

HOUSE BILL 790

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HB 386/98 - CGM

1999 Regular Session
9lr0479

By: **Delegate Getty**

Introduced and read first time: February 12, 1999

Assigned to: Commerce and Government Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Public Information - Access to Electronic Public Records**

3 FOR the purpose of declaring a certain public policy regarding access to and copying
4 of public records; specifying that an applicant requesting a copy of a public
5 record need not disclose the purpose or motive for the request; requiring that a
6 custodian sanitize, and then provide access to, a public record requested by an
7 applicant that contains both confidential and nonconfidential information;
8 requiring that a custodian maintain and search its public records in certain
9 forms and formats and that an applicant be provided with a copy of a public
10 record in certain forms or formats under certain circumstances; requiring the
11 State and local governments to consider certain factors when purchasing,
12 leasing, or otherwise acquiring certain electronic data storage and retrieval
13 systems for public records; specifying the amount, subject to certain conditions,
14 that a custodian may charge for a copy of certain electronic public records;
15 providing for an appeal process that an applicant may utilize for contesting the
16 charges assessed by a custodian for access to electronic public records;
17 prohibiting the State or a local government from claiming or exercising a
18 copyright to public information or a public record, except under certain
19 circumstances; requiring a custodian to provide access to certain database and
20 data file information under certain circumstances; and generally relating to the
21 public's right to access and copy electronic public records.

22 BY repealing and reenacting, with amendments,
23 Article - State Government
24 Section 10-611, 10-612, 10-620, and 10-621
25 Annotated Code of Maryland
26 (1995 Replacement Volume and 1998 Supplement)

27 BY adding to
28 Article - State Government
29 Section 10-621.1, 10-621.2, and 10-621.3
30 Annotated Code of Maryland
31 (1995 Replacement Volume and 1998 Supplement)

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

3 **Article - State Government**

4 10-611.

5 (a) In this Part III of this subtitle the following words have the meanings
6 indicated.

7 (A-1) (1) "ACTUAL COST OF REPRODUCTION" MEANS THE DIRECT,
8 CHARGEABLE COSTS RELATED TO THE REPRODUCTION OF A PUBLIC RECORD AS
9 DETERMINED BY GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

10 (2) "ACTUAL COST OF REPRODUCTION" DOES NOT INCLUDE COSTS THAT
11 WOULD HAVE BEEN INCURRED BY A UNIT OR INSTRUMENTALITY OF THE STATE
12 GOVERNMENT OR OF A POLITICAL SUBDIVISION IF A REQUEST TO REPRODUCE A
13 PUBLIC RECORD HAD NOT BEEN MADE, UNLESS SPECIFICALLY OTHERWISE
14 PROVIDED BY LAW.

15 (b) "Applicant" means a person or governmental unit that asks to inspect a
16 public record.

17 (B-1) "BOARD" MEANS THE STATE OPEN MEETINGS LAW COMPLIANCE BOARD
18 ESTABLISHED UNDER SUBTITLE 5 OF THIS TITLE.

19 (c) "Custodian" means:

20 (1) the official custodian; or

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

23 (d) "Official custodian" means an officer or employee of the State or of a
24 political subdivision who, whether or not the officer or employee has physical custody
25 and control of a public record, is responsible for keeping the public record.

26 (e) "Person in interest" means:

27 (1) a person or governmental unit that is the subject of a public record or
28 a designee of the person or governmental unit;

29 (2) if the person has a legal disability, the parent or legal representative
30 of the person; or

31 (3) as to requests for correction of certificates of death under §
32 5-310(d)(2) of the Health - General Article, the spouse, adult child, parent, adult
33 sibling, grandparent, or guardian of the person of the deceased at the time of the
34 deceased's death.

1 (f) (1) "Personal information" means information that identifies an
2 individual including an individual's address, driver's license number or any other
3 identification number, medical or disability information, name, photograph or
4 computer generated image, Social Security number, or telephone number.

5 (2) "Personal information" does not include an individual's driver's
6 status, driving offenses, 5-digit zip code, or information on vehicular accidents.

7 (g) (1) "Public record" means the original or any copy of any documentary
8 material that:

9 (i) is made by a unit or instrumentality of the State government or
10 of a political subdivision or received by the unit or instrumentality in connection with
11 the transaction of public business; and

12 (ii) is in any form, including:

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

23 (2) "Public record" includes a document that lists the salary of an
24 employee of a unit or instrumentality of the State government or of a political
25 subdivision.

26 (3) "Public record" does not include a digital photographic image or
27 signature of an individual, or the actual stored data thereof, recorded by the Motor
28 Vehicle Administration.

29 (h) (1) "Telephone solicitation" means the initiation of a telephone call to an
30 individual or to the residence or business of an individual for the purpose of
31 encouraging the purchase or rental of or investment in property, goods, or services.

32 (2) "Telephone solicitation" does not include a telephone call or message:

1 (i) to an individual who has given express permission to the person
2 making the telephone call;

3 (ii) to an individual with whom the person has an established
4 business relationship; or

5 (iii) by a tax-exempt, nonprofit organization.

6 10-612.

7 (a) (1) All persons are entitled to have access to information about the
8 affairs of government and the official acts of public officials and employees.

9 (2) THE PUBLIC RECORDS AND PUBLIC INFORMATION COMPILED BY A
10 UNIT OR INSTRUMENTALITY OF THE STATE GOVERNMENT OR OF A POLITICAL
11 SUBDIVISION ARE THE PROPERTY OF THE PEOPLE. IT IS THE POLICY OF THE STATE
12 THAT AN APPLICANT MAY OBTAIN A COPY OF A PUBLIC RECORD AT THE ACTUAL
13 COST OF REPRODUCTION, UNLESS A DIFFERENT FEE IS OTHERWISE SPECIFICALLY
14 PROVIDED BY LAW.

15 (b) To carry out the right set forth in subsection (a) of this section, unless an
16 unwarranted invasion of the privacy of a person in interest would result, this Part III
17 of this subtitle shall be construed in favor of permitting inspection of a public record,
18 with the least cost and least delay to the person or governmental unit that requests
19 the inspection.

20 (c) This Part III of this subtitle does not preclude a member of the General
21 Assembly from acquiring the names and addresses of and statistical information
22 about individuals who are licensed or, as required by a law of the State, registered.

23 10-620.

24 (A) AN APPLICANT REQUESTING A COPY OF A PUBLIC RECORD IS NOT
25 REQUIRED TO DISCLOSE THE PURPOSE OR MOTIVE FOR THE REQUEST.

26 (B) (1) AN APPLICANT MAY NOT BE DENIED A COPY OF A PUBLIC RECORD
27 BECAUSE CONFIDENTIAL INFORMATION IS COMMINGLED WITH INFORMATION THAT
28 IS NOT CONFIDENTIAL.

29 (2) IF A CUSTODIAN MUST SEPARATE CONFIDENTIAL INFORMATION
30 FROM INFORMATION THAT IS NOT CONFIDENTIAL IN ORDER TO PERMIT ACCESS TO A
31 PUBLIC RECORD:

32 (I) THE CUSTODIAN SHALL SEPARATE THE INFORMATION; AND

33 (II) THE UNIT OR INSTRUMENTALITY OF THE STATE GOVERNMENT
34 OR A POLITICAL SUBDIVISION TO WHOM THE CUSTODIAN IS RESPONSIBLE SHALL
35 BEAR THE COST OF THE SEPARATION.

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

3 (i) a copy, printout, or photograph of the public record; or

4 (ii) if the custodian does not have facilities to reproduce the public
5 record, access to the public record to make the copy, printout, or photograph.

6 (2) An applicant may not have a copy of a judgment until:

7 (i) the time for appeal expires; or

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

9 [(b)] (D) (1) The copy, printout, or photograph shall be made:

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

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

12 (2) The official custodian may set a reasonable time schedule to make
13 copies, printouts, or photographs.

14 (E) (1) A COPY OF A PUBLIC RECORD SHALL BE PROVIDED IN THE FORM OR
15 FORMAT REQUESTED BY THE APPLICANT IF THE PUBLIC RECORD IS READILY
16 REPRODUCIBLE IN THAT FORM OR FORMAT.

17 (2) EACH UNIT OR INSTRUMENTALITY OF STATE GOVERNMENT OR A
18 POLITICAL SUBDIVISION SHALL MAKE A REASONABLE EFFORT TO:

19 (I) MAINTAIN ITS PUBLIC RECORDS IN THE FORMS OR FORMATS
20 THAT ARE BOTH READILY REPRODUCIBLE AND LIKELY TO BE REQUESTED; AND

21 (II) SEARCH, EITHER MANUALLY OR THROUGH AUTOMATED
22 MEANS, FOR PUBLIC RECORDS IN ELECTRONIC FORM OR FORMAT.

23 (F) A UNIT OR INSTRUMENTALITY OF STATE GOVERNMENT OR A POLITICAL
24 SUBDIVISION MAY NOT PURCHASE, LEASE, OR OTHERWISE ACQUIRE AN
25 ELECTRONIC DATA PROCESSING SYSTEM FOR THE STORAGE, MANIPULATION, OR
26 RETRIEVAL OF PUBLIC RECORDS UNLESS IT FIRST DETERMINES THAT THE SYSTEM
27 WILL NOT IMPAIR OR IMPEDE THE ENTITY'S ABILITY TO:

28 (1) PERMIT PUBLIC EXAMINATION AND INSPECTION OF THE PUBLIC
29 RECORDS; AND

30 (2) PROVIDE ELECTRONIC COPIES OF THE PUBLIC RECORDS.

31 10-621.

32 (a) [Subject to the limitations] EXCEPT AS OTHERWISE PROVIDED in this
33 section, the official custodian may charge an applicant [a reasonable fee for the

1 search for, preparation of, and reproduction of] ONLY THE ACTUAL COST OF
2 REPRODUCTION FOR a public record.

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

5 (B) (1) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, A UNIT OR
6 INSTRUMENTALITY OF THE STATE OR A POLITICAL SUBDIVISION MAY CHARGE THE
7 APPLICANT, IN ADDITION TO THE ACTUAL COST OF REPRODUCTION OF A PUBLIC
8 RECORD, A SPECIAL SERVICE CHARGE IF, IN ORDER TO COMPLY WITH THE REQUEST,
9 THE CUSTODIAN MAKES GREATER USE OF:

10 (I) ITS CLERICAL OR SUPERVISORY PERSONNEL THAN HAS BEEN
11 ESTABLISHED FOR THE ENTITY TO COMPLY WITH REQUESTS BY APPLICANTS FOR
12 ACCESS TO PUBLIC RECORDS; OR

13 (II) INFORMATION TECHNOLOGY RESOURCES THAT HAVE BEEN
14 ESTABLISHED FOR THE ENTITY FOR THE REPRODUCTION OF THE VOLUME OF
15 INFORMATION REQUESTED BY THE APPLICANT.

16 (2) A SPECIAL SERVICE CHARGE THAT IS IMPOSED UNDER PARAGRAPH
17 (1) OF THIS SUBSECTION SHALL BE:

18 (I) REASONABLE; AND

19 (II) BASED ON THE ACTUAL COST OF REPRODUCTION INCURRED BY
20 THE CUSTODIAN FOR ITS:

21 1. HIGHER LABOR COSTS IN ORDER TO PROVIDE THE
22 SERVICES REQUESTED BY THE APPLICANT; OR

23 2. USE OF INFORMATION TECHNOLOGY RESOURCES TO A
24 GREATER EXTENT THAN THE AMOUNT THAT IS ATTRIBUTABLE TO OR ESTABLISHED
25 FOR THE ENTITY BY LAW.

26 (c) (1) If another law sets a fee for a copy, printout, or photograph of a public
27 record, that law applies.

28 (2) [The official custodian otherwise may charge any reasonable fee for
29 making or supervising the making of a copy, printout, or photograph of a public
30 record.

31 (3)] The official custodian may charge for the cost of providing facilities
32 for the reproduction of the public record if the custodian did not have the facilities.

33 (d) The official custodian may waive a fee under this section if:

34 (1) the applicant asks for a waiver; and

1 (2) after consideration of the ability of the applicant to pay the fee and
2 other relevant factors, the official custodian determines that the waiver would be in
3 the public interest.

4 10-621.1.

5 (A) AN APPLICANT WHO BELIEVES THAT A CUSTODIAN HAS CHARGED THE
6 APPLICANT A FEE FOR A COPY OF A PUBLIC RECORD THAT EXCEEDS THE AMOUNT
7 AUTHORIZED UNDER § 10-621 OF THIS SUBTITLE MAY FILE A COMPLAINT WITH THE
8 STATE OPEN MEETINGS LAW COMPLIANCE BOARD.

9 (B) A COMPLAINT FILED UNDER SUBSECTION (A) OF THIS SECTION SHALL:

10 (1) BE IN WRITING;

11 (2) STATE IN A CLEAR AND CONCISE MANNER THE REASON THE
12 APPLICANT BELIEVES THE FEE IS EXCESSIVE; AND

13 (3) BE RECEIVED BY THE BOARD WITHIN 10 WORKING DAYS AFTER THE
14 APPLICANT RECEIVES NOTICE OF THE ALLEGED OVERCHARGE.

15 (C) (1) THE BOARD SHALL SUBMIT WRITTEN INTERROGATORIES TO THE
16 CUSTODIAN THAT IS THE SUBJECT OF A COMPLAINT FILED UNDER THIS SECTION
17 REQUESTING THAT THE CUSTODIAN PROVIDE AN EXPLANATION OF THE
18 METHODOLOGY AND FIGURES THAT WERE USED TO CALCULATE THE CHARGES THAT
19 ARE THE SUBJECT OF THE COMPLAINT.

20 (2) THE CUSTODIAN SHALL RESPOND IN WRITING TO THE BOARD
21 WITHIN 10 DAYS OF THE RECEIPT OF THE INTERROGATORIES.

22 (D) IF THE BOARD DETERMINES THAT THE CUSTODIAN OVERCHARGED THE
23 APPLICANT FOR THE COPY OF THE PUBLIC RECORD THAT IS THE SUBJECT OF THE
24 COMPLAINT FILED UNDER THIS SECTION, THE CUSTODIAN SHALL:

25 (1) ADJUST ITS CHARGES IN ACCORDANCE WITH THE BOARD'S
26 DETERMINATION; AND

27 (2) REFUND TO THE APPLICANT THE DIFFERENCE BETWEEN THE FEE
28 THAT WAS CHARGED AND THE AMOUNT THAT THE BOARD DETERMINED TO BE
29 APPROPRIATE.

30 (E) THE BOARD SHALL PROVIDE A WRITTEN COPY OF ITS DETERMINATION:

31 (1) TO THE APPLICANT WHO FILED THE COMPLAINT; AND

32 (2) TO THE CUSTODIAN THAT WAS THE SUBJECT OF THE COMPLAINT.

33 (F) IF AN APPLICANT PAYS A FEE FOR A COPY OF A PUBLIC RECORD THAT
34 EXCEEDS THE AMOUNT DETERMINED BY THE BOARD TO BE APPROPRIATE, THE
35 APPLICANT MAY RECOVER 3 TIMES THE AMOUNT OF THE OVERCHARGE, PROVIDED

1 THE CUSTODIAN FAILED TO ACT IN GOOD FAITH IN COMPUTING THE ORIGINAL
2 CHARGES.

3 10-621.2.

4 A UNIT OR INSTRUMENTALITY OF THE STATE GOVERNMENT OR A POLITICAL
5 SUBDIVISION MAY NOT CLAIM OR EXERCISE PROSPECTIVELY A COPYRIGHT TO
6 PUBLIC INFORMATION OR A PUBLIC RECORD UNLESS EXPRESSLY AUTHORIZED TO
7 DO SO BY AN ENACTMENT OF THE GENERAL ASSEMBLY.

8 10-621.3.

9 THE UNDERLYING DATA OR COMPONENT DATA ELEMENTS OF A PUBLIC
10 RECORD, SUBJECT TO THIS SECTION, THAT A CUSTODIAN USES AS THE BASIS FOR
11 PUBLIC INFORMATION SHALL BE MADE AVAILABLE TO THE PUBLIC AT THE ACTUAL
12 COST OF PRODUCTION.

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 October 1, 1999.