

HOUSE BILL 1024

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2002 Regular Session
(2r2018)

ENROLLED BILL

-- Commerce and Government Matters/Education, Health, and Environmental Affairs --

Introduced by **Delegate Taylor**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **State Government - Public Information Act - Access to Public Records**

3 FOR the purpose of requiring an official custodian of public records to consider
4 whether to designate certain public records to be made immediately available
5 upon request and to maintain a list of those public records; waiving the
6 requirement for certain persons and governmental units to submit a written
7 application to review certain public records; requiring the custodian of certain
8 public records to follow certain notification procedures to an applicant
9 requesting certain public records, if the public records do not exist ~~or the~~
10 ~~application for disclosure of public records does not reasonably describe the~~
11 ~~public record~~; providing for certain considerations that a custodian of public
12 records may take into account when determining whether to grant an
13 application for public records; altering the damages that may be awarded for
14 failing to comply with a request for public records; defining the burden of proof
15 that must be met in order for the court to award certain damages for failing to
16 comply with a request for public records; altering the damages that may be
17 awarded for permitting the inspection or use of certain public records in

1 violation of certain provisions of law; defining the burden of proof that must be
 2 met in order for the court to award certain damages for permitting the
 3 inspection or use of certain public records under certain circumstances;
 4 providing clarification of certain provisions of the Maryland Public Information
 5 Act; defining certain terms; providing for the construction of this Act; and
 6 generally relating to the access of public records under the Maryland Public
 7 Information Act.

8 BY repealing and reenacting, with amendments,
 9 Article - State Government
 10 Section 10-613, 10-614, ~~10-618(a)~~, 10-621, 10-623, and 10-626
 11 Annotated Code of Maryland
 12 (1999 Replacement Volume and 2001 Supplement)

13 BY repealing and reenacting, without amendments,
 14 Article - State Government
 15 Section 10-618(a)
 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:

20 **Article - State Government**

21 10-613.

22 (a) (1) Except as otherwise provided by law, a custodian shall permit a
 23 person or governmental unit to inspect any public record at any reasonable time.

24 (2) INSPECTION OR COPYING OF A PUBLIC RECORD MAY BE DENIED
 25 ONLY TO THE EXTENT PROVIDED UNDER THIS PART III OF THIS SUBTITLE.

26 (b) To protect public records and to prevent unnecessary interference with
 27 official business, each official custodian shall adopt reasonable rules or regulations
 28 that, subject to this Part III of this subtitle, govern timely production and inspection
 29 of a public record.

30 (C) EACH OFFICIAL CUSTODIAN SHALL CONSIDER WHETHER TO:

31 (1) DESIGNATE SPECIFIC TYPES OF PUBLIC RECORDS OF THE
 32 GOVERNMENTAL UNIT THAT ARE TO BE MADE AVAILABLE TO ANY APPLICANT
 33 IMMEDIATELY UPON REQUEST; AND

34 (2) MAINTAIN A CURRENT LIST OF THE TYPES OF PUBLIC RECORDS
 35 THAT HAVE BEEN DESIGNATED AS AVAILABLE TO ANY APPLICANT IMMEDIATELY
 36 UPON REQUEST.

1 10-614.

2 (a) (1) [A] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,
3 A person or governmental unit that wishes to inspect a public record shall submit a
4 written application to the custodian.

5 (2) A PERSON OR GOVERNMENTAL UNIT NEED NOT SUBMIT A WRITTEN
6 APPLICATION TO THE CUSTODIAN IF:

7 (I) THE PERSON OR GOVERNMENTAL UNIT SEEKS TO INSPECT A
8 PUBLIC RECORD ~~OF A TYPE LISTED BY AN OFFICIAL CUSTODIAN IN ACCORDANCE~~
9 WITH § 10-613(C)(2) OF THIS SUBTITLE; OR

10 (II) THE CUSTODIAN WAIVES THE REQUIREMENT FOR A WRITTEN
11 APPLICATION.

12 [(2)] (3) If the individual to whom the application is submitted is not the
13 custodian of the public record, within 10 working days after receiving the application,
14 the individual shall give the applicant:

15 (i) notice of that fact; and

16 (ii) if known:

17 1. the name of the custodian; and

18 2. the location or possible location of the public record.

19 (4) WHEN AN APPLICANT REQUESTS TO INSPECT A PUBLIC RECORD AND
20 A CUSTODIAN DETERMINES THAT THE RECORD DOES NOT EXIST, THE CUSTODIAN
21 SHALL NOTIFY THE APPLICANT OF THIS DETERMINATION:

22 (I) IF THE CUSTODIAN HAS REACHED THIS DETERMINATION UPON
23 INITIAL REVIEW OF THE APPLICATION, IMMEDIATELY; OR

24 (II) IF THE CUSTODIAN HAS REACHED THIS DETERMINATION
25 AFTER A SEARCH FOR POTENTIALLY RESPONSIVE PUBLIC RECORDS, PROMPTLY
26 AFTER THE SEARCH IS COMPLETED BUT NOT TO EXCEED 30 DAYS AFTER RECEIVING
27 THE APPLICATION.

28 ~~(5) WHEN AN APPLICATION DOES NOT REASONABLY DESCRIBE A
29 PUBLIC RECORD BECAUSE THE APPLICATION IS DEEMED BY A CUSTODIAN TO BE
30 VAGUE OR AMBIGUOUS OR OVERLY BROAD, THE CUSTODIAN SHALL NOTIFY THE
31 APPLICANT OF THIS CONCLUSION:~~

32 ~~(I) IF THE CUSTODIAN HAS REACHED THIS CONCLUSION UPON
33 INITIAL REVIEW OF THE APPLICATION, IMMEDIATELY; OR~~

34 ~~(II) IF THE CUSTODIAN HAS REACHED THIS CONCLUSION AFTER A
35 SEARCH FOR POTENTIALLY RESPONSIVE PUBLIC RECORDS, PROMPTLY AFTER THE~~

~~1 SEARCH IS COMPLETED BUT NOT TO EXCEED 30 DAYS AFTER RECEIVING THE
2 APPLICATION.~~

3 (b) (1) [Within 30 days after receiving an application, the] THE custodian
4 shall grant or deny the application PROMPTLY, BUT NOT TO EXCEED 30 DAYS AFTER
5 RECEIVING THE APPLICATION.

6 (2) A custodian who approves the application shall produce the public
7 record immediately or within the reasonable period that is needed to retrieve the
8 public record, but not to exceed 30 days after receipt of the application.

9 (3) A custodian who denies the application shall:

10 (i) immediately notify the applicant;

11 (ii) within 10 working days, give the applicant a written statement
12 that gives:

13 1. the reasons for the denial;

14 2. the legal authority for the denial; and

15 3. notice of the remedies under this Part III of this subtitle
16 for review of the denial; and

17 (iii) permit inspection of any part of the record that is subject to
18 inspection and is reasonably severable.

19 (4) With the consent of the applicant, any time limit imposed under this
20 subsection may be extended for not more than 30 days.

21 (C) (1) EXCEPT TO THE EXTENT THAT THE GRANT OF AN APPLICATION IS
22 RELATED TO THE STATUS OF THE APPLICANT AS A PERSON IN INTEREST AND
23 EXCEPT AS REQUIRED BY OTHER LAW OR REGULATION, THE CUSTODIAN MAY NOT
24 CONDITION THE GRANT OF AN APPLICATION ON:

25 (I) THE IDENTITY OF THE APPLICANT;

26 (II) ANY ORGANIZATIONAL OR OTHER AFFILIATION OF THE
27 APPLICANT; OR

28 (III) A DISCLOSURE BY THE APPLICANT OF THE PURPOSE FOR AN
29 APPLICATION.

30 (2) THIS SUBSECTION DOES NOT PRECLUDE AN OFFICIAL CUSTODIAN
31 FROM CONSIDERING THE IDENTITY OF THE APPLICANT, ANY ORGANIZATIONAL OR
32 OTHER AFFILIATION OF THE APPLICANT, OR THE PURPOSE FOR THE APPLICATION
33 IF:

1 (I) THE APPLICANT CHOOSES TO PROVIDE THIS INFORMATION
2 FOR THE CUSTODIAN TO CONSIDER IN MAKING A DETERMINATION UNDER § 10-618
3 OF THIS SUBTITLE; ~~OR~~

4 (II) ~~+~~ THE APPLICANT HAS REQUESTED A WAIVER OF FEES
5 PURSUANT TO § 10-621(E) OF THIS SUBTITLE; ~~AND~~ OR

6 ~~2-~~ (III) THE IDENTITY OF THE APPLICANT, ANY
7 ORGANIZATIONAL OR OTHER AFFILIATION OF THE APPLICANT, OR THE PURPOSE
8 FOR THE APPLICATION IS MATERIAL TO THE DETERMINATION OF THE OFFICIAL
9 CUSTODIAN IN ACCORDANCE WITH § 10-621(E)(2) OF THIS SUBTITLE.

10 (3) CONSISTENT WITH THIS SUBSECTION, AN OFFICIAL MAY REQUEST
11 THE IDENTITY OF AN APPLICANT FOR THE PURPOSE OF CONTACTING THE
12 APPLICANT.

13 10-618.

14 (a) ~~(+)~~ Unless otherwise provided by law, if a custodian believes that
15 inspection of a part of a public record by the applicant would be contrary to the public
16 interest, the custodian may deny inspection by the applicant of that part, as provided
17 in this section.

18 ~~(2) (+) IN DETERMINING WHETHER DISCLOSURE WOULD BE
19 CONTRARY TO THE PUBLIC INTEREST, THE CUSTODIAN SHALL CONSIDER WHETHER
20 THE POTENTIAL HARMFUL CONSEQUENCES OF DISCLOSING A PUBLIC RECORD ARE
21 SUFFICIENT TO OUTWEIGH THE PUBLIC INTEREST IN ACCESS TO PUBLIC RECORDS.~~

22 ~~(H) THE DETERMINATION OF WHETHER DISCLOSURE OF A RECORD
23 WOULD BE CONTRARY TO THE PUBLIC INTEREST IS IN THE CUSTODIAN'S SOUND
24 DISCRETION, TO BE EXERCISED ONLY AFTER CAREFUL CONSIDERATION IS GIVEN TO
25 THE PUBLIC INTEREST INVOLVED.~~

26 10-621.

27 (A) IN THIS SECTION, "REASONABLE FEE" MEANS A FEE BEARING A
28 REASONABLE RELATIONSHIP TO THE RECOVERY OF ACTUAL COSTS INCURRED BY A
29 GOVERNMENTAL UNIT.

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

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

35 [(c)] (D) (1) If another law sets a fee for a copy, printout, or photograph of a
36 public record, that law applies.

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

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

6 [(d)] (E) The official custodian may waive a fee under this section if:

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

8 (2) after consideration of the ability of the applicant to pay the fee, ~~THE~~
9 ~~INTENTION OF THE APPLICANT TO INSPECT OR COPY THE PUBLIC RECORD FOR A~~
10 ~~PURPOSE LIKELY TO BENEFIT THE PUBLIC GENERALLY RATHER THAN FOR A~~
11 ~~PURPOSE RELATED SOLELY TO A PERSONAL OR COMMERCIAL INTEREST OF THE~~
12 ~~APPLICANT~~, and other relevant factors, the official custodian determines that the
13 waiver would be in the public interest.

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.

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

1 (3) The court may:

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

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

6 (iii) for noncompliance with the order, punish the responsible
7 employee for contempt.

8 ~~{d}~~ (1) A defendant governmental unit is liable to the complainant for actual
9 damages ~~and any punitive damages~~ that the court considers appropriate if the court
10 finds BY CLEAR AND CONVINCING EVIDENCE that any defendant knowingly and
11 willfully failed to disclose or fully to disclose a public record that the complainant was
12 entitled to inspect under this Part III of this subtitle.

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

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

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

24 ~~{f}~~ ~~{E}~~ If the court determines that the complainant has substantially
25 prevailed, the court may assess against a defendant governmental unit reasonable
26 counsel fees and other litigation costs that the complainant reasonably incurred.

27 10-626.

28 (a) ~~{1}~~ IN THIS SUBSECTION, "PERSON" DOES NOT INCLUDE AN OFFICER OR
29 EMPLOYEE OF A GOVERNMENTAL UNIT.

30 ~~{2}~~ A person~~], including an officer or employee of a governmental unit,~~
31 is liable to an individual for actual damages ~~and any punitive damages~~ that the court
32 considers appropriate if THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE
33 THAT:

34 ~~{1}~~ (i) the person willfully and knowingly permits inspection or use of
35 a public record in violation of this Part III of this subtitle; and

36 (ii) the public record names or, with reasonable certainty, otherwise
37 identifies the individual by an identifying factor such as:

- 1 1. an address;
- 2 2. a description;
- 3 3. a finger or voice print;
- 4 4. a number; or
- 5 5. a picture; or

6 ~~{(2)}~~ ~~(HH)~~ the person willfully and knowingly obtains, discloses, or uses
7 personal information in violation of § 10-616(p) of this subtitle.

8 (b) ~~(I)~~ ~~IN THIS SUBSECTION, "DEFENDANT" INCLUDES AN OFFICER OR~~
9 ~~EMPLOYEE OF A GOVERNMENTAL UNIT.~~

10 ~~(2)~~ If the court determines that the complainant has substantially
11 prevailed, the court may assess against a defendant reasonable counsel fees and other
12 litigation costs that the complainant reasonably incurred.

13 SECTION 2. AND BE IT FURTHER ENACTED, That:

14 (a) §§ 10-613(a)(2) and 10-614(b)(1) of the State Government Article as
15 enacted by Section 1 of this Act may not be construed as expanding the right to
16 inspect or copy a record; and

17 (b) § 10-613(c) of the State Government Article as enacted by Section 1 of this
18 Act may not be construed as creating a cause of action if a custodian does not
19 designate specific types of records that are to be made immediately available.

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