

SENATE BILL 695

P3

5lr1284
CF 5lr1703

By: **Senator Raskin**

Introduced and read first time: February 6, 2015

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

AN ACT concerning

General Provisions – Public Information Act – Enforcement, Fees, and Exemptions

FOR the purpose of altering certain provisions of law regarding the maintenance of public records relating to certain agricultural operations and programs; establishing the State Public Information Act Compliance Board; requiring the Governor to publish on the Governor's Office Web site certain notice relating to applications for membership on the Board and the names and qualifications of certain applicants; authorizing the Governor to broadcast certain interviews on the Governor's Office Web site; requiring the Governor, with the advice and consent of the Senate, to appoint the members of the Board from a certain pool of applicants; providing for the composition, chair, terms, and meetings of the Board; prohibiting a member of the Board from receiving certain compensation, but authorizing the reimbursement of certain expenses; requiring the Office of the Attorney General to provide staff for the Board; providing for the powers and duties of the Board; authorizing any person to file a certain complaint with the Board; requiring that the complaint contain certain information, be signed by the complainant, and filed within a certain time period; requiring the Board to take certain action regarding a complaint; requiring a custodian who receives a complaint from the Board to file a certain response within a certain time period; requiring the Board to maintain the confidentiality of a certain public record; authorizing the Board, under certain circumstances, to hold a certain conference; providing that a certain conference held by the Board is not a contested case; requiring the Board to assess certain statutory damages and reimbursement of certain fees under certain circumstances; providing that compliance by a custodian with an order of the Board is not a certain admission and may not be used as evidence in a certain proceeding; providing that a complainant is not required to exhaust certain administrative remedies before seeking certain judicial review; repealing certain provisions of law related to the administrative review of a decision to deny inspection of a public record; requiring a person receiving benefits from the State to relinquish certain public records to a certain custodian; establishing that failure to comply with a certain provision of law constitutes a denial of a certain application

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



and may not be considered the result of a bona fide dispute; altering a certain provision of law to require a custodian who denies an application to inspect public records to provide certain information to the applicant within certain periods of time; repealing a certain limitation on the requirement that a custodian allow inspection of any part of a record that is subject to disclosure; prohibiting a custodian from denying or ignoring an application to inspect public records on certain grounds; altering certain provisions of law that authorize a custodian to charge a reasonable fee for certain tasks relating to public records requests; authorizing a custodian to require a certain statement from an applicant under certain circumstances; prohibiting an applicant from obtaining any part of a public record under certain circumstances; requiring the Board to establish a penalty for a certain violation of a certain provision of this Act; requiring a custodian within a certain period of time to provide certain evidence to the Board if the custodian refuses to waive a certain fee under certain circumstances; requiring a custodian to provide certain proof to the Board if an applicant challenges a certain denial to disclose certain public records; establishing that certain defendants are liable for certain statutory damages under certain circumstances; repealing certain burdens of proof that a complainant must show to recover certain damages in a certain court; defining certain terms; specifying the initial terms of the members of the Board; making conforming changes; providing for the effective dates of this Act; and generally relating to the Public Information Act.

BY repealing and reenacting, with amendments,

Article – Agriculture

Section 8–801.1 and 8–1010

Annotated Code of Maryland

(2007 Replacement Volume and 2014 Supplement)

BY repealing and reenacting, with amendments,

Article – General Provisions

Section 4–101, 4–201, 4–203, 4–206, 4–343; and 4–362 and the amended part
designation “Part VI. Judicial Review” immediately preceding Section 4–361

Annotated Code of Maryland

(2014 Volume)

BY adding to

Article – General Provisions

Section 4–1A–01 through 4–1A–10 to be under the new subtitle “Subtitle 1A. State
Public Information Act Compliance Board”

Annotated Code of Maryland

(2014 Volume)

BY repealing

Article – General Provisions

Section 4–361

Annotated Code of Maryland

(2014 Volume)

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

Article – Agriculture

8–801.1.

(A) IN THIS SECTION, “PERSONAL INFORMATION” MEANS AN INDIVIDUAL’S NAME, HOME TELEPHONE NUMBER, PERSONAL EMAIL ADDRESS, AND SOCIAL SECURITY NUMBER.

[(a)] (B) (1) Each nutrient management plan shall be developed considering factors including:

(i) Levels of bioavailable nitrogen and phosphorus in the soil;

(ii) Levels of bioavailable nitrogen and phosphorus in all fertilizer materials to be applied;

(iii) The amount of nitrogen and phosphorus necessary to achieve the expected crop yield for the land that is the subject of the nutrient management plan, as determined by:

1. The field’s actual yield record and soil productivity for that crop; or

2. If information concerning actual yield record and soil productivity for a crop is unavailable, relevant information concerning similar fields and soil;

(iv) Soil erodibility and nutrient retention capacity;

(v) 1. The best reasonable scientific methods accepted by the Department and the University of Maryland Cooperative Extension Service; or

2. Scientifically validated data for the development of a nutrient management plan as defined by the Department in regulation; and

(vi) Existing best management practices.

(2) Each nutrient management plan shall provide flexibility for management decisions that may be required by conditions beyond the control of the farmer.

[(b)] (C) (1) A summary of each nutrient management plan shall be filed and updated with the Department at a time and in a form that the Department requires by regulation.

(2) The Department shall maintain a copy of each summary for 3 years in a manner that protects the [identity] **PERSONAL INFORMATION** of the individual for whom the nutrient management plan was prepared.

8–1010.

(A) IN THIS SECTION, “PERSONAL INFORMATION” MEANS AN INDIVIDUAL’S NAME, HOME TELEPHONE NUMBER, PERSONAL EMAIL ADDRESS, AND SOCIAL SECURITY NUMBER.

[(a)] (B) Except as provided in § 8–1007(b) of this subtitle, all records and information concerning any agricultural operation certified by the Department under this subtitle shall be maintained by the Department and made available for public review in a manner that provides the greatest public disclosure of records and information while protecting the identity of the person for whom the records or information relates.

[(b)] (C) Except as provided in § 8–1008(b) of this subtitle, a certified verifier shall maintain all records and information concerning a certified agricultural operation in a manner that protects the identity of the person for whom the records or information relates.

[(c)] (D) (1) Except as otherwise provided by law, the Department of the Environment shall maintain all records and information received from the Department under §§ 8–1004(c)(2) and 8–1007(b) of this subtitle in a manner that protects the [identity] **PERSONAL INFORMATION** of the person for whom the records or information relates.

(2) This subsection does not affect the maintenance and disclosure of records and information obtained from any other source by the Department of the Environment, even if the records and information are duplicative of information provided to the Department of the Environment by the Department under this subtitle.

[(d)] (E) Except as provided in § 8–1007(b) of this subtitle, records and information relating to an agricultural operation that are generated or obtained solely for the purpose of obtaining certification may not be disclosed by any State agency, department, or certified verifier before the agricultural operation is certified under this subtitle.

[(e)] (F) On or before December 31, 2014, and each December 31 thereafter, the Department shall submit an annual report to the Governor and, in accordance with § 2–1246 of the State Government Article, the Senate Education, Health, and Environmental Affairs Committee and the House Environmental Matters Committee on:

(1) Participation in the Program; and

(2) Recommendations of the oversight committee established in § 8–1013 of this subtitle.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – General Provisions

4–101.

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

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

(c) **“BOARD” MEANS THE STATE PUBLIC INFORMATION ACT COMPLIANCE BOARD.**

[(c)] (D) “Custodian” means:

(1) the official custodian; or

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

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

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

- (i) name;
 - (ii) address;
 - (iii) driver's license number or any other identification number;
 - (iv) medical or disability information;
 - (v) photograph or computer-generated image;
 - (vi) Social Security number; and
 - (vii) telephone number.
- (3) "Personal information" does not include an individual's:
- (i) driver's status;
 - (ii) driving offenses;
 - (iii) five-digit zip code; or
 - (iv) information on vehicular accidents.

[(g)] (H) "Political subdivision" means:

- (1) a county;
- (2) a municipal corporation;
- (3) an unincorporated town;
- (4) a school district; or
- (5) a special district.

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

(i) is made by a unit or an instrumentality of the State 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 an instrumentality of the State 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 of the image or signature, recorded by the Motor Vehicle Administration.

SUBTITLE 1A. STATE PUBLIC INFORMATION ACT COMPLIANCE BOARD.

4-1A-01.

THERE IS A STATE PUBLIC INFORMATION ACT COMPLIANCE BOARD.

4-1A-02.

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

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

(3) AT LEAST ONE OF THE MEMBERS OF THE BOARD SHALL BE A REPRESENTATIVE FROM A NONGOVERNMENTAL NONPROFIT GROUP THAT IS ORGANIZED IN THE STATE.

(4) (I) THE GOVERNOR SHALL PUBLISH, ON THE GOVERNOR'S OFFICE WEB SITE, NOTICE OF THE GOVERNOR'S INTENT TO CONSIDER APPLICANTS FOR POSITIONS ON THE BOARD.

(II) THE NOTICE SHALL INCLUDE:

- 1. APPLICATION PROCEDURES;**
- 2. CRITERIA FOR EVALUATING AN APPLICANT'S QUALIFICATIONS; AND**
- 3. PROCEDURES FOR RESOLVING ANY CONFLICTS OF INTEREST.**

(III) 1. AN INDIVIDUAL MAY SUBMIT TO THE GOVERNOR AN APPLICATION FOR MEMBERSHIP ON THE BOARD AS PROVIDED UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH.

2. THE NAMES AND QUALIFICATIONS OF APPLICANTS SHALL BE POSTED ON THE GOVERNOR'S OFFICE WEB SITE AND INTERVIEWS MAY BE BROADCAST ON THE WEB SITE.

(IV) WHEN EVALUATING AN APPLICANT, THE GOVERNOR SHALL CONSIDER THE NEED FOR GEOGRAPHIC AND POLITICAL DIVERSITY ON THE BOARD.

(5) SUBJECT TO PARAGRAPHS (2) AND (3) OF THIS SUBSECTION AND WITH THE ADVICE AND CONSENT OF THE SENATE, THE GOVERNOR SHALL APPOINT THE MEMBERS OF THE BOARD FROM THE POOL OF APPLICANTS UNDER PARAGRAPH (4) OF THIS SUBSECTION.

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

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

(2) THE TERMS OF MEMBERS ARE STAGGERED AS REQUIRED BY THE TERMS PROVIDED FOR MEMBERS OF THE BOARD ON OCTOBER 1, 2015.

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

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

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

4-1A-03.

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

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

(C) A MEMBER OF THE BOARD:

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

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

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

4-1A-04.

(A) THE BOARD SHALL:

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

(I) DENIED INSPECTION OF A PUBLIC RECORD IN VIOLATION OF THIS TITLE;

(II) CHARGED AN UNREASONABLE FEE OF MORE THAN \$250 UNDER § 4-206 OF THIS TITLE; OR

(III) IMPROPERLY DENIED A FEE WAIVER UNDER § 4-206(E) OF THIS TITLE;

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

(3) ORDER THE CUSTODIAN TO:

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

(II) IF THE BOARD FINDS THAT THE CUSTODIAN CHARGED AN UNREASONABLE FEE OF MORE THAN \$250 UNDER § 4-206 OF THIS TITLE, REDUCE THE FEE TO AN AMOUNT DETERMINED BY THE BOARD TO BE REASONABLE AND REFUND THE DIFFERENCE; OR

(III) IF THE BOARD FINDS THAT THE CUSTODIAN IMPROPERLY DENIED A FEE WAIVER UNDER § 4-206(E) OF THIS TITLE, WAIVE THE FEE.

(B) THE BOARD SHALL:

(1) ADOPT REGULATIONS TO CARRY OUT THIS TITLE;

(2) STUDY ONGOING COMPLIANCE WITH THIS TITLE BY CUSTODIANS;

AND

(3) MAKE RECOMMENDATIONS TO THE GENERAL ASSEMBLY FOR IMPROVEMENTS TO THIS TITLE.

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

(2) THE REPORT SHALL:

(I) DESCRIBE THE ACTIVITIES OF THE BOARD;

(II) DESCRIBE THE OPINIONS OF THE BOARD;

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

(IV) RECOMMEND ANY IMPROVEMENTS TO THIS TITLE.

4-1A-05.

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

(1) DENIED INSPECTION OF A PUBLIC RECORD IN VIOLATION OF THIS TITLE;

(2) CHARGED AN UNREASONABLE FEE OF MORE THAN \$250 UNDER § 4-206 OF THIS TITLE; OR

(3) IMPROPERLY DENIED A FEE WAIVER UNDER § 4-206(E) OF THIS TITLE.

(B) THE COMPLAINT SHALL:

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

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

(3) BE SIGNED BY THE COMPLAINANT;

(4) IF AVAILABLE, INCLUDE A COPY OF THE ORIGINAL REQUEST FOR PUBLIC RECORDS; AND

(5) BE FILED WITHIN 90 DAYS AFTER THE ACTION THAT IS THE SUBJECT OF THE COMPLAINT OCCURRED.

4-1A-06.

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

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

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

(B) (1) THE CUSTODIAN SHALL FILE A WRITTEN RESPONSE TO THE COMPLAINT WITHIN 15 DAYS AFTER THE CUSTODIAN RECEIVES THE COMPLAINT.

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

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

1. A COPY OF THE PUBLIC RECORD; AND

2. THE PROVISION OF LAW THAT THE CUSTODIAN ALLEGES ALLOWS THE CUSTODIAN TO DENY INSPECTION OF THE PUBLIC RECORD;

(II) IF THE COMPLAINT ALLEGES THAT THE CUSTODIAN CHARGED AN UNREASONABLE FEE OF MORE THAN \$250 UNDER § 4-206 OF THIS TITLE, THE BASIS FOR THE FEE THAT WAS CHARGED; OR

(III) IF THE COMPLAINT ALLEGES THAT THE CUSTODIAN IMPROPERLY DENIED A FEE WAIVER UNDER § 4-206(E) OF THIS TITLE, THE BASIS FOR THE DENIAL.

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

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

4-1A-07.

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

(2) IF THE INFORMATION IN THE COMPLAINT AND RESPONSE IS SUFFICIENT FOR MAKING A DETERMINATION BASED ON THE BOARD'S OWN INTERPRETATION OF THE EVIDENCE, WITHIN 30 DAYS AFTER RECEIVING THE RESPONSE, THE BOARD SHALL ISSUE A WRITTEN OPINION AS TO WHETHER A VIOLATION OF THIS TITLE HAS OCCURRED OR WILL OCCUR.

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

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

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

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

(I) STATE IN WRITING THE REASON FOR ITS INABILITY TO ISSUE AN OPINION; AND

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

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

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

(E) (1) A CUSTODIAN IS LIABLE TO THE COMPLAINANT FOR DAMAGES AS DETERMINED UNDER PARAGRAPH (2) OF THIS SUBSECTION IF THE BOARD FINDS THAT THE CUSTODIAN, IN THE ABSENCE OF A BONA FIDE DISPUTE, WILLFULLY AND KNOWINGLY:

(I) FAILED TO DISCLOSE A PUBLIC RECORD THAT THE COMPLAINANT WAS ENTITLED TO INSPECT UNDER THIS TITLE;

(II) CHARGED AN UNREASONABLE FEE OF MORE THAN \$250 UNDER § 4-206 OF THIS TITLE; OR

(III) IMPROPERLY DENIED A FEE WAIVER UNDER § 4-206(E) OF THIS TITLE.

(2) (I) 1. IF THE BOARD DETERMINES THAT A CUSTODIAN IS LIABLE UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE BOARD SHALL ASSESS DAMAGES AGAINST THE CUSTODIAN AT A RATE OF \$100 FOR EACH DAY THAT THE CUSTODIAN TOOK TO DENY THE COMPLAINANT'S INITIAL REQUEST FOR PUBLIC RECORDS.

2. THE STATUTORY DAMAGES IMPOSED UNDER THIS SUBPARAGRAPH MAY NOT EXCEED \$1,000 PER VIOLATION OF THIS TITLE.

(II) IF THE BOARD DETERMINES THAT THE COMPLAINANT SUBSTANTIALLY PREVAILED, THE BOARD SHALL ORDER THE REIMBURSEMENT OF REASONABLE ATTORNEY'S FEES AND OTHER LITIGATION COSTS.

4-1A-08.

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

(B) THE ATTORNEY GENERAL SHALL POST ON THE ATTORNEY GENERAL'S WEB SITE ALL OF THE BOARD'S WRITTEN OPINIONS UNDER THIS SUBTITLE.

4-1A-09.

COMPLIANCE BY A CUSTODIAN WITH AN ORDER OF THE BOARD:

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

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

4-1A-10.

A PERSON OR GOVERNMENTAL UNIT NEED NOT EXHAUST THE ADMINISTRATIVE REMEDY UNDER THIS SUBTITLE BEFORE FILING SUIT.

4-201.

(a) (1) Except as otherwise provided by law, a custodian shall allow a person or governmental unit to inspect any public record at any reasonable time.

(2) TO ENSURE COMPLIANCE WITH THIS SUBSECTION, A PERSON RECEIVING BENEFITS FROM THE STATE, INCLUDING A CONTRACTOR OR SUBCONTRACTOR OF THE STATE, SHALL PROMPTLY RELINQUISH TO THE APPROPRIATE CUSTODIAN ANY PUBLIC RECORD IN THE POSSESSION OF THE PERSON.

[(2)] (3) Inspection or copying of a public record may be denied only to the extent provided under this title.

(b) To protect public records and to prevent unnecessary interference with official business, each official custodian shall adopt reasonable rules or regulations that, subject to this title, govern timely production and inspection of a public record.

(c) Each official custodian shall consider whether to:

(1) designate types of public records of the governmental unit that are to be made available to any applicant immediately on request; and

(2) maintain a current list of the types of public records that have been designated as available to any applicant immediately on request.

4-203.

(a) The custodian shall grant or deny the application promptly, but not more than 30 days after receiving the application.

(b) **(1)** A custodian who approves the application shall produce the public record immediately or within a reasonable period that is needed to retrieve the public record, but not more than 30 days after receipt of the application.

(2) IF THE CUSTODIAN REASONABLY BELIEVES THAT IT WILL TAKE MORE THAN 10 DAYS TO PRODUCE THE PUBLIC RECORD, THE CUSTODIAN SHALL INDICATE IN WRITING WITHIN 10 DAYS AFTER RECEIPT OF THE REQUEST:

(I) THE AMOUNT OF TIME THAT THE CUSTODIAN ANTICIPATES IT WILL TAKE TO PRODUCE THE PUBLIC RECORD;

(II) THE DOCUMENTS THAT ARE BEING RETRIEVED; AND

(III) THE REASON FOR THE DELAY.

(3) IF THE CUSTODIAN FAILS TO COMPLY WITH PARAGRAPH (1) OF THIS SUBSECTION, THE FAILURE CONSTITUTES A DENIAL OF AN APPLICATION AND THE DENIAL MAY NOT BE CONSIDERED THE RESULT OF A BONA FIDE DISPUTE.

(c) **(1)** A custodian who denies the application shall:

[(1)] (I) [immediately] WITHIN 4 WORKING DAYS, notify the applicant IN WRITING;

[(2)] (II) within 10 working days, give the applicant a written statement that gives:

1. FOR EACH RECORD REQUESTED, AN ITEMIZED INDEX OF THE TITLE OR DESCRIPTION, DATE MADE, AND AUTHOR;

[(i)] 2. the reasons for the denial, INCLUDING AN EXPLANATION OF HOW THE STATE’S INTEREST IN PROTECTING THE PRIVACY OF A PERSON IN INTEREST OUTWEIGHS THE PUBLIC’S INTEREST IN DISCLOSURE;

[(ii)] 3. the legal authority for the denial; and

[(iii)] 4. notice of the remedies under this title for review of the denial; and

[(3)] (III) allow inspection of any part of the record that is subject to inspection [and is reasonably severable].

(2) A CUSTODIAN MAY NOT DENY OR IGNORE AN APPLICATION TO INSPECT PUBLIC RECORDS ON THE GROUNDS THAT THE APPLICATION WAS INTENDED FOR PURPOSES OF HARASSMENT.

(d) With the consent of the applicant, any time limit imposed under this section may be extended for not more than 30 days.

4–206.

(a) **(1) In this section[, reasonable fee] THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

(2) (I) “COMMERCIAL PURPOSE” MEANS THE DIRECT OR INDIRECT USE OF ANY PART OF A PUBLIC RECORD IN ANY FORM FOR SALE, RESALE, SOLICITATION, RENT, OR LEASE OF A SERVICE, OR ANY USE BY WHICH THE APPLICANT EXPECTS A PROFIT THROUGH COMMISSION, SALARY, OR FEE.

(II) “COMMERCIAL PURPOSE” DOES NOT INCLUDE USE OF A PUBLIC RECORD:

1. FOR PUBLICATION OR A RELATED USE BY A NEWSPAPER OR PERIODICAL;

2. BY A RADIO OR TELEVISION STATION IN ITS NEWS OR OTHER INFORMATIONAL PROGRAMS;

3. TO PREPARE FOR LITIGATION OR ANY SETTLEMENT BY THE PARTIES OR ATTORNEYS INVOLVED IN THE LITIGATION; OR

4. BY A NONPROFIT ORGANIZATION ACTING IN THE PUBLIC INTEREST.

(3) "INDIGENT" MEANS AN INDIVIDUAL'S FAMILY HOUSEHOLD INCOME IS LESS THAN 50% OF THE MEDIAN FAMILY INCOME FOR THE STATE AS REPORTED IN THE FEDERAL REGISTER.

(4) "REASONABLE FEE" means a fee bearing a reasonable relationship to the recovery of actual costs incurred by a governmental unit.

(b) (1) Subject to the limitations in this section, the official custodian may charge an applicant a reasonable fee for:

(I) the search for, preparation of, and reproduction of a public record:

1. REQUESTED FOR A COMMERCIAL PURPOSE; OR

2. REQUESTED FOR A NONCOMMERCIAL PURPOSE IF THE RECORD IS PREPARED, ON REQUEST OF THE APPLICANT, IN A CUSTOMIZED FORMAT; AND

(II) THE ACTUAL COSTS OF REPRODUCING A PUBLIC RECORD IN STANDARD FORMAT REQUESTED FOR A NONCOMMERCIAL PURPOSE, INCLUDING MEDIA AND MECHANICAL PROCESSING COSTS.

(2) (I) THE OFFICIAL CUSTODIAN MAY REQUIRE A CERTIFIED STATEMENT FROM THE APPLICANT THAT INCLUDES THE COMMERCIAL PURPOSE FOR WHICH THE RECORD IS INTENDED.

(II) AN APPLICANT MAY NOT OBTAIN A COPY OF ANY PART OF A PUBLIC RECORD IF THE APPLICANT WILL USE OR KNOWINGLY ALLOW THE USE OF THE PUBLIC RECORD FOR A PURPOSE OTHER THAN THAT STATED IN THE APPLICATION OR CERTIFIED STATEMENT.

(III) THE BOARD SHALL DETERMINE THE APPROPRIATE PENALTY FOR A VIOLATION OF SUBPARAGRAPH (II) OF THIS PARAGRAPH.

(c) (1) The official custodian may not charge a fee for the first [2] 5 hours that are needed to search for a public record and prepare it for inspection.

(2) THE SEARCH FEE UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE BASED ON THE SALARY OF THE LOWEST-PAID STAFF MEMBER PERFORMING THE SEARCH.

(d) (1) If another law sets a fee for a copy, an electronic copy, a printout, or a 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, an electronic copy, a printout, or a 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 **OR THAT THE APPLICANT IS INDIGENT.**

4–343.

(A) [Unless] SUBJECT TO THE LIMITATIONS IN SUBSECTION (B) OF THIS SECTION AND 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 of the record, as provided in this part.

(B) IF AN APPLICANT FILES A COMPLAINT WITH THE BOARD CHALLENGING A DISCRETIONARY DENIAL UNDER THIS PART, THE CUSTODIAN SHALL PROVE THAT:

(1) THE DENIAL RELATES TO THE STATE’S INTEREST IN PROTECTING THE PRIVACY OF A PERSON IN INTEREST;

(2) THE DISCLOSURE THREATENS TO CAUSE REASONABLY FORESEEABLE, ARTICULABLE, AND SUBSTANTIAL HARM TO A PERSON IN INTEREST; AND

(3) THE HARM FROM THE DISCLOSURE IS GREATER THAN THE PUBLIC INTEREST IN ACCESS TO THE INFORMATION.

Part VI. [Administrative and] Judicial Review.

[4–361.

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

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

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

4–362.

(a) Whenever a person or governmental unit is denied inspection of a public record or is not provided with a copy, printout, or photograph of a public record as requested, the person or governmental unit may file a complaint with the circuit court for the county where:

- (1) the complainant resides or has a principal place of business; or
- (2) the public record is located.

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

(2) The defendant:

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

1. deny inspection of a public record; or
2. deny the person or governmental unit a copy, printout, or photograph of a public record; and

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

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

- (i) take precedence on the docket;
- (ii) be heard at the earliest practicable date; and
- (iii) be expedited in every way.

(2) The court may examine the public record in camera to determine whether any part of the public record may be withheld under this title.

(3) The court may:

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

1. withholding the public record; or
2. withholding a copy, printout, or photograph of the public record;

(ii) issue an order for the production of the public record or a copy, printout, or photograph of the public record that was withheld from the complainant; and

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

(d) (1) A defendant governmental unit is liable to the complainant for **STATUTORY DAMAGES AND** actual damages that the court considers appropriate if the court finds [by clear and convincing evidence] that any defendant [knowingly and willfully], **IN THE ABSENCE OF A BONA FIDE DISPUTE**, failed to:

(i) disclose or fully to disclose a public record that the complainant was entitled to inspect under this title; or

(ii) provide a copy, printout, or photograph of a public record that the complainant requested under § 4–205 of this title.

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

(3) (I) STATUTORY DAMAGES IMPOSED BY THE COURT UNDER PARAGRAPHS (1) OR (2) OF THIS SUBSECTION SHALL BE ASSESSED BY THE COURT AT A RATE OF \$100 FOR EACH DAY THAT THE CUSTODIAN TOOK TO DENY THE COMPLAINANT’S INITIAL REQUEST FOR PUBLIC RECORDS.

(II) THE STATUTORY DAMAGES IMPOSED UNDER PARAGRAPHS (1) OR (2) OF THIS SUBSECTION MAY NOT EXCEED \$1,000 PER VIOLATION OF THIS TITLE.

(e) (1) Whenever the court orders the production of a public record or a copy, printout, or photograph of a public record that was withheld from the applicant and, in

addition, finds that the custodian acted arbitrarily or capriciously in withholding the public record or the copy, printout, or photograph of the public record, the court shall send a certified copy of its finding to the appointing authority of the custodian.

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

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

SECTION 3. AND BE IT FURTHER ENACTED, That the terms of the initial members of the State Public Information Act Compliance Board shall expire as follows:

- (1) one member on June 30, 2017;
- (2) one member on June 30, 2018; and
- (3) one member on June 30, 2019.

SECTION 4. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall take effect October 1, 2016.

SECTION 5. AND BE IT FURTHER ENACTED, That, except as provided in Section 4 of this Act, this Act shall take effect October 1, 2015.