

HOUSE BILL 37

P3
HB 1301/10 – HGO

11r0361
CF SB 740

By: **Delegates Carr, Pena–Melnyk, Barnes, Beidle, Hucker, Lafferty, Mizeur, and Niemann**

Introduced and read first time: January 17, 2011
Assigned to: Health and Government Operations

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 9, 2011

CHAPTER _____

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 a certain electronic format under
5 certain circumstances; establishing a certain exception; authorizing a custodian
6 to remove certain metadata from certain documents; providing for the
7 construction of certain provisions of this Act; clarifying that a certain act does
8 not constitute creating, ~~compiling, or programming~~ a new public record;
9 authorizing a custodian to charge an applicant a certain fee for producing a copy
10 of a public record in an electronic format under certain circumstances; defining
11 a certain term; and generally relating to access to public records.

12 BY repealing and reenacting, with amendments,
13 Article – State Government
14 Section 10–611, 10–620, and 10–621
15 Annotated Code of Maryland
16 (2009 Replacement Volume and 2010 Supplement)

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

19 **Article – State Government**

20 10–611.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (a) In this Part III of this subtitle the following words have the meanings
2 indicated.

3 (b) "Applicant" means a person or governmental unit that asks to inspect a
4 public record.

5 (c) "Custodian" means:

6 (1) the official custodian; or

7 (2) any other authorized individual who has physical custody and
8 control of a public record.

9 (D) (1) **"METADATA" MEANS INFORMATION, GENERALLY NOT VISIBLE**
10 **WHEN AN ELECTRONIC DOCUMENT IS PRINTED, DESCRIBING THE HISTORY,**
11 **TRACKING, OR MANAGEMENT OF THE ELECTRONIC DOCUMENT, INCLUDING**
12 **INFORMATION ABOUT DATA IN THE ELECTRONIC DOCUMENT THAT DESCRIBES**
13 **HOW, WHEN, AND BY WHOM THE DATA IS COLLECTED, CREATED, ACCESSED, OR**
14 **MODIFIED AND HOW IT IS FORMATTED.**

15 (2) **"METADATA" DOES NOT INCLUDE:**

16 (I) **A SPREADSHEET FORMULA;**

17 (II) **A DATABASE FIELD;**

18 (III) **AN EXTERNALLY OR INTERNALLY LINKED FILE; OR**

19 (IV) **A REFERENCE TO AN EXTERNAL FILE OR HYPERLINK.**

20 [(d)] (E) "Official custodian" means an officer or employee of the State or of
21 a political subdivision who, whether or not the officer or employee has physical custody
22 and control of a public record, is responsible for keeping the public record.

23 [(e)] (F) "Person in interest" means:

24 (1) a person or governmental unit that is the subject of a public record
25 or a designee of the person or governmental unit;

26 (2) if the person has a legal disability, the parent or legal
27 representative of the person; or

28 (3) as to requests for correction of certificates of death under §
29 5-310(d)(2) of the Health – General Article, the spouse, adult child, parent, adult

1 sibling, grandparent, or guardian of the person of the deceased at the time of the
2 deceased's death.

3 **[(f)] (G)** (1) Except as otherwise provided in this Part III, "personal
4 information" means information that identifies an individual including an individual's
5 address, driver's license number or any other identification number, medical or
6 disability information, name, photograph or computer generated image, Social
7 Security number, or telephone number.

8 (2) "Personal information" does not include an individual's driver's
9 status, driving offenses, 5-digit zip code, or information on vehicular accidents.

10 **[(g)] (H)** (1) "Public record" means the original or any copy of any
11 documentary material that:

12 (i) is made by a unit or instrumentality of the State
13 government or of a political subdivision or received by the unit or instrumentality in
14 connection with the transaction of public business; and

15 (ii) is in any form, including:

- 16 1. a card;
- 17 2. a computerized record;
- 18 3. correspondence;
- 19 4. a drawing;
- 20 5. film or microfilm;
- 21 6. a form;
- 22 7. a map;
- 23 8. a photograph or photostat;
- 24 9. a recording; or
- 25 10. a tape.

26 (2) "Public record" includes a document that lists the salary of an
27 employee of a unit or instrumentality of the State government or of a political
28 subdivision.

1 (3) "Public record" does not include a digital photographic image or
 2 signature of an individual, or the actual stored data thereof, recorded by the Motor
 3 Vehicle Administration.

4 **[(h)] (I)** (1) "Telephone solicitation" means the initiation of a telephone
 5 call to an individual or to the residence or business of an individual for the purpose of
 6 encouraging the purchase or rental of or investment in property, goods, or services.

7 (2) "Telephone solicitation" does not include a telephone call or
 8 message:

9 (i) to an individual who has given express permission to the
 10 person making the telephone call;

11 (ii) to an individual with whom the person has an established
 12 business relationship; or

13 (iii) by a tax-exempt, nonprofit organization.

14 10-620.

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

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

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

20 **(2) (I) ~~THE~~ EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF**
 21 **THIS PARAGRAPH, THE CUSTODIAN OF A PUBLIC RECORD SHALL PROVIDE AN**
 22 **APPLICANT WITH A COPY OF THE PUBLIC RECORD IN A SEARCHABLE AND**
 23 **ANALYZABLE ELECTRONIC FORMAT IF:**

24 **1. THE PUBLIC RECORD IS IN A SEARCHABLE AND**
 25 **ANALYZABLE ELECTRONIC FORMAT;**

26 **2. THE APPLICANT REQUESTS A COPY OF THE**
 27 **PUBLIC RECORD IN A SEARCHABLE AND ANALYZABLE ELECTRONIC FORMAT;**
 28 **AND**

29 **3. THE CUSTODIAN IS ABLE TO PROVIDE A COPY OF**
 30 **THE PUBLIC RECORD, IN WHOLE OR IN PART, IN A SEARCHABLE AND**
 31 **ANALYZABLE ELECTRONIC FORMAT THAT DOES NOT DISCLOSE:**

1 A. CONFIDENTIAL OR PROTECTED INFORMATION
2 FOR WHICH THE CUSTODIAN IS REQUIRED TO DENY INSPECTION IN
3 ACCORDANCE WITH §§ 10-615 THROUGH 10-617 OF THIS SUBTITLE; OR

4 B. INFORMATION FOR WHICH A CUSTODIAN HAS
5 CHOSEN TO DENY INSPECTION IN ACCORDANCE WITH § 10-618 OF THIS
6 SUBTITLE.

7 (II) THE DEPARTMENT OF ASSESSMENTS AND TAXATION IS
8 NOT REQUIRED TO PROVIDE AN APPLICANT WITH A COPY OF THE PUBLIC
9 RECORD IN A SEARCHABLE AND ANALYZABLE ELECTRONIC FORMAT IF THE
10 DEPARTMENT OF ASSESSMENTS AND TAXATION HAS PROVIDED THE PUBLIC
11 RECORD TO A CONTRACTOR THAT WILL PROVIDE THE APPLICANT A COPY OF
12 THE PUBLIC RECORD IN A SEARCHABLE AND ANALYZABLE ELECTRONIC
13 FORMAT FOR A REASONABLE COST.

14 ~~(H)~~ (III) A CUSTODIAN MAY REMOVE METADATA FROM AN
15 ELECTRONIC DOCUMENT BEFORE PROVIDING THE ELECTRONIC DOCUMENT TO
16 AN APPLICANT BY:

17 1. USING A SOFTWARE PROGRAM OR FUNCTION; OR
18 2. CONVERTING THE ELECTRONIC DOCUMENT INTO
19 A DIFFERENT SEARCHABLE AND ANALYZABLE FORMAT.

20 ~~(H)~~ (IV) THIS PARAGRAPH MAY NOT BE CONSTRUED TO:

21 1. REQUIRE THE CUSTODIAN TO RECONSTRUCT A
22 PUBLIC RECORD IN AN ELECTRONIC FORMAT IF THE CUSTODIAN NO LONGER
23 HAS THE PUBLIC RECORD AVAILABLE IN ELECTRONIC FORMAT;

24 2. ALLOW A CUSTODIAN TO MAKE A PUBLIC RECORD
25 AVAILABLE ONLY IN AN ELECTRONIC FORMAT;

26 3. REQUIRE A CUSTODIAN TO CREATE, COMPILE, OR
27 PROGRAM A NEW PUBLIC RECORD; OR

28 4. REQUIRE A CUSTODIAN TO RELEASE AN
29 ELECTRONIC RECORD IN A FORMAT THAT WOULD JEOPARDIZE OR COMPROMISE
30 THE SECURITY OR INTEGRITY OF THE ORIGINAL RECORD OR OF ANY
31 PROPRIETARY SOFTWARE IN WHICH IT IS MAINTAINED.

32 ~~(IV)~~ (V) ~~THE~~ IF A PUBLIC RECORD EXISTS IN A
33 SEARCHABLE AND ANALYZABLE ELECTRONIC FORMAT, THE ACT OF
34 EXTRACTING OR EXPORTING DATA FROM A SPREADSHEET OR DATABASE OR

1 ~~CONVERTING DATA FROM ONE AVAILABLE FORMAT TO ANOTHER~~ A CUSTODIAN
 2 PROVIDING A PORTION OF THE PUBLIC RECORD IN A SEARCHABLE AND
 3 ANALYZABLE ELECTRONIC FORMAT DOES NOT CONSTITUTE CREATING,
 4 ~~COMPILING, OR PROGRAMMING~~ A NEW PUBLIC RECORD.

5 [(2)] (3) An applicant may not have a copy of a judgment until:

6 (i) the time for appeal expires; or

7 (ii) if an appeal is noted, the appeal is dismissed or adjudicated.

8 (b) (1) The copy, printout, or photograph shall be made:

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

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

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

14 10-621.

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

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

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

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

24 (2) The official custodian otherwise may charge any reasonable fee for
 25 making or supervising the making of a copy, **ELECTRONIC COPY**, printout, or
 26 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 official custodian may waive a fee under this section if:

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

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

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2011.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.