
By: **Delegate McIntosh**

Introduced and read first time: February 8, 2002

Assigned to: Commerce and Government Matters

A BILL ENTITLED

1 AN ACT concerning

2 **State Government - Public Information Act - Records Related to Public**
3 **Safety**

4 FOR the purpose of denying the inspection of certain information in a public record
5 that relates to certain water and wastewater system plans, emergency response
6 plans, communication and security systems, essential personnel, and building
7 plans of certain public buildings from the provisions of the Maryland Public
8 Information Act; providing for judicial review to a person who is denied
9 inspection of a certain public record; establishing a certain burden of proof in
10 certain cases; defining a certain term; and generally relating to the Maryland
11 Public Information Act.

12 BY renumbering
13 Article - State Government
14 Section 10-617(a) through (j), respectively
15 to be Section 10-617(b) through (k), respectively
16 Annotated Code of Maryland
17 (1999 Replacement Volume and 2001 Supplement)

18 BY adding to
19 Article - State Government
20 Section 10-617(a) and (l)
21 Annotated Code of Maryland
22 (1999 Replacement Volume and 2001 Supplement)

23 BY repealing and reenacting, with amendments,
24 Article - State Government
25 Section 10-623
26 Annotated Code of Maryland
27 (1999 Replacement Volume and 2001 Supplement)

28 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
29 MARYLAND, That Section(s) 10-617(a) through (j), respectively, of Article - State

1 Government of the Annotated Code of Maryland be renumbered to be Section(s)
2 10-617(b) through (k), respectively.

3 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
4 read as follows:

5 **Article - State Government**

6 10-617.

7 (A) IN THIS SECTION, "WATER OR WASTEWATER SYSTEM" INCLUDES A:

8 (1) PLANT;

9 (2) RAW WATER IMPOUNDMENT FACILITY;

10 (3) TESTING FACILITY;

11 (4) CHEMICAL HANDLING OR STORAGE SYSTEM OR PROGRAM;

12 (5) COLLECTION SYSTEM;

13 (6) DISTRIBUTION SYSTEM;

14 (7) TREATMENT PLANT; OR

15 (8) INTAKE SYSTEM.

16 (L) (1) A CUSTODIAN SHALL DENY INSPECTION OF THE PART OF A PUBLIC
17 RECORD THAT CONTAINS INFORMATION RELATED TO:

18 (I) EMERGENCY RESPONSE PLANS, INCLUDING INFORMATION
19 REGARDING THE DEVELOPMENT, STRUCTURE, AND SUBSEQUENT REVIEW OF THE
20 PLAN;

21 (II) COMMUNICATION AND SECURITY SYSTEMS, INCLUDING
22 INFRASTRUCTURE, DESIGN, AND OPERATIONS;

23 (III) THE ASSIGNMENTS AND DUTIES OF ESSENTIAL PERSONNEL,
24 INCLUDING THE PUBLIC SAFETY OFFICERS AND HEALTH OFFICIALS;

25 (IV) THE BUILDING PLANS OF PUBLIC SCHOOLS AND EXECUTIVE,
26 LEGISLATIVE, AND JUDICIAL OFFICERS; AND

27 (V) WATER OR WASTEWATER SYSTEM PLANS, INCLUDING THE
28 DEVELOPMENT, STRUCTURE, AND SUBSEQUENT REVIEW OF THE PLAN.

29 (2) THE PROVISIONS OF THIS SUBSECTION DO NOT PRECLUDE A
30 PERSON FROM SEEKING JUDICIAL REVIEW UNDER § 10-623 OF THIS ARTICLE.

1 10-623.

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

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

6 (2) the public record is located.

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

10 (2) The defendant:

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

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

15 (c) NOTWITHSTANDING SUBSECTION (B) OF THIS SECTION, A PERSON WHO IS
16 DENIED INSPECTION OF A PUBLIC RECORD UNDER § 10-617(L) OF THIS SUBTITLE
17 MUST PROVE BY CLEAR AND CONVINCING EVIDENCE THAT THE DENIAL OF THE
18 INSPECTION IS CONTRARY TO PUBLIC INTEREST.

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

21 (i) take precedence on the docket;

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

23 (iii) be expedited in every way.

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

26 (3) The court may:

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

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

31 (iii) for noncompliance with the order, punish the responsible
32 employee for contempt.

1 [(d)] (E) (1) A defendant governmental unit is liable to the complainant for
2 actual damages and any punitive damages that the court considers appropriate if the
3 court finds that any defendant knowingly and willfully failed to disclose or fully to
4 disclose a public record that the complainant was entitled to inspect under this Part
5 III of this subtitle.

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

10 [(e)] (F) (1) Whenever the court orders the production of a public record
11 that was withheld from the applicant and, in addition, finds that the custodian acted
12 arbitrarily or capriciously in withholding the public record, the court shall send a
13 certified copy of its finding to the appointing authority of the custodian.

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

17 [(f)] (G) If the court determines that the complainant has substantially
18 prevailed, the court may assess against a defendant governmental unit reasonable
19 counsel fees and other litigation costs that the complainant reasonably incurred.

20 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 June 1, 2002.