

HOUSE BILL 658

P3

4lr1956

By: **Delegates Carter, Glass, Hough, Parrott, and Smigiel**

Introduced and read first time: January 31, 2014

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Public Information Act – State Public Information Act Compliance Board –**
3 **Establishment**

4 FOR the purpose of establishing the State Public Information Act Compliance Board;
5 providing for the composition, chair, terms, and meetings of the Board;
6 prohibiting a member of the Board from receiving certain compensation, but
7 authorizing the reimbursement of certain expenses; requiring the Office of the
8 Attorney General to provide staff for the Board; providing for the powers and
9 duties of the Board; authorizing any person to file a certain complaint with the
10 Board; requiring that the complaint contain certain information and be signed
11 by the complainant; requiring the Board to take certain action regarding a
12 complaint; requiring a custodian who receives a complaint from the Board to file
13 a certain response within a certain time period; requiring the Board to maintain
14 the confidentiality of a certain public record; authorizing the Board, under
15 certain circumstances, to hold a certain conference; providing that a certain
16 conference held by the Board is not a contested case; providing that compliance
17 by a custodian with an order of the Board is not a certain admission and may
18 not be used as evidence in a certain proceeding; repealing certain provisions of
19 law related to the administrative review of a decision to deny inspection of a
20 public record; specifying the terms of the initial members of the Board; defining
21 a certain term; and generally relating to the State Public Information Act
22 Compliance Board.

23 BY repealing and reenacting, with amendments,
24 Article – General Provisions
25 Section 4–101; and the amended part designation “Part VI. Judicial Review”
26 immediately preceding Section 4–361
27 Annotated Code of Maryland
28 (As enacted by Chapter ____ (H.B. 270) of the Acts of the General Assembly of
29 2014)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to

2 Article – General Provisions

3 Section 4–1A–01 through 4–1A–09 to be under the new subtitle “Subtitle 1A.
4 State Public Information Act Compliance Board”

5 Annotated Code of Maryland

6 (As enacted by Chapter ____ (H.B. 270) of the Acts of the General Assembly of
7 2014)

8 BY repealing

9 Article – General Provisions

10 Section 4–361

11 Annotated Code of Maryland

12 (As enacted by Chapter ____ (H.B. 270) of the Acts of the General Assembly of
13 2014)

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

16 **Article – General Provisions**

17 4–101.

18 (a) In this title the following words have the meanings indicated.

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

21 **(C) “BOARD” MEANS THE STATE PUBLIC INFORMATION ACT**
22 **COMPLIANCE BOARD.**

23 **[(c)] (D)** “Custodian” means:

24 (1) the official custodian; or

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

27 **[(d)] (E)** “Official custodian” means an officer or employee of the State or of
28 a political subdivision who is responsible for keeping a public record, whether or not
29 the officer or employee has physical custody and control of the public record.

30 **[(e)] (F)** “Person in interest” means:

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

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

3 (3) as to requests for correction of certificates of death under §
4 5–310(d)(2) of the Health – General Article, the spouse, adult child, parent, adult
5 sibling, grandparent, or guardian of the person of the deceased at the time of the
6 deceased’s death.

7 **[(f)] (G)** (1) “Personal information” means information that identifies an
8 individual.

9 (2) Except as provided in § 4–355 of this title, “personal information”
10 includes an individual’s:

11 (i) name;

12 (ii) address;

13 (iii) driver’s license number or any other identification number;

14 (iv) medical or disability information;

15 (v) photograph or computer-generated image;

16 (vi) Social Security number; and

17 (vii) telephone number.

18 (3) “Personal information” does not include an individual’s:

19 (i) driver’s status;

20 (ii) driving offenses;

21 (iii) five-digit zip code; or

22 (iv) information on vehicular accidents.

23 **[(g)] (H)** “Political subdivision” means:

24 (1) a county;

25 (2) a municipal corporation;

26 (3) an unincorporated town;

27 (4) a school district; or

1 (5) a special district.

2 [(h)] (I) (1) "Public record" means the original or any copy of any
3 documentary material that:

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

7 (ii) is in any form, including:

8 1. a card;

9 2. a computerized record;

10 3. correspondence;

11 4. a drawing;

12 5. film or microfilm;

13 6. a form;

14 7. a map;

15 8. a photograph or photostat;

16 9. a recording; or

17 10. a tape.

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

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

23 **SUBTITLE 1A. STATE PUBLIC INFORMATION ACT COMPLIANCE BOARD.**

24 **4-1A-01.**

25 **THERE IS A STATE PUBLIC INFORMATION ACT COMPLIANCE BOARD.**

26 **4-1A-02.**

1 (A) (1) **THE BOARD CONSISTS OF THREE MEMBERS.**

2 (2) **AT LEAST ONE OF THE MEMBERS OF THE BOARD SHALL BE AN**
3 **ATTORNEY ADMITTED TO THE MARYLAND BAR.**

4 (3) **THE GOVERNOR SHALL APPOINT THE MEMBERS WITH THE**
5 **ADVICE AND CONSENT OF THE SENATE.**

6 (B) **FROM AMONG THE MEMBERS OF THE BOARD, THE GOVERNOR**
7 **SHALL APPOINT A CHAIR.**

8 (C) (1) **THE TERM OF A MEMBER IS 3 YEARS.**

9 (2) **THE TERMS OF MEMBERS ARE STAGGERED AS REQUIRED BY**
10 **THE TERMS PROVIDED FOR MEMBERS OF THE BOARD ON OCTOBER 1, 2014.**

11 (3) **AT THE END OF A TERM, A MEMBER CONTINUES TO SERVE**
12 **UNTIL A SUCCESSOR IS APPOINTED.**

13 (4) **A MEMBER WHO IS APPOINTED AFTER A TERM HAS BEGUN**
14 **SERVES ONLY FOR THE REST OF THE TERM AND UNTIL A SUCCESSOR IS**
15 **APPOINTED.**

16 (5) **A MEMBER MAY NOT SERVE FOR MORE THAN TWO**
17 **CONSECUTIVE 3-YEAR TERMS.**

18 **4-1A-03.**

19 (A) **A MAJORITY OF THE FULL AUTHORIZED MEMBERSHIP OF THE**
20 **BOARD IS A QUORUM.**

21 (B) **THE BOARD SHALL DETERMINE THE TIMES AND PLACES OF ITS**
22 **MEETINGS.**

23 (C) **A MEMBER OF THE BOARD:**

24 (1) **MAY NOT RECEIVE COMPENSATION AS A MEMBER OF THE**
25 **BOARD; BUT**

26 (2) **IS ENTITLED TO REIMBURSEMENT FOR EXPENSES UNDER THE**
27 **STANDARD STATE TRAVEL REGULATIONS, AS PROVIDED IN THE STATE**
28 **BUDGET.**

1 **(D) THE OFFICE OF THE ATTORNEY GENERAL SHALL PROVIDE STAFF**
2 **FOR THE BOARD.**

3 **4-1A-04.**

4 **(A) THE BOARD SHALL:**

5 **(1) RECEIVE, REVIEW, AND, SUBJECT TO § 4-1A-07 OF THIS**
6 **SUBTITLE, RESOLVE COMPLAINTS FROM ANY PERSON ALLEGING THAT A**
7 **CUSTODIAN:**

8 **(I) DENIED INSPECTION OF A PUBLIC RECORD IN**
9 **VIOLATION OF THIS TITLE; OR**

10 **(II) CHARGED AN UNREASONABLE FEE OF MORE THAN \$500**
11 **UNDER § 4-206 OF THIS TITLE;**

12 **(2) ISSUE A WRITTEN OPINION AS TO WHETHER A VIOLATION HAS**
13 **OCCURRED; AND**

14 **(3) ORDER THE CUSTODIAN TO:**

15 **(I) IF THE BOARD FINDS THAT THE CUSTODIAN DENIED**
16 **INSPECTION OF A PUBLIC RECORD IN VIOLATION OF THIS TITLE, PRODUCE THE**
17 **PUBLIC RECORD FOR INSPECTION; OR**

18 **(II) IF THE BOARD FINDS THAT THE CUSTODIAN CHARGED**
19 **AN UNREASONABLE FEE OF MORE THAN \$500 UNDER § 4-206 OF THIS TITLE,**
20 **REDUCE THE FEE TO AN AMOUNT DETERMINED BY THE BOARD TO BE**
21 **REASONABLE AND REFUND THE DIFFERENCE.**

22 **(B) THE BOARD SHALL:**

23 **(1) ADOPT REGULATIONS TO CARRY OUT THIS TITLE;**

24 **(2) STUDY ONGOING COMPLIANCE WITH THIS TITLE BY**
25 **CUSTODIANS; AND**

26 **(3) MAKE RECOMMENDATIONS TO THE GENERAL ASSEMBLY FOR**
27 **IMPROVEMENTS IN THIS TITLE.**

1 **(C) (1) ON OR BEFORE OCTOBER 1 OF EACH YEAR, THE BOARD**
2 **SHALL SUBMIT A REPORT TO THE GOVERNOR AND, SUBJECT TO § 2-1246 OF**
3 **THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY.**

4 **(2) THE REPORT SHALL:**

5 **(I) DESCRIBE THE ACTIVITIES OF THE BOARD;**

6 **(II) DESCRIBE THE OPINIONS OF THE BOARD;**

7 **(III) STATE THE NUMBER AND NATURE OF COMPLAINTS**
8 **FILED WITH THE BOARD AND DISCUSS COMPLAINTS THAT THE INSPECTION OF**
9 **PUBLIC RECORDS WAS DENIED; AND**

10 **(IV) RECOMMEND ANY IMPROVEMENTS TO THIS TITLE.**

11 **4-1A-05.**

12 **(A) ANY PERSON MAY FILE A WRITTEN COMPLAINT WITH THE BOARD**
13 **SEEKING A WRITTEN OPINION AND ORDER FROM THE BOARD ALLEGING THAT A**
14 **CUSTODIAN:**

15 **(1) DENIED INSPECTION OF A PUBLIC RECORD IN VIOLATION OF**
16 **THIS TITLE; OR**

17 **(2) CHARGED AN UNREASONABLE FEE OF MORE THAN \$500**
18 **UNDER § 4-206 OF THIS TITLE.**

19 **(B) THE COMPLAINT SHALL:**

20 **(1) IDENTIFY THE CUSTODIAN THAT IS THE SUBJECT OF THE**
21 **COMPLAINT;**

22 **(2) DESCRIBE THE ACTION OF THE CUSTODIAN, THE DATE OF THE**
23 **ACTION, AND THE CIRCUMSTANCES OF THE ACTION; AND**

24 **(3) BE SIGNED BY THE COMPLAINANT.**

25 **4-1A-06.**

26 **(A) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, ON**
27 **RECEIPT OF THE WRITTEN COMPLAINT, THE BOARD PROMPTLY SHALL:**

1 **(1) SEND THE COMPLAINT TO THE CUSTODIAN IDENTIFIED IN THE**
2 **COMPLAINT; AND**

3 **(2) REQUEST THAT A RESPONSE TO THE COMPLAINT BE SENT TO**
4 **THE BOARD.**

5 **(B) (1) THE CUSTODIAN SHALL FILE A WRITTEN RESPONSE TO THE**
6 **COMPLAINT WITHIN 30 DAYS AFTER THE CUSTODIAN RECEIVES THE**
7 **COMPLAINT.**

8 **(2) ON REQUEST OF THE BOARD, THE CUSTODIAN SHALL**
9 **INCLUDE WITH ITS WRITTEN RESPONSE TO THE COMPLAINT:**

10 **(I) IF THE COMPLAINT ALLEGES THAT THE CUSTODIAN**
11 **DENIED INSPECTION OF A PUBLIC RECORD IN VIOLATION OF THIS TITLE:**

12 **1. A COPY OF THE PUBLIC RECORD; AND**

13 **2. THE PROVISION OF LAW THAT THE CUSTODIAN**
14 **ALLEGES ALLOWS THE CUSTODIAN TO DENY INSPECTION OF THE PUBLIC**
15 **RECORD; OR**

16 **(II) IF THE COMPLAINT ALLEGES THAT THE CUSTODIAN**
17 **CHARGED AN UNREASONABLE FEE OF MORE THAN \$500 UNDER § 4-206 OF THIS**
18 **TITLE, THE BASIS FOR THE FEE THAT WAS CHARGED.**

19 **(3) THE BOARD SHALL MAINTAIN THE CONFIDENTIALITY OF A**
20 **PUBLIC RECORD SUBMITTED BY A CUSTODIAN UNDER PARAGRAPH (2) OF THIS**
21 **SUBSECTION.**

22 **(C) IF A WRITTEN RESPONSE IS NOT RECEIVED WITHIN 45 DAYS AFTER**
23 **THE NOTICE IS SENT, THE BOARD SHALL DECIDE THE CASE ON THE FACTS**
24 **BEFORE THE BOARD.**

25 **4-1A-07.**

26 **(A) (1) THE BOARD SHALL REVIEW THE COMPLAINT AND ANY**
27 **RESPONSE.**

28 **(2) IF THE INFORMATION IN THE COMPLAINT AND RESPONSE IS**
29 **SUFFICIENT FOR MAKING A DETERMINATION, WITHIN 30 DAYS AFTER**
30 **RECEIVING THE RESPONSE, THE BOARD SHALL ISSUE A WRITTEN OPINION AS**
31 **TO WHETHER A VIOLATION OF THIS TITLE HAS OCCURRED OR WILL OCCUR.**

1 **(B) (1) IF THE BOARD IS UNABLE TO REACH A DETERMINATION**
2 **BASED ON THE WRITTEN SUBMISSIONS BEFORE IT, THE BOARD MAY SCHEDULE**
3 **AN INFORMAL CONFERENCE TO HEAR FROM THE COMPLAINANT, THE**
4 **CUSTODIAN, OR ANY OTHER PERSON WITH RELEVANT INFORMATION ABOUT THE**
5 **SUBJECT OF THE COMPLAINT.**

6 **(2) AN INFORMAL CONFERENCE SCHEDULED BY THE BOARD IS**
7 **NOT A CONTESTED CASE WITHIN THE MEANING OF § 10-202(D) OF THE STATE**
8 **GOVERNMENT ARTICLE.**

9 **(3) THE BOARD SHALL ISSUE A WRITTEN OPINION WITHIN 30**
10 **DAYS AFTER THE INFORMAL CONFERENCE.**

11 **(C) (1) IF THE BOARD IS UNABLE TO RENDER AN OPINION ON A**
12 **COMPLAINT WITHIN THE TIME PERIODS SPECIFIED IN SUBSECTION (A) OR (B)**
13 **OF THIS SECTION, THE BOARD SHALL:**

14 **(I) STATE IN WRITING THE REASON FOR ITS INABILITY TO**
15 **RENDER AN OPINION; AND**

16 **(II) ISSUE AN OPINION AS SOON AS POSSIBLE BUT NOT**
17 **LATER THAN 90 DAYS AFTER THE FILING OF THE COMPLAINT.**

18 **(2) AN OPINION OF THE BOARD MAY STATE THAT THE BOARD IS**
19 **UNABLE TO RESOLVE THE COMPLAINT.**

20 **(D) THE BOARD SHALL SEND A COPY OF THE WRITTEN OPINION TO THE**
21 **COMPLAINANT AND THE AFFECTED CUSTODIAN.**

22 **4-1A-08.**

23 **(A) THE BOARD MAY SEND TO ANY CUSTODIAN IN THE STATE ANY**
24 **WRITTEN OPINION THAT WILL PROVIDE THE CUSTODIAN WITH GUIDANCE ON**
25 **COMPLIANCE WITH THIS TITLE.**

26 **(B) ON REQUEST, THE BOARD SHALL PROVIDE A COPY OF A WRITTEN**
27 **OPINION TO ANY PERSON.**

28 **4-1A-09.**

29 **COMPLIANCE BY A CUSTODIAN WITH AN ORDER OF THE BOARD:**

1 **(1) IS NOT AN ADMISSION TO A VIOLATION OF THIS TITLE BY THE**
2 **CUSTODIAN; AND**

3 **(2) MAY NOT BE USED AS EVIDENCE IN A PROCEEDING**
4 **CONDUCTED IN ACCORDANCE WITH § 4-362 OF THIS TITLE.**

5 Part VI. [Administrative and] Judicial Review.

6 [4-361.

7 (a) This section does not apply when the official custodian denies inspection
8 temporarily under § 4-358 of this subtitle.

9 (b) If a unit is subject to Title 10, Subtitle 2 of the State Government Article,
10 a person or governmental unit may seek administrative review in accordance with
11 that subtitle of a decision of the unit, under this subtitle, to deny inspection of any
12 part of a public record.

13 (c) A person or governmental unit need not exhaust the remedy under this
14 section before filing suit.]

15 SECTION 2. AND BE IT FURTHER ENACTED, That the terms of the initial
16 members of the State Public Information Act Compliance Board shall expire as
17 follows:

18 (1) one member on June 30, 2016;

19 (2) one member on June 30, 2017; and

20 (3) one member on June 30, 2018.

21 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
22 October 1, 2014.