

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	11/24/2015	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 12/28/2015

2. COMAR Codification

Title Subtitle Chapter Regulation

36 01 02 01

3. Name of Promulgating Authority

Maryland State Lottery and Gaming Control Agency

4. Name of Regulations Coordinator Telephone Number
James B Butler 410-230-8781

Mailing Address

1800 Washington Blvd., Ste. 330

City State Zip Code
Baltimore MD 21230

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jbutler@maryland.gov

5. Name of Person to Call About this Document Telephone No.
James B. Butler (410) 230-8781

Email Address
jbutler@maryland.gov

6. Check applicable items:

New Regulations

Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: November 20, 2015.

Repeal of Existing Regulations

Recodification

Incorporation by Reference of Documents Requiring DSD Approval

Reproposal of Substantively Different Text:

: Md. R

(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

7. Is there emergency text which is identical to this proposal:

Yes No

8. Incorporation by Reference

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

9. Public Body - Open Meeting

OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

10. Children's Environmental Health and Protection

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Robert T. Fontaine, Assistant Attorney General, (telephone #(410) 230-8780) on November 19, 2015. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Gordon Medenica

Title

Director

Telephone No.

(410) 230-8790

Date

November 24, 2015

Title 36
MARYLAND STATE LOTTERY AND GAMING CONTROL
AGENCY

Subtitle 01 GENERAL PROVISIONS

36.01.02 Administrative Procedures

Authority: 36.01.02: State Government Article, §9-110; General Provisions Article §§4-101 to 4-601, Annotated Code of Maryland

Notice of Proposed Action

[]

The Maryland Lottery and Gaming Control Agency proposes to amend Regulation .01 under COMAR 36.01.02 Administrative Procedures.

This action was considered at the Maryland Lottery and Gaming Control Commission open meeting held on November 19, 2015, notice of which was given pursuant to General Provisions Article, §3-302(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to reflect the legislative changes to Maryland's Public Information Act (PIA), delete obsolete or unnecessary provisions, replace terms for greater consistency with the terms used in the PIA, and structure the regulation in a manner that is consistent with how the Agency responds to PIA requests.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to James B. Butler, Director of Legislative and Policy Affairs, Maryland Lottery and Gaming Control Agency, 1800 Washington Blvd., Suite 330, Baltimore, MD 21230, or call (410) 230-8781, or email to jbutler@maryland.gov, or fax

to (410) 230-8727. Comments will be accepted through January 27, 2016. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 2016

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

Yes

C. If 'yes', state whether general, special (exact name), or federal funds will be used: General (Lottery and Gaming Proceeds)

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly: To reflect the legislative changes to Maryland's Public Information Act (PIA), delete obsolete or unnecessary provisions, replace terms for greater consistency with the terms used in the PIA, and structure the regulation in a manner that is consistent with how the Agency responds to PIA requests.

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

To reflect the legislative changes to Maryland's Public Information Act (PIA), delete obsolete or unnecessary provisions, replace terms for greater consistency with the terms used in the PIA, and structure the regulation in a manner that is consistent with how the Agency responds to PIA requests.

G. Small Business Worksheet:

Attached Document:

(November 20, 2015)

36.01.02 Administrative Procedures

Authority: State Government Article, § 9-110; General Provisions Article §§ 4-101 to 4-601, Annotated Code of Maryland

.01 Public Information Act Requests.

A. – B. (text unchanged)

C. Definitions.

(1) (text unchanged)

(2) Terms Defined.

(a) – (b) (text unchanged)

(c) "Application" means a request for access under the Act for a public record of the Agency.

(d) "Board" has the meaning stated in §4-101 of the Act.

(e) "Copy" means any form of reproduction using a photocopying machine or other reproduction technology, including a paper copy, an electronic copy, a printout, or an image.

[(c)] (f) "Custodian" [has the meaning stated in §4-101 of the Act.] means:

(i) The official custodian, as defined in General Provisions Article, §4-101, Annotated Code of Maryland;

(ii) The Director;

(iii) The PIA Coordinator; or

(iv) Any other authorized individual who has physical custody and control of a public record of the Agency.

(g) "Indigent" has the meaning stated in §4-206 of the Act.

(h) "Metadata" has the meaning stated in §4-205 of the Act.

(i) "PIA Coordinator" means the Agency employee who is responsible for accepting requests for public records.

(j) "Public Access Ombudsman" means the official appointed, under Title 4, Subtitle 1B of the Act, to resolve disputes under the Act.

[(d)] "Official custodian" means the Director.

(e) "Prepare" includes reviewing documents to determine whether the information contained in them may be disclosed under the Act.]

[(f)] (k) "Public Record" has the meaning stated in §4-101 of the Act.

(l) "Reasonable fee" has the meaning stated in §4-206 of the Act.

D. (text unchanged)

E. Necessity for Written [Request] Application.

(1) [Inspection.] Except as otherwise provided in this regulation, an applicant that wishes to inspect a public record of the Agency shall submit a written application to the PIA Coordinator.

[(a)] Except as otherwise provided in this regulation, the custodian shall make public records available for inspection by an applicant without demanding a written request.

(b) The custodian shall require a written request if the custodian reasonably believes that:

(i) The Act or any other law may prevent the disclosure of the record to the applicant; or

(ii) A written request will materially assist the Agency in responding to the request.

(2) Copies. If the applicant requests one or more copies of any public record of the Agency, the custodian may require a written request from the applicant.]

(2) An applicant need not submit a written application if:

(a) The applicant seeks to inspect a public record designated by the official custodian as available to any applicant immediately on request; or

(b) The PIA coordinator waives the requirement for a written application.

F. [Contents of Written Request.] Application to Inspect a Public Record. [A written request shall:

(1) Contain the applicant's complete name and address;

(2) Be signed by the applicant; and

(3) Reasonably identify, by brief description, the public record sought.]

(1) An application shall be addressed to:

(a) The PIA Coordinator; or

(b) If the PIA Coordinator is not known, the Director.

(2) An application shall:

(a) Reasonably identify, by brief description, the public record sought; and

(b) Provide an address or other means by which the custodian may respond to the applicant's request.

[G. Request to Addressee.

(1) A written request for a public record of the Agency shall be addressed to the custodian of the record.

(2) If the custodian is unknown to the applicant, the request may be addressed to the Director.]

[H.] G. Response to [Written Request] Application.

(1) If the individual to whom the application is submitted is not an Agency custodian, within 10 work days after receiving the application the individual shall give the applicant:

(a) Notice of that fact; and

(b) If known, the name of the custodian and possible location of the public record.

[(1)] (2) If the custodian decides to grant [a request] an application for inspection, the custodian shall produce the record for inspection:

(a) (text unchanged)

(b) Within a reasonable period, not to exceed 30 days from the date of the [request] application if that period of time is needed to retrieve the public record and conduct any necessary review.

(3) If the custodian reasonably believes that it will take more than 10 work days to search for, retrieve, prepare, and produce the public record for inspection, the custodian shall indicate in writing or by electronic mail within 10 work days after receipt of the application:

(a) The amount of time that the custodian anticipates it will take to produce the public record;

(b) An estimate of the range of fees that may be charged to comply with the application for public records;

and

(c) *The reason why it will take more than 10 work days to produce the public record.*

(4) *If an applicant requests to inspect a public record and a custodian determines the record does not exist, the custodian shall notify the applicant of this determination:*

(a) *Immediately, if the custodian determines this on initial review of the application; or*

(b) *If the custodian determines this after a search for responsive records, promptly after the search is completed but not more than 30 days after receiving the application.*

[(2)] (5) *If the custodian [decides to deny] denies [a request] an application for inspection:*

(a) – (b) (text unchanged)

[(3)] (6) *If [a request] an application is denied, the custodian shall provide the applicant, at the time of the denial or within 10 work days, a written statement that gives:*

(a) *The [reasons] reason for the denial including, for records denied under §4-343 of the Act, a brief explanation of [;] :*

(i) *Why denial is necessary; and*

(ii) *Why the harm from disclosure of the public record would be greater than the public interest in providing access to the information in the public record such that disclosure of the public record would be contrary to the public interest;*

(b) (text unchanged)

(c) *Without disclosing the protected information, a brief description of the undisclosed records that will enable the applicant to assess the applicability of the legal authority for the denial; and*

[(c)] (d) *Notice of the remedies available for review of the denial[; and*

(d) *Permission to inspect any part of the record that is:*

(i) *Subject to inspection; and*

(ii) *Reasonably severable.*

(4) *If a requested public record is not in the custody or control of the person to whom application is made, that person shall, within 10 work days after receipt of the request, notify the applicant:*

(a) *That the person does not have custody or control of the requested public record; and*

(b) *If the person knows:*

(i) *Of the name of the custodian of the public record; and*

(ii) *Of the location or possible location of the public record[.]*

[(5)] (7) *A time limit imposed by § G(2) through (3) of this regulation may be extended:*

(a) *With the consent of the applicant, [any time limit imposed by §I(1) — (4) of this regulation may be extended] for an additional period of up to 30 days[.]; and*

(b) *For the period of time during which a dispute initiated by the applicant is pending before the Public Access Ombudsman.*

[I.] *H. Notice to and Consideration of Views of Person Potentially Affected by Disclosure.*

(1) – (2) (text unchanged)

I. Electronic Records.

(1) *Except as provided in §I(3) and (4) of this regulation, the custodian shall provide an applicant with a copy of the public record in a searchable and analyzable electronic format if:*

(a) *The public record is in a searchable and analyzable electronic format;*

(b) *The applicant requests a copy of the public record in a searchable and analyzable electronic format; and*

(c) *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 information that is exempt from disclosure under the Act.*

(2) *The custodian shall provide a portion of the public record in a searchable and analyzable electronic format if:*

(a) *Requested by the applicant; and*

(b) *The custodian is able to do so by using the existing functions of the database or software program that contains the searchable and analyzable data.*

(3) *The custodian is not required to:*

(a) *Create or reconstruct a public record in an electronic format if the public record is not available in an electronic format; or*

(b) *Release an electronic record in a format that would jeopardize or compromise the security or integrity of the original record or any proprietary software in which the record is maintained.*

(4) *The custodian may remove metadata from an electronic document before providing the electronic record to an applicant by:*

(a) *Using a software program or function; or*

(b) *Converting the electronic record into a different searchable and analyzable format.*

[J.] *Record Temporarily Unavailable. If a requested public record is in the custody and control of the person to whom written application is made, but is not immediately available for inspection or copying, the custodian shall promptly:*

(1) *Notify the applicant that the public record is not immediately available; and*

(2) *Schedule a date within a reasonable time for inspection or copying.*

K. Records Destroyed or Lost. If a requested record has been destroyed or lost, the custodian to whom the application is made shall promptly:

- (1) Notify the applicant of this fact within 10 work days of the request; and
- (2) Explain the reasons why the public record cannot be produced.]

[L.] J. Review of Denial.

(1) If the custodian denies [a written request] *an application* to inspect or copy a public record of the Agency, the applicant may, [within 30 days after receipt of the notice of denial, request an administrative hearing] *file an action for judicial enforcement under § 4-362 of the Act without pursuing the remedies set forth in §J(2) and (3) of this regulation.*

[(2) If the applicant requests a hearing:

(a) The hearing shall be governed by State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland; and

(b) The Director shall issue the final decision of the Agency unless the Director delegates final decision authority.

(3) If the hearing results in a total or partial denial of the request, the applicant may file an appropriate action in the circuit court under §4-362 of the Act.

(4) If the applicant does not request a hearing, the applicant may file an action for judicial enforcement under §4-362 of the Act without exhausting that administrative remedy.]

[M. Disclosure Against Public Interest.

(1) Denial pending court order.

(a) If, in the opinion of the Director, disclosure of a public record of the Agency otherwise subject to disclosure under the Act would do substantial injury to the public interest, the Director may temporarily deny the request to obtain a court order allowing nondisclosure.

(b) The temporary denial shall be in writing to the applicant.

(2) Circuit Court Review.

(a) Within 10 work days after the denial, the Director shall apply to the appropriate circuit court for an order permitting continued denial or restriction of access.

(b) Notice of the Director's complaint shall be served on the applicant in the same manner provided for service of process by the Maryland Rules of Civil Procedure.]

K. Temporary Denial.

(1) *If the act authorizes inspection of a public record but the custodian believes inspection would cause substantial injury to the public interest, the custodian may temporarily deny inspection.*

(2) *Within 10 work days after the denial, the custodian shall petition a circuit court to authorize continued denial of inspection.*

(3) *The petition shall be filed in:*

(a) *The circuit court for the county where the public record is located; or*

(b) *The Circuit Court for Baltimore City.*

(4) *The custodian's petition shall be served on the applicant as provided in the Maryland Rules.*

[N.] L. Fees.

(1) [Fee Schedule for Copying and Certifying Copies of Records.

(a) Copies.

(i) The fee for [each copy made by a photocopying machine within the Agency] *a photocopy of a public record of the Agency* is 25 cents per page.

(ii) The fee for each copy made otherwise shall be based on the actual cost of reproduction.

(b) Certification of copies. If a person requests that a copy of a public record be certified as a true copy, an additional fee of \$1 per page (or if appropriate, per item) shall be charged.]

(2) *The fee for a certified true copy of a public record is an additional fee of \$1 per page.*

[(c) Minimum fee. No charge will be made if the total fee is \$1 or less.]

(3) *There is no charge if the total fee for copies is \$10 or less.*

[(2)] (4) Notwithstanding [§O(1)] §L(1) of this regulation, if [the fee for copies or certified copies of any public record is specifically prescribed by a law other than the Act or this regulation, the custodian shall charge the prescribed fee] *another law sets a fee for a copy, printout or photograph of a public record, that law applies.*

[(3)] (5) [If the custodian cannot copy a public record within the Agency, the custodian shall:

(a) Make arrangements for the prompt reproduction of the record at public or private facilities outside the Agency; and

(b) Collect from the applicant a fee to cover the actual cost of reproduction or direct the applicant to pay the cost of reproduction directly to the facility making the copy] *The custodian may charge for the cost of providing facilities for the reproduction of a public record if the custodian does not have the facilities.*

[(4)] (6) Before searching for, *retrieving, reviewing, preparing,* or copying a public record of the Agency, the custodian shall estimate the cost of reproduction and notify the applicant of the cost, and [either] *may*:

(a) – (b) (text unchanged)

[(5)] (7) *Search and Preparation Fee.*

(a) Except as provided in [§P(6)] §L(8) of this regulation, the Agency may charge a reasonable fee to:

[(a)] (i) [To search] *Search for and retrieve* requested public records; [and]

[(ii)] *Review requested public records for potential disclosure; and*

[(b)] (iii) [To prepare] *Prepare* public records for inspection and copying.

(b) *The custodian shall determine the fee by multiplying the staff's or attorney's salary, prorated to an hourly basis, by the actual time attributable to the search for, retrieval of, review of, and preparation of public records for inspection and copying.*

[(6)] (8) The custodian may not charge [any] a [search or preparation] fee for the first 2 hours [that an official or employee of the Agency spends to respond to a request for public records] *spent searching for, retrieving, reviewing and preparing a public record for inspection.*

[(7)] (9) Waiver or reduction of fee.

(a) The [official] custodian may waive or reduce any fee set under this regulation if[:

(i) The] *the* applicant requests a waiver, [and] :

[(ii)] (i) The custodian determines that the waiver or reduction is in the public interest[.] ; *or*

(ii) *The applicant is indigent and files an affidavit verifying the facts that support a claim of indigency.*

(b) [The official] *In determining whether a fee is in the public interest, the custodian shall consider, among other relevant factors, the ability of the applicant to pay the fee.*

[(8)] (10) If the applicant requests that copies of a public record be mailed or delivered to the applicant or a third party, the custodian may charge the applicant for the cost of postage or delivery.

[(9)] (11) If the applicant fails to respond to the custodian within 30 days of the notification under [§N(4)] §L(11) of this regulation, the custodian may deem the request withdrawn without further notification to the applicant.

[(10)] (12) An applicant's request to reopen a request deemed withdrawn under [§N(9)] §L(11) of this regulation shall be processed as a new request.

[O.] *M. Time and Place of Inspection.*

[(1)] An applicant may inspect [any] a public record of the Agency that the applicant is entitled to inspect during [the normal working hours] *a work day* of the Agency.

[(2)] The place of inspection shall be the place where the public record is located unless the custodian, taking into account the applicant's express wish, determines that another place of inspection is more suitable and convenient.]