

# HOUSE BILL 1301

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By: **Delegates Carr, Pena-Melnyk, Ali, Beidle, Hucker, Lafferty, Manno, Mizeur, and Niemann**

Introduced and read first time: February 18, 2010

Assigned to: Health and Government Operations

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## A BILL ENTITLED

1 AN ACT concerning

2 **State Government – Access to Public Records – Electronic Documents**

3 FOR the purpose of requiring a custodian of a public record to provide certain  
4 applicants with a copy of the public record in an electronic format under certain  
5 circumstances; requiring the custodian to make a public record available in any  
6 electronic format in which the public record is kept; requiring a custodian of a  
7 public record to provide the public record in the electronic format requested  
8 under certain circumstances; requiring an official custodian to comply with  
9 certain provisions of this Act even if the public record is in the physical custody  
10 or control of another person; providing for the construction of certain provisions  
11 of this Act; authorizing a custodian to charge an applicant a certain fee for  
12 producing a copy of a public record in an electronic format under certain  
13 circumstances; and generally relating to access to public records.

14 BY repealing and reenacting, with amendments,  
15 Article – State Government  
16 Section 10–620 and 10–621  
17 Annotated Code of Maryland  
18 (2009 Replacement Volume)

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

21 **Article – State Government**

22 10–620.

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

**(2) (I) THE CUSTODIAN OF A PUBLIC RECORD SHALL PROVIDE AN APPLICANT WITH A COPY OF THE PUBLIC RECORD IN AN ELECTRONIC FORMAT IF:**

**1. THE PUBLIC RECORD IS IN AN ELECTRONIC FORMAT;**

**2. THE APPLICANT REQUESTS A COPY OF THE PUBLIC RECORD IN AN ELECTRONIC FORMAT; AND**

**3. THE CUSTODIAN IS ABLE TO PROVIDE A COPY OF THE PUBLIC RECORD, IN WHOLE OR IN PART, IN AN ELECTRONIC FORMAT THAT DOES NOT DISCLOSE CONFIDENTIAL OR PROTECTED INFORMATION FOR WHICH THE CUSTODIAN IS REQUIRED TO DENY INSPECTION IN ACCORDANCE WITH §§ 10-615 THROUGH 10-617 OF THIS SUBTITLE.**

**(II) THE CUSTODIAN SHALL PROVIDE A COPY OF THE PUBLIC RECORD IN:**

**1. ANY ELECTRONIC FORMAT IN WHICH THE PUBLIC RECORD IS KEPT; AND**

**2. THE ELECTRONIC FORMAT REQUESTED IF:**

**A. THE FORMAT HAS BEEN USED BY THE CUSTODIAN TO CREATE COPIES FOR THE CUSTODIAN'S USE OR FOR PROVIDING THE PUBLIC RECORD TO A UNIT OF STATE OR LOCAL GOVERNMENT; OR**

**B. THE ELECTRONIC FORMAT CAN BE READILY PRODUCED BY THE CUSTODIAN USING A COMPUTER PROGRAM OR OTHER TOOL THAT IS READILY AVAILABLE TO OR ALREADY USED BY THE CUSTODIAN.**

**(III) THE OFFICIAL CUSTODIAN SHALL COMPLY WITH THE REQUIREMENTS OF THIS SECTION EVEN IF THE PUBLIC RECORD IS IN THE PHYSICAL CUSTODY OR CONTROL OF ANOTHER PERSON.**

**(IV) THIS PARAGRAPH MAY NOT BE CONSTRUED TO:**

1                   **1.     REQUIRE THE CUSTODIAN TO RECONSTRUCT A**  
2 **PUBLIC RECORD IN AN ELECTRONIC FORMAT IF THE CUSTODIAN NO LONGER**  
3 **HAS THE PUBLIC RECORD AVAILABLE IN ELECTRONIC FORMAT; OR**

4                   **2.     ALLOW A CUSTODIAN TO MAKE A PUBLIC RECORD**  
5 **AVAILABLE ONLY IN AN ELECTRONIC FORMAT.**

6                   **[(2)] (3)**     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)     (1)     The copy, printout, or photograph shall be made:

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

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

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

15 10–621.

16                   (a)     In this section, “reasonable fee” means a fee bearing a reasonable  
17 relationship to the recovery of actual costs incurred by a governmental unit.

18                   (b)     Subject to the limitations in this section, the official custodian may  
19 charge an applicant a reasonable fee for the search for, preparation of, and  
20 reproduction of a public record.

21                   (c)     The official custodian may not charge a fee for the first 2 hours that are  
22 needed to search for a public record and prepare it for inspection.

23                   (d)     (1)     If another law sets a fee for a copy, printout, or photograph of a  
24 public record, that law applies.

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

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

29                   **(E)     THE CUSTODIAN MAY CHARGE AN APPLICANT A FEE THAT IS EQUAL**  
30 **TO THE COST OF PRODUCING A COPY OF A PUBLIC RECORD IN AN ELECTRONIC**  
31 **FORMAT ONLY IF:**

1           **(1) THE CUSTODIAN IS REQUIRED TO PRODUCE A COPY OF AN**  
2 **ELECTRONIC RECORD IN ACCORDANCE WITH § 10-620 OF THIS SUBTITLE; AND**

3           **(2) (I) THE PUBLIC RECORD IS ONLY PRODUCED AT**  
4 **OTHERWISE REGULARLY SCHEDULED INTERVALS; OR**

5           **(II) THE PRODUCTION OF THE COPY WOULD REQUIRE DATA**  
6 **COMPILATION, EXTRACTION, OR PROGRAMMING.**

7           **[(e)] (F)** The official custodian may waive a fee under this section if:

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

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

12           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
13 October 1, 2010.