
By: **Delegate Arnick**
Introduced and read first time: February 13, 1998
Assigned to: Commerce and Government Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Public Information Act - Access to Information**

3 FOR the purpose of altering the definition of "public record" to include electronic
4 records; requiring the official custodians of public records to provide copies of
5 certain records in certain forms or formats; requiring official custodians of
6 public records to conduct searches for certain records in a certain manner;
7 limiting certain fees that may be charged for certain services; setting certain fee
8 schedules for the retrieval of certain information; prohibiting official custodians
9 of public records from requiring advance payment for certain services except
10 under certain circumstances; providing for a certain construction of this Act; and
11 generally relating to access to public records.

12 BY repealing and reenacting, with amendments,
13 Article - State Government
14 Section 10-611(g), 10-613, 10-620, and 10-621
15 Annotated Code of Maryland
16 (1995 Replacement Volume and 1997 Supplement)

17 **Preamble**

18 WHEREAS, The General Assembly finds and declares that the public policy of
19 Maryland is to open the operations of government to the scrutiny of its citizens. Thus
20 the basic policy of the Public Information Act is that open examination of public
21 records is in the public interest. Denial of public access generally is contrary to the
22 public interest, and only in exceptional circumstances may access be denied. Thus the
23 provisions in this Act, or in other laws, that exempt records from public access shall
24 be strictly construed; now, therefore,

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

1 **Article - State Government**

2 10-611.

3 (g) (1) "Public record" means the original or any copy of any documentary
4 material that:5 (i) is made by a unit or instrumentality of the State government or
6 of a political subdivision or received by the unit or instrumentality in connection with
7 the transaction of public business; and

8 (ii) is in any form, including:

- 9 1. a card;
- 10 2. a computerized OR ELECTRONIC record;
- 11 3. correspondence;
- 12 4. a drawing;
- 13 5. film or microfilm;
- 14 6. a form;
- 15 7. a map;
- 16 8. a photograph or photostat;
- 17 9. a recording; or
- 18 10. a tape.

19 (2) "Public record" includes a document that lists the salary of an
20 employee of a unit or instrumentality of the State government or of a political
21 subdivision.22 (3) "Public record" does not include a digital photographic image or
23 signature of an individual, or the actual stored data thereof, recorded by the Motor
24 Vehicle Administration.

25 10-613.

26 (a) Except as otherwise provided by law, a custodian shall permit a person or
27 governmental unit to inspect any public record at any reasonable time.28 (b) To protect public records and to prevent unnecessary interference with
29 official business, each official custodian shall adopt AND PUBLISH reasonable [rules
30 or] regulations that, subject to this Part III of this subtitle, govern timely production
31 and inspection of a public record.

1 10-620.

2 (a) [(1)] Except as otherwise provided in this subsection, an applicant who is
3 authorized to inspect a public record may have:

4 [(i)] (1) a copy, printout, [or] photograph, OR COMPUTER OR
5 ELECTRONIC REPLICATION of the public record; or

6 [(ii)] (2) if the custodian does not have facilities to reproduce the
7 public record, access to the public record to make the copy, printout, or photograph.

8 [(2)] An applicant may not have a copy of a judgment until:

9 (i) the time for appeal expires; or

10 (ii) if an appeal is noted, the appeal is dismissed or adjudicated.]

11 (b) (1) The copy, printout, [or] photograph, OR COMPUTER OR ELECTRONIC
12 REPLICATION shall be made:

13 (i) while the public record is in the custody of the custodian; and

14 (ii) whenever practicable, where the public record is kept.

15 (2) The official custodian may set a reasonable time schedule to make
16 copies, printouts, [or] photographs, OR COMPUTER OR ELECTRONIC REPLICATIONS.

17 (3) (I) IN MAKING ANY RECORD AVAILABLE TO A PERSON UNDER THIS
18 PARAGRAPH, THE OFFICIAL CUSTODIAN SHALL PROVIDE THE RECORD IN ANY FORM
19 OR FORMAT REQUESTED BY THE PERSON, IF THE RECORD IS READILY
20 REPRODUCIBLE BY THE UNIT OR INSTRUMENTALITY IN THAT FORM OR FORMAT.

21 (II) THIS OFFICIAL CUSTODIAN OR INSTRUMENTALITY SHALL
22 MAKE REASONABLE EFFORTS TO MAINTAIN ITS RECORDS IN FORMS OR FORMATS
23 THAT ARE REPRODUCIBLE FOR PURPOSES OF THIS SECTION.

24 (4) IN RESPONDING UNDER THIS PARAGRAPH TO A REQUEST FOR
25 RECORDS, THE OFFICIAL CUSTODIAN SHALL MAKE REASONABLE EFFORTS TO
26 SEARCH FOR THE RECORDS IN ELECTRONIC FORM OR FORMAT, EXCEPT WHEN SUCH
27 EFFORTS WOULD SIGNIFICANTLY INTERFERE WITH THE OPERATION OF AN
28 AUTOMATED INFORMATION SYSTEM.

29 10-621.

30 (a) Subject to the limitations in this section, the official custodian may charge
31 an applicant a reasonable fee for the search for, preparation of, and reproduction of a
32 public record.

33 (B) FEES SHALL BE LIMITED TO THE REASONABLE STANDARD CHARGES FOR
34 DOCUMENT SEARCH, DUPLICATION, AND REVIEW.

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

3 [(c)] (D) (1) [If another law sets a fee for a copy, printout, or photograph of a
4 public record, that law applies] DOCUMENTS SHALL BE FURNISHED WITHOUT
5 CHARGE, OR AT A CHARGE BELOW THE FEES AUTHORIZED UNDER SUBSECTIONS (A)
6 AND (B) OF THIS SECTION IF DISCLOSURE OF THE INFORMATION CONTRIBUTES
7 SIGNIFICANTLY TO PUBLIC UNDERSTANDING OF THE OPERATIONS OR ACTIVITIES
8 OF THE GOVERNMENT AND IS NOT PRIMARILY IN THE INTEREST OF THE
9 REQUESTOR.

10 (2) [The official custodian otherwise may charge any reasonable fee for
11 making or supervising the making of a copy, printout, or photograph of a public
12 record] FEE SCHEDULES SHALL PROVIDE FOR THE RECOVERY OF ONLY THE DIRECT
13 COSTS OF THE SEARCH, DUPLICATION, OR REVIEW.

14 (3) (I) REVIEW COSTS SHALL INCLUDE THE DIRECT COSTS INCURRED
15 DURING THE INITIAL EXAMINATION OF A DOCUMENT FOR THE PURPOSES OF
16 DETERMINING WHETHER THE DOCUMENTS MUST BE :

17 1. DISCLOSED UNDER THIS SECTION; OR

18 2. WITHHELD UNDER THIS SECTION.

19 (II) REVIEW COSTS MAY NOT INCLUDE ANY COSTS INCURRED IN
20 RESOLVING ISSUES OF LAW OR POLICY THAT MAY BE RAISED IN THE COURSE OF
21 PROCESSING A REQUEST UNDER THIS SECTION.

22 [(3)] (4) [The official custodian may charge for the cost of providing
23 facilities for the reproduction of the public record if the custodian did not have the
24 facilities] A FEE MAY NOT BE CHARGED UNDER THIS SECTION IF:

25 (I) THE COSTS OF ROUTINE COLLECTION AND PROCESSING OF
26 THE FEE ARE LIKELY TO EXCEED THE AMOUNT OF THE FEE; OR

27 (II) ANY REQUEST DESCRIBED UNDER THIS SECTION EXCEEDS 100
28 PAGES OF DUPLICATION.

29 (E) AN OFFICIAL CUSTODIAN MAY NOT REQUIRE ADVANCE PAYMENT OF ANY
30 FEE UNLESS:

31 (1) THE REQUESTOR HAS PREVIOUSLY FAILED TO PAY FEES IN A
32 TIMELY FASHION; OR

33 (2) THE OFFICIAL CUSTODIAN HAS DETERMINED THAT THE FEE WILL
34 EXCEED \$250.

35 (F) NOTHING IN THIS SECTION MAY BE CONSTRUED TO SUPERSEDE FEES
36 CHARGEABLE UNDER A STATUTE SPECIFICALLY PROVIDING FOR SETTING THE
37 LEVEL OF FEES FOR PARTICULAR TYPES OF RECORDS.

1 [(d)] (G) The official custodian may waive a fee under this section if:
2 (1) the applicant asks for a waiver; and
3 (2) after consideration of the ability of the applicant to pay the fee and
4 other relevant factors, the official custodian determines that the waiver would be in
5 the public interest.

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 1998.