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By: **Delegate Taylor**  
Introduced and read first time: February 8, 2002  
Assigned to: Commerce and Government Matters

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A BILL ENTITLED

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; providing clarification of certain provisions of the  
14 Maryland Public Information Act; defining certain terms; providing for the  
15 construction of this Act; and generally relating to the access of public records  
16 under the Maryland Public Information Act.

17 BY repealing and reenacting, with amendments,  
18 Article - State Government  
19 Section 10-613, 10-614, 10-618(a), 10-621, 10-623, and 10-626  
20 Annotated Code of Maryland  
21 (1999 Replacement Volume and 2001 Supplement)

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

24 **Article - State Government**

25 10-613.

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

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

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

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

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

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

12 10-614.

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

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

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

21 (II) THE CUSTODIAN WAIVES THE REQUIREMENT FOR A WRITTEN  
22 APPLICATION.

23 [(2)] (3) If the individual to whom the application is submitted is not the  
24 custodian of the public record, within 10 working days after receiving the application,  
25 the individual shall give the applicant:

26 (i) notice of that fact; and

27 (ii) if known:

28 1. the name of the custodian; and

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

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

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

1 (II) IF THE CUSTODIAN HAS REACHED THIS DETERMINATION  
2 AFTER A SEARCH FOR POTENTIALLY RESPONSIVE PUBLIC RECORDS, PROMPTLY  
3 AFTER THE SEARCH IS COMPLETED BUT NOT TO EXCEED 30 DAYS AFTER RECEIVING  
4 THE APPLICATION.

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

9 (I) IF THE CUSTODIAN HAS REACHED THIS CONCLUSION UPON  
10 INITIAL REVIEW OF THE APPLICATION, IMMEDIATELY; OR

11 (II) IF THE CUSTODIAN HAS REACHED THIS CONCLUSION AFTER A  
12 SEARCH FOR POTENTIALLY RESPONSIVE PUBLIC RECORDS, PROMPTLY AFTER THE  
13 SEARCH IS COMPLETED BUT NOT TO EXCEED 30 DAYS AFTER RECEIVING THE  
14 APPLICATION.

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

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

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

22 (i) immediately notify the applicant;

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

25 1. the reasons for the denial;

26 2. the legal authority for the denial; and

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

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

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

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

- 1 (I) THE IDENTITY OF THE APPLICANT;  
2 (II) ANY ORGANIZATIONAL OR OTHER AFFILIATION OF THE  
3 APPLICANT; OR  
4 (III) A DISCLOSURE BY THE APPLICANT OF THE PURPOSE FOR AN  
5 APPLICATION.

6 (2) THIS SUBSECTION DOES NOT PRECLUDE AN OFFICIAL CUSTODIAN  
7 FROM CONSIDERING THE IDENTITY OF THE APPLICANT, ANY ORGANIZATIONAL OR  
8 OTHER AFFILIATION OF THE APPLICANT, OR THE PURPOSE FOR THE APPLICATION  
9 IF:

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

13 (II) 1. THE APPLICANT HAS REQUESTED A WAIVER OF FEES  
14 PURSUANT TO § 10-621(E) OF THIS SUBTITLE; AND

15 2. THE IDENTITY OF THE APPLICANT, ANY ORGANIZATIONAL  
16 OR OTHER AFFILIATION OF THE APPLICANT, OR THE PURPOSE FOR THE  
17 APPLICATION IS MATERIAL TO THE DETERMINATION OF THE OFFICIAL CUSTODIAN  
18 IN ACCORDANCE WITH § 10-621(E)(2) OF THIS SUBTITLE.

19 (3) CONSISTENT WITH THIS SUBSECTION, AN OFFICIAL MAY REQUEST  
20 THE IDENTITY OF AN APPLICANT FOR THE PURPOSE OF CONTACTING THE  
21 APPLICANT.

22 10-618.

23 (a) (1) Unless otherwise provided by law, if a custodian believes that  
24 inspection of a part of a public record by the applicant would be contrary to the public  
25 interest, the custodian may deny inspection by the applicant of that part, as provided  
26 in this section.

27 (2) (I) IN DETERMINING WHETHER DISCLOSURE WOULD BE  
28 CONTRARY TO THE PUBLIC INTEREST, THE CUSTODIAN SHALL CONSIDER WHETHER  
29 THE POTENTIAL HARMFUL CONSEQUENCES OF DISCLOSING A PUBLIC RECORD ARE  
30 SUFFICIENT TO OUTWEIGH THE PUBLIC INTEREST IN ACCESS TO PUBLIC RECORDS.

31 (II) THE DETERMINATION OF WHETHER DISCLOSURE OF A RECORD  
32 WOULD BE CONTRARY TO THE PUBLIC INTEREST IS IN THE CUSTODIAN'S SOUND  
33 DISCRETION, TO BE EXERCISED ONLY AFTER CAREFUL CONSIDERATION IS GIVEN TO  
34 THE PUBLIC INTEREST INVOLVED.

1 10-621.

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

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

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

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

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

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

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

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

19 (2) after consideration of the ability of the applicant to pay the fee, THE  
20 INTENTION OF THE APPLICANT TO INSPECT OR COPY THE PUBLIC RECORD FOR A  
21 PURPOSE LIKELY TO BENEFIT THE PUBLIC GENERALLY RATHER THAN FOR A  
22 PURPOSE RELATED SOLELY TO A PERSONAL OR COMMERCIAL INTEREST OF THE  
23 APPLICANT, and other relevant factors, the official custodian determines that the  
24 waiver would be in the public interest.

25 10-623.

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

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

30 (2) the public record is located.

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

34 (2) The defendant:

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

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

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

7 (i) take precedence on the docket;

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

9 (iii) be expedited in every way.

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

12 (3) The court may:

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

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

17 (iii) for noncompliance with the order, punish the responsible  
18 employee for contempt.

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

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

28 (e)] (D) (1) Whenever the court orders the production of a public record  
29 that was withheld from the applicant and, in addition, finds that the custodian acted  
30 arbitrarily or capriciously in withholding the public record, the court shall send a  
31 certified copy of its finding to the appointing authority of the custodian.

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

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

4 10-626.

5 (a) (1) IN THIS SUBSECTION, "PERSON" DOES NOT INCLUDE AN OFFICER OR  
6 EMPLOYEE OF A GOVERNMENTAL UNIT.

7 (2) A person[, including an officer or employee of a governmental unit,]  
8 is liable to an individual for actual damages and any punitive damages that the court  
9 considers appropriate if:

10 [(1)] (i) the person willfully and knowingly permits inspection or use of  
11 a public record in violation of this Part III of this subtitle; and

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

- 14 1. an address;
- 15 2. a description;
- 16 3. a finger or voice print;
- 17 4. a number; or
- 18 5. a picture; or

19 [(2)] (III) the person willfully and knowingly obtains, discloses, or uses  
20 personal information in violation of § 10-616(p) of this subtitle.

21 (b) (1) IN THIS SUBSECTION, "DEFENDANT" INCLUDES AN OFFICER OR  
22 EMPLOYEE OF A GOVERNMENTAL UNIT.

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

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

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

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

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

