

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 1105
Ways and Means

(Howard County Delegation)

Education, Health, and Environmental Affairs

Howard County Public School System - Access to Public Information
Ho. Co. 9-16

This bill requires a custodian of a public record for the Howard County Public School System (HCPSS) that charges an applicant a fee for access to public information, to provide a written notice advising the applicant of his/her option to file a complaint with the State Public Information Act Compliance Board to contest the fee. The bill also requires the Public Access Ombudsman to investigate, evaluate, and issue a report by January 1, 2017, concerning HCPSS relating access to public records, as specified.

The bill takes effect July 1, 2016.

Fiscal Summary

State Effect: The Public Access Ombudsman within the Office of the Attorney General (OAG) can conduct the required investigation and issue the required report using existing budgeted resources. This assumes that the bill does not otherwise result in a significant increase in workload for OAG.

Local Effect: The bill's changes can be handled with existing budgeted resources.

Small Business Effect: None.

Analysis

Bill Summary: The Public Access Ombudsman must investigate and evaluate HCPSS for the period beginning July 1, 2012, through December 31, 2015, regarding (1) the integrity and propriety of any refusal by the custodian for HCPSS to disclose a public record on the

request of an applicant; (2) the validity of any declaration by the custodian for HCPSS that a public record requested by an applicant does not exist and cannot be produced; and (3) the reasonableness of any complaint by an applicant for a public record from HCPSS as to:

- any delay by a custodian in furnishing the public record that was requested; and
- any other matter involving compliance by a custodian with the requirements of the Maryland Public Information Act;

On request of the ombudsman, the Howard County Board of Education, the Howard County Superintendent of Schools, and HCPSS, as applicable, must provide the ombudsman with any public record that the ombudsman deems necessary to conduct the review and evaluation and to issue the required report. However, the ombudsman must maintain and preserve as confidential any records determined to be confidential by the board, the county superintendent, or the school system.

Current Law:

Access to Public Records – Generally

Each governmental unit that maintains public records must identify a representative who a member of the public may contact to request a public record. OAG must post all such contact information on its website and in any Public Information Act manual published by OAG.

A custodian of a public record must designate types of public records that are to be made available to any applicant immediately on request and must maintain a current list of the types of public records that have been so designated.

Generally, a custodian of a public record must permit inspection of the record at a reasonable time.

A custodian has to deny inspection of a public record or any part of a public record if (1) the public record is privileged or confidential by law or (2) the inspection would be contrary to a State statute, a federal statute or regulation, the Maryland Rules, or an order of a court of record. Denial of inspection is also mandatory for public records relating to adoption, welfare records, letters of reference, specified information about an individual maintained by a library, retirement records, certain police records, criminal charging documents, arrest warrants, personnel records, certain hospital and school records, records of certain State agencies, certain recorded and surveillance images, and captured plate data collected by automatic license plate reader systems. Denial of inspection is required for information in a public record relating to certain medical, psychological, sociological, and financial

information; trade secrets; certain personal information about public employees; information about the security of an information system; and licensing records.

Unless otherwise specified, if a custodian believes that inspection of a part of a public record by an applicant would be contrary to the public interest, the custodian may deny inspection to the applicant of that part of the record. Permissible denials include information relating to documents that would not be available through discovery in a lawsuit, certain information about publicly administered tests, research projects conducted by an institution of the State or a political subdivision, real estate appraisals of property to be acquired by the State prior to its acquisition, certain information on inventions owned by State public higher educational institutions, and trade secrets or confidential information owned by the Maryland Technology Development Corporation.

Fees and Fee Waivers

An official custodian may charge the actual cost for the search, preparation, and reproduction of any public record in a *standard* format. This includes the cost of media and mechanical processing. Staff and/or attorney review costs must be prorated by salary and actual time attributable to the search and preparation of the public record. If a public record is requested by an applicant to be provided in a *customized* format, an official custodian may charge a reasonable fee for search, preparation, and reproduction of the public record.

The official custodian may not charge a fee for the first two hours that are needed to search for a public record and prepare it for inspection. If another law sets a fee for a copy of a public record, that law applies. The official custodian may also charge for the cost of providing facilities for the reproduction of the public record if the custodian did not have the facilities. The fee may be waived by the official custodian if the applicant asks for a waiver and files an affidavit of indigency. “Indigent” means an individual’s family household income is less than 50% of the median family income for the State as specified by federal rules. A waiver may also be granted if the applicant asks for a waiver and, after considering the ability of the applicant to pay the fee, the official custodian determines that the waiver would be in the public interest.

Public Information Act Compliance Board

Chapters 135 and 136 of 2015 established the Public Information Act Compliance Board, a five-member board appointed by the Governor that receives, reviews, and resolves complaints from applicants alleging that a custodian of a public record charged an unreasonable fee of more than \$350. The board does not have jurisdiction over complaints involving fees of less than \$350. The board must issue a written opinion as to whether a violation occurred and may order a custodian to reduce a fee and refund the difference, as

appropriate. The board is required to study ongoing compliance by custodians, make recommendations for improvements, and report to the Governor and General Assembly annually on the board's activities, opinions, the number and nature of complaints filed with the board, and any recommendations.

Public Access Ombudsman

The Office of the Public Access Ombudsman within OAG reviews and resolves disputes between applicants and custodians over requests for public records, including disputes over (1) the custodian's application of an exemption; (2) redactions of information in the public record; (3) the custodian's failure to timely produce a public record or to disclose all records relevant to the request; (4) overly broad requests for public records; (5) the amount of time a custodian needs, given available staff and resources, to produce public records; (6) requests for or denials of fee waivers; and (7) repetitive or redundant applicant requests.

Background: The HCPSS website notes that the fee for copies of public records is 20 cents per page for photocopies made on school system equipment. All fees for records in any other format, such as microfilm or magnetic tape, are charged based on actual cost. Additional fees apply (\$1 per page) if an applicant requests that the school system certify the record as a true copy.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Howard County, Office of the Attorney General, Department of Legislative Services

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