authority of the custodian.

19 (2) On receipt of the statement of the court and after an appropriate
20 investigation, the appointing authority shall take the disciplinary action that the
21 circumstances warrant.

22 (f) If the court determines that the complainant has substantially prevailed,
23 the court may assess against a defendant governmental unit reasonable counsel fees
24 and other litigation costs that the complainant reasonably incurred.

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 October 1, 2014.