

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	08/16/2017	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 9/15/2017

2. COMAR Codification

Title Subtitle Chapter Regulation

09 01 04 01-17

3. Name of Promulgating Authority

Department of Labor, Licensing, and Regulation

4. Name of Regulations Coordinator Telephone Number
Kimberly S Ward 410-230-6123

Mailing Address

500 N. Calvert Street

City State Zip Code
Baltimore MD 21202

Email
kimberlys.ward@maryland.gov

5. Name of Person to Call About this Document Telephone No.
Milena Trust 4102306139

Email Address
milena.trust@maryland.gov

6. Check applicable items:
 New Regulations
 Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: August 16, 2017.

- 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 General Provisions Article, §3-302(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 of 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 Milena Y.Trust, Assistant Attorney General, (telephone #4102306139) on August 15, 2017. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Kimberly Smith Ward

Title

Deputy Counsel

Telephone No.

4102306123

Date

August 15, 2017

**Title 09
DEPARTMENT OF LABOR, LICENSING, AND
REGULATION**

Subtitle 01 OFFICE OF THE SECRETARY

09.01.04 Public Information Act Requests

Authority: Business Regulation Article, §2-105; General Provisions Article, Title 4,
Annotated Code of Maryland

Notice of Proposed Action

□

The The Secretary of the Department of Labor, Licensing and Regulation proposes to amend:

- (1) Regulations .01, .02 and .04 under COMAR 03.01.04;
- (2) Adopt new Regulations .06 and .11;
- (3) Amend and recodify existing Regulations .08, .10-.17 to be Regulations .05, .08 - .14, respectively; and
- (4) Repeal existing Regulations .05 - .07 and .09.

Statement of Purpose

The purpose of this action is to update the Office of the Secretary's regulations governing Public Information Act 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 Milena Trust, Office of the Attorney General, DLLR, 500 N. Calvert Street, Baltimore, MD 21201, or call 410-230-6139, or email to milena.trust@maryland.gov, or fax to 410-333-6503. Comments will be accepted through September 10, 2017. A public hearing has not been scheduled.

Economic Impact Statement Part C

- A. Fiscal Year in which regulations will become effective: FY 2018
- 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: Each individual division, including the Office of the Secretary, will use its own funds to fulfill the relevant requests, depending on to which Division is responsible for fulfilling the relevant request.
- 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:
- F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.
- G. Small Business Worksheet:

Attached Document:

.01 General.

- A. These regulations set out procedures for filing requests with the Department of Labor, Licensing, and Regulation (*the "Department"*) for the inspection and copying of records under [Access to Public Records, State Government Article, Title 10, Subtitle 6, Part III,] *the Public Information Act, General Provisions Article, Title 4, Annotated Code of Maryland.*
- B. It is the policy of the Department to facilitate public access to the records of the Department, when access is allowed by law, by minimizing costs and time delays to persons requesting information.

.02 Definitions.

- A. ["Act" means the Public Information Act, State Government Article, Title 10, Subtitle 6, Part III, Annotated Code of Maryland.
- B. "Applicant" means a person requesting disclosure of public records.] *Unless otherwise noted, the definitions set forth in General Provisions Article, Title 4, Annotated Code of Maryland, apply in this chapter.*
- [C.] B. "Custodian" means *the Secretary of the Department or the Secretary's designee* [an authorized person] employed by the Department [having] *who* has personal custody and control of public records of the Department.
- [D. "Department" means the Department of Labor, Licensing and Regulation
- E. "MPIA officer" means the person assigned to each major component of the Department responsible for monitoring and processing MPIA requests submitted to his or her agency.
- F. "Official Custodian" means the person who is responsible for the maintenance, care, and keeping of the public records of the Department. Unless otherwise provided by law, the Secretary is the official custodian of the Department's records.
- G. "Public records" means all paper, correspondence, forms, books, photographs, photostats, films, microfilms, sound recordings, maps, drawings, or other written documents, regardless of physical form or characteristics. Public records includes all copies made or received by the Department in connection with the transaction of public business and includes the salaries of all employees of the Department.]
- C. "PIA Coordinator" means *the Department employee who is responsible for accepting, monitoring, and, with advice from the Department's legal staff, processing of requests for public records.*
- D. "Public Access Ombudsman" means *the official appointed under General Provisions Article, Title 4, Subtitle 1B, to address disputes under the Public Information Act, General Provisions Article, Title 4, Annotated Code of Maryland.*
- [H] E. "Secretary" means the Secretary of Labor, Licensing and Regulation.

[I.] F. "Working day" means a day other than Saturday, Sunday, [or] State holiday, *or the day of State emergency closure.*

[J.] G. "Written documents" means all books, papers, *copies of electronic communications*, maps, photographs, cards, tapes, *computer disks, flash drives*, recordings, computerized records, and other documentary materials, regardless of physical form or characteristics.

.04 [Necessity for Written] Request To Inspect a Public Record.

[A. Inspections.

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

(2) The custodian shall require a written request if the custodian reasonably believes that the Act or any other law may prevent the disclosure of the record to the applicant or that a written request will materially assist the Department in responding to the request.

B. Copies. If the applicant is requesting a copy of any public record, the custodian may require a written request by the applicant.]

A. *Necessity for Written Request.*

Except as otherwise provided in General Provisions Article, Title 4, Annotated Code of Maryland, the custodian shall require a written request via regular or electronic means from a person or governmental unit that wishes to inspect a public record.

B. *Contents of Written Request.*

A written request shall contain the applicant's name and address, shall be signed by the applicant, and shall reasonably identify by brief description the record sought.

C. *Addressee.*

A written request shall be addressed to the custodian of the record. If the custodian is unknown to the applicant, the request may be addressed to the Secretary.

[.05 Contents of Written Request.

A written request shall contain the applicant's name and address, shall be signed by the applicant, and shall reasonably identify by brief description the record sought.]

[.06 Filing Written Request.

A written request shall be addressed to the custodian of the record. If the custodian is unknown to the applicant, the request may be addressed to the Secretary.]

[.07 Departmental MPIA Officers.

[Each of the following agencies within the Department shall appoint a MPIA officer who, with advice from the Department's legal staff, will monitor the receipt and processing of all MPIA requests received by his or her agency: The Office of the Secretary, the Division of Labor and Industry, the Commissioner of Financial Regulation, the Racing Commission, the Division of Unemployment Insurance, the Division of Occupational and Professional Licensing, and the Division of Workforce Development.]

[.08] .05 Response to Written Request.

A. *Decision to Grant a Request.*

(1) If the custodian decides to grant a written request for inspection, [he] *the custodian shall [produce] be responsible for producing the public record for inspection immediately or within a reasonable period, not to exceed 30 days from the date [of] the request [when that period of time is needed to retrieve the information] was received.*

(2) *If the custodian reasonably believes that it will take more than ten (10) working days to produce the public record, the custodian shall indicate in writing via regular or electronic mail within 10 working days after receipt of the request:*

(a) *The amount of time 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 request for public records;*

and

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

B. *Decision to Deny a Request.*

(1) If the custodian decides to deny the written request, [he] *the custodian shall do so within 30 days [of] after receipt of the written request and shall immediately [upon deciding to deny the request,] notify the applicant of the denial [, and the reason for it].*

(2) *If a request is denied, the custodian shall provide the applicant, at the time of the denial or within 10 working days, a written statement that provides the following information:*

(a) *The reason for the denial, including, for records denied under §4-343 of the General Provisions Article, a brief explanation of:*

(i) *Why the 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) *The legal authority for the denial;*

(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*

(d) *Notice of the remedies available for review of the denial.*

C. *Records Not in Custody or Control.*

(1) If a requested public record is not in the custody or control of the person to whom written application is made, that person shall, within 10 working days of the receipt of the request, notify the applicant *that the person does not have custody or control of the requested public record.*

(2) If that person knows the name of the custodian of the *public* record or the location or possible location of the record, this information shall also be given to the applicant.

D. [With the consent of the applicant, any time limit imposed by § A--C may be extended for an additional period not to exceed 30 days] *Extension of Time.*

Any time limit imposed under this Section may be extended either with the consent of the applicant for an additional period not to exceed 30 days, or if the applicant seeks resolution of a dispute under §4-1B-04 of General Provisions Article before the Public Access Ombudsman.

[.09].06 [Records Temporarily Unavailable] Electronic Records.

[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, within 10 working days of the receipt of the request, notify the applicant and set a date and hour within a reasonable time for inspection or copying.]

A. *Except as provided in Sections C. and D. of this regulation, the custodian shall provide an applicant with a copy of the public record in a searchable and analyzable electronic format if:*

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

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

(3) *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 may not be disclosed under the Act.*

B. *The custodian shall provide a portion of the public record in a searchable and analyzable electronic format if:*

(1) *Requested by the applicant; and*

(2) *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.*

C. *The custodian is not required to:*

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

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

D. *The custodian may remove metadata from an electronic document before providing the electronic record to an applicant by:*

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

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

[.10].07 Public Records Destroyed or Lost.

If the custodian is aware that a requested public record of the Department has been destroyed or lost, the custodian [to whom the application is made shall, within 10 working days of the request, notify the applicant of this fact and explain in the response the reasons why the record cannot be produced] *shall within a reasonable time notify the applicant that the public record is not available, and explain the reasons why the public record cannot be produced.*

[.11].08 Review of the Denial.

A. If [a written request is denied by the custodian for a reason other than that stated in Regulations .09 or .10, above,] *the custodian denies a request to inspect or copy a public record of the Department, the applicant may [, within 30 days after receipt of the notice of the denial, request an administrative hearing] file an action for judicial enforcement under General Provisions Article, § 4-362, Annotated Code of Maryland without pursuing the remedies set forth in paragraphs B and C of this regulation.*

B. [If the applicant requests a hearing, the hearing shall be conducted by a hearing officer designated by the Secretary and the hearing shall be governed by State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland. After the hearing, the hearing officer shall prepare a recommended decision for the Secretary. The Secretary

shall issue the final decision of the Department.] *If the custodian charges a fee of more than \$350 under Regulation XXX of this chapter, the applicant may, within 90 days after the date the fee is imposed, file a written complaint with the Board under General Provisions Article, §4-1A-05(a), Annotated Code of Maryland.*

C. [If the hearing results in a total or partial denial of the written request, the applicant may file an appropriate action in the circuit court under State Government Article, § 10-623, Annotated Code of Maryland.] *The applicant and the custodian may contact the Public Access Ombudsman to resolve, under General Provisions Article, Title 4, Subtitle 1B, Annotated Code of Maryland, a dispute relating to a request for public records.*

[D. If the applicant chooses not to request a hearing under § A, above, the applicant may file an action for judicial enforcement under State Government Article, § 10-623, Annotated Code of Maryland, without exhausting that administrative remedy.]

[.12] .09 Disclosure Against Public Interest.

A. Denial Pending Court Order.

(1) If, in the opinion of the Secretary, disclosure of any public record that is otherwise required to be disclosed under the Act would do substantial injury to the public interest, the Secretary may temporarily deny the request *and seek a court order allowing continued nondisclosure.*

(2) *A temporary denial shall be in writing.*

B. Circuit Court Review.

[and apply within 10 working days of the denial to the appropriate circuit court for an order permitting continued denial or restriction of access. Notice of the application filed with the circuit court shall be served on the applicant in the same manner that is provided for service of process by the Maryland Rules of Procedure].

(1) *Within 10 working days after the denial, the Secretary shall apply to the appropriate circuit court for an order permitting continued denial or restriction of access.*

(2) *Notice of the Secretary's complaint shall be served on the applicant in the manner provided for service of process by the Maryland Rules.*

[.13] .10 Time and Place of Inspection.

A. *An applicant may inspect any public record that the applicant is entitled to inspect during the normal working hours of the Department.*

B. *The place of inspection shall be the place where the public record is located, unless the custodian, after taking into account the applicant's expressed preferences, determines that another place of inspection is more suitable and convenient.*

[.13] .11 Inspection of Occupational and Professional Licensing Data for Compelling Public Purpose.

A. A compelling public purpose shall be deemed to exist under [State Government Article, §10-617(h)(3),] *General Provisions Article, §4-333, Annotated Code of Maryland, and the custodian of occupational and professional licensing records within the Department may permit the right of inspection of occupational and professional licensing data on individual persons other than that data specified under [State Government Article, §10-617(h)(2),] General Provisions Article, §4-333 Annotated Code of Maryland, as set forth in this regulation.*

B. – D (text unchanged)

[.14] .12 Fees.

A. The fee schedule for copying and certifying copies of records is as follows:

(1) Copies.

[The fee for each copy is 25 cents per page if reproduction is made by a photocopying machine within the Department. If records are not susceptible to photocopying (for example, punch cards, magnetic tapes, blueprints, and microfilm), the fee for copies will be based on the actual cost of reproduction.]

(a) *The fee for each copy made is 25 cents per page if reproduction is made by a standard printer or photocopying or scanning machine within the Department;*

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

(2) 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.

(3) Minimum Fee Charged. A charge will not be made if the total amount of the fee would be [\$1] \$5 or less.

B. Notwithstanding § A[above] *of this regulation*, if the fees for copies, print-outs, photographs, or certified copies of any *public* record are specifically prescribed by a law other than the Act or this regulation, the prescribed fee shall be charged.

C. If the custodian is unable to copy a *public* record within the Department, the custodian shall make arrangements for the prompt reproduction of the record at public or private facilities outside the Department. The custodian shall either 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.

D. Before copying a record, the custodian shall estimate the cost of reproduction, *including any search and preparation fees*, and either obtain the agreement of the applicant to pay the cost or [demand] *require* prepayment of any estimated fee before reproducing the record.

E. *Search and Preparation Fees.*

(1) Except as provided in § [F, below] *E (2) of this regulation*, the official custodian may charge reasonable fees for [official or employee] time expended *fulfilling the following tasks*:

(a) [searching] *Searching* for requested *public* records[or for any time expended preparing records for inspection and copying.];

(b) *Reviewing requested public records for potential disclosure; and*

(c) *Preparing public records for inspection and copying.*

[F.] (2) The official custodian may not charge any search or preparation fee for the first 2 hours of [official or employee] time that is needed to respond to a request [for information] *to copy or inspect a public record.*

[G.] *F. Waiver or Reduction of Fee*

[Upon request, the]

(1) *The official custodian may waive or reduce any fee charged pursuant to this regulation if:*

[the custodian determines that the waiver or reduction is in the public interest. The official custodian shall consider, among other relevant factors, the ability of the applicant to pay the cost or fee.]

(a) *The applicant requests a waiver; and*

(b) *The custodian determines that the waiver or reduction is in the public interest or if the applicant is indigent and files an affidavit verifying the facts support a claim of indigency.*

(2) *In determining whether a fee is in the public interest, the custodian shall consider, among other relevant factor, the ability of the applicant to pay the fee.*

[H.] *G.* 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 [to the applicant].

[.17] .13 Sociological Information.

A. Definition. For purposes of [this regulation] *General Provisions Article, §4-330, Annotated Code of Maryland*, "sociological information" means any of the following information requested from the Department:

(1) – (5) (text unchanged)

B. Nondisclosure. *Unless otherwise prohibited from disclosure under applicable state or federal laws*, [The] *the* Department may not disclose sociological information to a requester, except that *sociological* information may be disclosed:

(1) (text unchanged)

(2) [To parties litigating claims for unemployment insurance to the extent the sociological information would be available to private parties in litigation;

(3)] When required by a duly issued subpoena; or

[(4)](3) (text unchanged)