

HOUSE BILL 297
EMERGENCY BILL

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2002 Regular Session
2r0159
CF 2r0158

By: **The Speaker (Administration) and Delegates Cole, D. Davis, Doory, Hammen, Hubbard, McHale, McIntosh, Morhaim, Oaks, Phillips, Turner, Vallario, and Wood**

Introduced and read first time: January 23, 2002
Assigned to: Commerce and Government Matters

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 19, 2002

CHAPTER _____

1 AN ACT concerning

2 **State Government - Access to Public Records - Public Security Documents**

3 FOR the purpose of establishing the circumstances under which a custodian may
4 deny inspection of certain records relating to public security; requiring the
5 Office of the Attorney General to report to the Governor and the General
6 Assembly on or before a certain date; making this Act an emergency measure;
7 and generally relating to the inspection of public records.

8 BY repealing and reenacting, without amendments,
9 Article - State Government
10 Section 10-618(a), 10-622, and 10-623
11 Annotated Code of Maryland
12 (1999 Replacement Volume and 2001 Supplement)

13 BY adding to
14 Article - State Government
15 Section 10-618(j)
16 Annotated Code of Maryland
17 (1999 Replacement Volume and 2001 Supplement)

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

1

Article - State Government

2 10-618.

3 (a) Unless otherwise provided by law, if a custodian believes that inspection of
4 a part of a public record by the applicant would be contrary to the public interest, the
5 custodian may deny inspection by the applicant of that part, as provided in this
6 section.

7 ~~(J) A CUSTODIAN MAY DENY INSPECTION OF A PUBLIC RECORD THAT
8 CONTAINS INFORMATION DISCLOSING OR RELATING TO PUBLIC SECURITY IF THE
9 CUSTODIAN DETERMINES THAT INSPECTION OF THE INFORMATION WOULD
10 CONSTITUTE A RISK TO THE PUBLIC OR TO PUBLIC SECURITY~~

11 (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A CUSTODIAN
12 MAY DENY INSPECTION OF:

13 (I) RESPONSE PROCEDURES OR PLANS PREPARED TO PREVENT OR
14 RESPOND TO EMERGENCY SITUATIONS, THE DISCLOSURE OF WHICH WOULD REVEAL
15 VULNERABILITY ASSESSMENTS, SPECIFIC TACTICS, SPECIFIC EMERGENCY
16 PROCEDURES, OR SPECIFIC SECURITY PROCEDURES;

17 (II) 1. BUILDING PLANS, BLUEPRINTS, SCHEMATIC DRAWINGS,
18 DIAGRAMS, OPERATIONAL MANUALS, OR OTHER RECORDS OF AIRPORTS AND OTHER
19 MASS TRANSIT FACILITIES, BRIDGES, TUNNELS, EMERGENCY RESPONSE FACILITIES
20 OR STRUCTURES, BUILDINGS WHERE HAZARDOUS MATERIALS ARE STORED, ARENAS,
21 STADIUMS, AND WASTE AND WATER SYSTEMS, THE DISCLOSURE OF WHICH WOULD
22 REVEAL THE BUILDING'S OR STRUCTURE'S INTERNAL LAYOUT, SPECIFIC LOCATION,
23 LIFE, SAFETY, AND SUPPORT SYSTEMS, STRUCTURAL ELEMENTS, SURVEILLANCE
24 TECHNIQUES, ALARM OR SECURITY SYSTEMS OR TECHNOLOGIES, OPERATIONAL
25 AND TRANSPORTATION PLANS OR PROTOCOLS, OR PERSONNEL DEPLOYMENTS; OR

26 2. RECORDS OF ANY OTHER BUILDING OR STRUCTURE
27 OWNED OR OPERATED BY THE STATE OR ANY OF ITS POLITICAL SUBDIVISIONS, THE
28 DISCLOSURE OF WHICH WOULD REVEAL THE BUILDING'S OR STRUCTURE'S LIFE,
29 SAFETY, AND SUPPORT SYSTEMS, SURVEILLANCE TECHNIQUES, ALARM OR SECURITY
30 SYSTEMS OR TECHNOLOGIES, OPERATIONAL AND EVACUATION PLANS OR
31 PROTOCOLS, OR PERSONNEL DEPLOYMENTS; OR

32 (III) RECORDS PREPARED TO PREVENT OR RESPOND TO
33 EMERGENCY SITUATIONS IDENTIFYING OR DESCRIBING THE NAME, LOCATION,
34 PHARMACEUTICAL CACHE, CONTENTS, CAPACITY, EQUIPMENT, PHYSICAL
35 FEATURES, OR CAPABILITIES OF INDIVIDUAL MEDICAL FACILITIES, STORAGE
36 FACILITIES, OR LABORATORIES ESTABLISHED, MAINTAINED, OR REGULATED BY THE
37 STATE OR ANY OF ITS POLITICAL SUBDIVISIONS.

38 (2) THE CUSTODIAN MAY DENY INSPECTION OF A PART OF A PUBLIC
39 RECORD UNDER PARAGRAPH (1) OF THIS SUBSECTION ONLY TO THE EXTENT THAT
40 THE INSPECTION WOULD:

1 (I) JEOPARDIZE THE SECURITY OF ANY STRUCTURE OWNED OR
2 OPERATED BY THE STATE OR ANY OF ITS POLITICAL SUBDIVISIONS;

3 (II) FACILITATE THE PLANNING OF A TERRORIST ATTACK; OR

4 (III) ENDANGER THE LIFE OR PHYSICAL SAFETY OF AN INDIVIDUAL.

5 10-622.

6 (a) This section does not apply when the official custodian temporarily denies
7 inspection under § 10-619 of this subtitle.

8 (b) If a unit is subject to Subtitle 2 of this title, a person or governmental unit
9 may seek administrative review in accordance with that subtitle of a decision of the
10 unit, under this Part III of this subtitle, to deny inspection of any part of a public
11 record.

12 (c) A person or governmental unit need not exhaust the remedy under this
13 section before filing suit.

14 10-623.

15 (a) Whenever a person or governmental unit is denied inspection of a public
16 record, the person or governmental unit may file a complaint with the circuit court for
17 the county where:

18 (1) the complainant resides or has a principal place of business; or

19 (2) the public record is located.

20 (b) (1) Unless, for good cause shown, the court otherwise directs and
21 notwithstanding any other provision of law, the defendant shall serve an answer or
22 otherwise plead to the complaint within 30 days after service of the complaint.

23 (2) The defendant:

24 (i) has the burden of sustaining a decision to deny inspection of a
25 public record; and

26 (ii) in support of the decision, may submit a memorandum to the
27 court.

28 (c) (1) Except for cases that the court considers of greater importance, a
29 proceeding under this section, including an appeal, shall:

30 (i) take precedence on the docket;

31 (ii) be heard at the earliest practicable date; and

32 (iii) be expedited in every way.

1 (2) The court may examine the public record in camera to determine
2 whether any part of it may be withheld under this Part III of this subtitle.

3 (3) The court may:

4 (i) enjoin the State, a political subdivision, or a unit, official, or
5 employee of the State or of a political subdivision from withholding the public record;

6 (ii) pass an order for the production of the public record that was
7 withheld from the complainant; and

8 (iii) for noncompliance with the order, punish the responsible
9 employee for contempt.

10 (d) (1) A defendant governmental unit is liable to the complainant for actual
11 damages and any punitive damages that the court considers appropriate if the court
12 finds that any defendant knowingly and willfully failed to disclose or fully to disclose
13 a public record that the complainant was entitled to inspect under this Part III of this
14 subtitle.

15 (2) An official custodian is liable for actual damages and any punitive
16 damages that the court considers appropriate if the court finds that, after temporarily
17 denying inspection of a public record, the official custodian failed to petition a court
18 for an order to continue the denial.

19 (e) (1) Whenever the court orders the production of a public record that was
20 withheld from the applicant and, in addition, finds that the custodian acted
21 arbitrarily or capriciously in withholding the public record, the court shall send a
22 certified copy of its finding to the appointing authority of the custodian.

23 (2) On receipt of the statement of the court and after an appropriate
24 investigation, the appointing authority shall take the disciplinary action that the
25 circumstances warrant.

26 (f) If the court determines that the complainant has substantially prevailed,
27 the court may assess against a defendant governmental unit reasonable counsel fees
28 and other litigation costs that the complainant reasonably incurred.

29 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before December 1,
30 2007, the Office of the Attorney General shall review the changes made to § 10-618 of
31 the State Government Article by this Act and shall submit a report to the Governor
32 and to the General Assembly, in accordance with § 2-1246 of the State Government
33 Article, on the continued necessity of this Act and any recommendations for changing
34 or modifying this Act.

35 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act is an
36 emergency measure, is necessary for the immediate preservation of the public health
37 or safety, has been passed by a yea and nay vote supported by three-fifths of all the
38 members elected to each of the two Houses of the General Assembly, and shall take
39 effect from the date it is enacted.

