

HOUSE BILL 53

P3

4lr0343

(PRE-FILED)

By: **Delegates Vitale and Carr**

Requested: July 24, 2013

Introduced and read first time: January 8, 2014

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 13, 2014

CHAPTER _____

1 AN ACT concerning

2 **Public Records – Provision of Copies, Printouts, and Photographs – Required**

3 FOR the purpose of requiring a custodian of a public record to provide a copy, printout,
4 or photograph of a public record to an applicant under certain circumstances;
5 authorizing a person or governmental unit that is not provided with a copy,
6 printout, or photograph of a public record to file a complaint with a certain
7 circuit court; providing that the defendant has the burden of sustaining a
8 certain decision; authorizing the court to take certain action regarding the
9 failure to provide a copy, printout, or photograph of a public record; providing
10 that a defendant governmental unit is liable for certain damages under certain
11 circumstances; requiring the court to send a certain copy of its finding regarding
12 the failure to provide a copy, printout, or photograph of a public record to the
13 appointing authority of the custodian of the public record; and generally
14 relating to the provision of copies, printouts, and photographs of public records
15 by custodians.

16 ~~BY repealing and reenacting, with amendments,~~
17 ~~Article – State Government~~
18 ~~Section 10-620 and 10-623~~
19 ~~Annotated Code of Maryland~~
20 ~~(2009 Replacement Volume and 2013 Supplement)~~

21 BY repealing and reenacting, with amendments,
22 Article – General Provisions

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 Section 4-205 and 4-362

2 Annotated Code of Maryland

3 (As enacted by Chapter (H.B. 270) of the Acts of the General Assembly of
4 2014)

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

7 ~~Article—State Government~~

8 ~~10-620.~~

9 ~~(a) (1) Except as otherwise provided in this subsection, IF an applicant~~
10 ~~who is authorized to inspect a public record [may have] REQUESTS A COPY,~~
11 ~~PRINTOUT, OR PHOTOGRAPH OF THE PUBLIC RECORD, THE CUSTODIAN SHALL~~
12 ~~PROVIDE THE APPLICANT WITH:~~

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

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

16 ~~(2) (i) Except as provided in subparagraph (ii) of this paragraph,~~
17 ~~the custodian of a public record shall provide an applicant with a copy of the public~~
18 ~~record in a searchable and analyzable electronic format if:~~

19 ~~1. the public record is in a searchable and analyzable~~
20 ~~electronic format;~~

21 ~~2. the applicant requests a copy of the public record in a~~
22 ~~searchable and analyzable electronic format; and~~

23 ~~3. the custodian is able to provide a copy of the public~~
24 ~~record, in whole or in part, in a searchable and analyzable electronic format that does~~
25 ~~not disclose:~~

26 ~~A. confidential or protected information for which the~~
27 ~~custodian is required to deny inspection in accordance with §§ 10-615 through 10-617~~
28 ~~of this subtitle; or~~

29 ~~B. information for which a custodian has chosen to deny~~
30 ~~inspection in accordance with § 10-618 of this subtitle.~~

31 ~~(ii) The Department of Assessments and Taxation is not~~
32 ~~required to provide an applicant with a copy of the public record in a searchable and~~
33 ~~analyzable electronic format if the Department of Assessments and Taxation has~~

1 ~~provided the public record to a contractor that will provide the applicant a copy of the~~
2 ~~public record in a searchable and analyzable electronic format for a reasonable cost.~~

3 ~~(iii) A custodian may remove metadata from an electronic~~
4 ~~document before providing the electronic document to an applicant by:~~

- 5 ~~1. using a software program or function; or~~
6 ~~2. converting the electronic document into a different~~
7 ~~searchable and analyzable format.~~

8 ~~(iv) This paragraph may not be construed to:~~

9 ~~1. require the custodian to reconstruct a public record in~~
10 ~~an electronic format if the custodian no longer has the public record available in~~
11 ~~electronic format;~~

12 ~~2. allow a custodian to make a public record available~~
13 ~~only in an electronic format;~~

14 ~~3. require a custodian to create, compile, or program a~~
15 ~~new public record; or~~

16 ~~4. require a custodian to release an electronic record in a~~
17 ~~format that would jeopardize or compromise the security or integrity of the original~~
18 ~~record or of any proprietary software in which it is maintained.~~

19 ~~(v) If a public record exists in a searchable and analyzable~~
20 ~~electronic format, the act of a custodian providing a portion of the public record in a~~
21 ~~searchable and analyzable electronic format does not constitute creating a new public~~
22 ~~record.~~

23 ~~(3) An applicant may not have a copy of a judgment until:~~

24 ~~(i) the time for appeal expires; or~~

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

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

27 ~~(i) while the public record is in the custody of the custodian;~~
28 ~~and~~

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

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

1 ~~10-623.~~

2 ~~(a) Whenever a person or governmental unit is denied inspection of a public~~
 3 ~~record OR IS NOT PROVIDED WITH A COPY, PRINTOUT, OR PHOTOGRAPH OF A~~
 4 ~~PUBLIC RECORD AS REQUESTED, the person or governmental unit may file a~~
 5 ~~complaint with the circuit court for the county where:~~

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

7 ~~(2) the public record is located.~~

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

11 ~~(2) The defendant:~~

12 ~~(i) has the burden of sustaining a decision to:~~

13 ~~1. deny inspection of a public record; OR~~

14 ~~2. DENY THE PERSON OR GOVERNMENTAL UNIT A~~
 15 ~~COPY, PRINTOUT, OR PHOTOGRAPH OF A PUBLIC RECORD, and~~

16 ~~(ii) in support of the decision, may submit a memorandum to~~
 17 ~~the court.~~

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

20 ~~(i) take precedence on the docket;~~

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

22 ~~(iii) be expedited in every way.~~

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

25 ~~(3) The court may:~~

26 ~~(i) enjoin the State, a political subdivision, or a unit, official, or~~
 27 ~~employee of the State or of a political subdivision from:~~

28 ~~1. withholding the public record; OR~~

1 ~~2. WITHHOLDING A COPY, PRINTOUT, OR~~
2 ~~PHOTOGRAPH OF THE PUBLIC RECORD;~~

3 ~~(ii) pass an order for the production of the public record OR A~~
4 ~~COPY, PRINTOUT, OR PHOTOGRAPH OF THE PUBLIC RECORD~~ that was withheld
5 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~~
9 ~~actual damages that the court considers appropriate if the court finds by clear and~~
10 ~~convincing evidence that any defendant knowingly and willfully failed to:~~

11 ~~(I) disclose or fully to disclose a public record that the~~
12 ~~complainant was entitled to inspect under this Part III of this subtitle; OR~~

13 ~~(II) PROVIDE A COPY, PRINTOUT, OR PHOTOGRAPH OF A~~
14 ~~PUBLIC RECORD THAT THE COMPLAINANT REQUESTED UNDER § 10-620 OF~~
15 ~~THIS SUBTITLE.~~

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

20 ~~(e) (1) Whenever the court orders the production of a public record OR A~~
21 ~~COPY, PRINTOUT, OR PHOTOGRAPH OF A PUBLIC RECORD~~ that was withheld from
22 the applicant and, in addition, finds that the custodian acted arbitrarily or
23 capriciously in withholding the public record ~~OR THE COPY, PRINTOUT, OR~~
24 ~~PHOTOGRAPH OF THE PUBLIC RECORD~~, the court shall send a certified copy of its
25 finding to the appointing authority of the custodian.

26 ~~(2) On receipt of the statement of the court and after an appropriate~~
27 ~~investigation, the appointing authority shall take the disciplinary action that the~~
28 ~~circumstances warrant.~~

29 ~~(f) If the court determines that the complainant has substantially prevailed,~~
30 ~~the court may assess against a defendant governmental unit reasonable counsel fees~~
31 ~~and other litigation costs that the complainant reasonably incurred.~~

32 Article – General Provisions

33 4-205.

1 (a) (1) In this section, “metadata” means information, generally not
2 visible when an electronic document is printed, describing the history, tracking, or
3 management of the electronic document, including information about data in the
4 electronic document that describes how, when, and by whom the data is collected,
5 created, accessed, or modified and how the data is formatted.

6 (2) “Metadata” does not include:

7 (i) a spreadsheet formula;

8 (ii) a database field;

9 (iii) an externally or internally linked file; or

10 (iv) a reference to an external file or a hyperlink.

11 (b) Except as otherwise provided in this section, IF an applicant who is
12 authorized to inspect a public record [may have] REQUESTS A COPY, PRINTOUT, OR
13 PHOTOGRAPH OF THE PUBLIC RECORD, THE CUSTODIAN SHALL PROVIDE THE
14 APPLICANT WITH:

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

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

18 (c) (1) Except as provided in paragraph (2) of this subsection, the
19 custodian of a public record shall provide an applicant with a copy of the public record
20 in a searchable and analyzable electronic format if:

21 (i) the public record is in a searchable and analyzable electronic
22 format;

23 (ii) the applicant requests a copy of the public record in a
24 searchable and analyzable electronic format; and

25 (iii) the custodian is able to provide a copy of the public record,
26 in whole or in part, in a searchable and analyzable electronic format that does not
27 disclose:

28 1. confidential or protected information for which the
29 custodian is required to deny inspection in accordance with Subtitle 3, Parts I through
30 III of this title; or

31 2. information for which a custodian has chosen to deny
32 inspection in accordance with Subtitle 3, Part IV of this title.

1 (2) The State Department of Assessments and Taxation is not
2 required to provide an applicant with a copy of the public record in a searchable and
3 analyzable electronic format if the State Department of Assessments and Taxation has
4 provided the public record to a contractor that will provide the applicant a copy of the
5 public record in a searchable and analyzable electronic format for a reasonable cost.

6 (3) A custodian may remove metadata from an electronic document
7 before providing the electronic document to an applicant by:

8 (i) using a software program or function; or

9 (ii) converting the electronic document into a different
10 searchable and analyzable format.

11 (4) This subsection may not be construed to:

12 (i) require the custodian to reconstruct a public record in an
13 electronic format if the custodian no longer has the public record available in an
14 electronic format;

15 (ii) allow a custodian to make a public record available only in
16 an electronic format;

17 (iii) require a custodian to create, compile, or program a new
18 public record; or

19 (iv) require a custodian to release an electronic record in a
20 format that would jeopardize or compromise the security or integrity of the original
21 record or of any proprietary software in which the record is maintained.

22 (5) If a public record exists in a searchable and analyzable electronic
23 format, the act of a custodian providing a portion of the public record in a searchable
24 and analyzable electronic format does not constitute creating a new public record.

25 (d) (1) The copy, printout, or photograph shall be made:

26 (i) while the public record is in the custody of the custodian;
27 and

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

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

31 (e) An applicant may not have a copy of a judgment until:

32 (1) the time for appeal expires; or

1 (2) if an appeal is noted, the appeal is dismissed or adjudicated.

2 4-362.

3 (a) Whenever a person or governmental unit is denied inspection of a public
4 record OR IS NOT PROVIDED WITH A COPY, PRINTOUT, OR PHOTOGRAPH OF A
5 PUBLIC RECORD AS REQUESTED, the person or governmental unit may file a
6 complaint with the circuit court for the county where:

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

8 (2) the public record is located.

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

12 (2) The defendant:

13 (i) has the burden of sustaining a decision to:

14 1. deny inspection of a public record; OR

15 2. DENY THE PERSON OR GOVERNMENTAL UNIT A
16 COPY, PRINTOUT, OR PHOTOGRAPH OF A PUBLIC RECORD; and

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

19 (c) (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 the public record may be withheld under this title.

26 (3) The court may:

27 (i) enjoin the State, a political subdivision, or a unit, an official,
28 or an employee of the State or of a political subdivision from:

1 1. withholding the public record; OR

2 2. WITHHOLDING A COPY, PRINTOUT, OR
3 PHOTOGRAPH OF THE PUBLIC RECORD;

4 (ii) issue an order for the production of the public record OR A
5 COPY, PRINTOUT, OR PHOTOGRAPH OF THE PUBLIC RECORD that was withheld
6 from the complainant; and

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

9 (d) (1) A defendant governmental unit is liable to the complainant for
10 actual damages that the court considers appropriate if the court finds by clear and
11 convincing evidence that any defendant knowingly and willfully failed to:

12 (I) disclose or fully to disclose a public record that the
13 complainant was entitled to inspect under this title; OR

14 (II) PROVIDE A COPY, PRINTOUT, OR PHOTOGRAPH OF A
15 PUBLIC RECORD THAT THE COMPLAINANT REQUESTED UNDER § 4-205 OF THIS
16 TITLE.

17 (2) An official custodian is liable for actual damages that the court
18 considers appropriate if the court finds that, after temporarily denying inspection of a
19 public record, the official custodian failed to petition a court for an order to continue
20 the denial.

21 (e) (1) Whenever the court orders the production of a public record OR A
22 COPY, PRINTOUT, OR PHOTOGRAPH OF A PUBLIC RECORD that was withheld from
23 the applicant and, in addition, finds that the custodian acted arbitrarily or
24 capriciously in withholding the public record OR THE COPY, PRINTOUT, OR
25 PHOTOGRAPH OF THE PUBLIC RECORD, the court shall send a certified copy of its
26 finding to the appointing authority of the custodian.

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

30 (f) If the court determines that the complainant has substantially prevailed,
31 the court may assess against a defendant governmental unit reasonable counsel fees
32 and other litigation costs that the complainant reasonably incurred.

33 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
34 October 1, 2014.