

HOUSE BILL 1105

P3, L2

6lr0713

By: **Howard County Delegation**

Introduced and read first time: February 11, 2016

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Howard County Public School System – Access to Public Information**

3 **Ho. Co. 9–16**

4 FOR the purpose of requiring the custodian of a public record to provide written notice to
5 an applicant regarding the right to file a certain complaint with the State Public
6 Information Act Compliance Board; requiring the Public Access Ombudsman to
7 investigate, evaluate, and issue a report concerning the Howard County Public
8 School System concerning certain matters; requiring the Howard County Board of
9 Education, Howard County Superintendent of Schools, and the Howard County
10 Public School System, as applicable, to provide the Ombudsman with certain records;
11 requiring the Ombudsman to maintain the confidentiality of certain records; and
12 generally relating to the Howard County Public School System and access to public
13 information.

14 BY repealing and reenacting, without amendments,
15 Article – General Provisions
16 Section 4–1A–01, 4–1A–04(a), 4–1A–05(a), 4–1B–01, and 4–1B–04(a)
17 Annotated Code of Maryland
18 (2014 Volume and 2015 Supplement)

19 BY repealing and reenacting, with amendments,
20 Article – General Provisions
21 Section 4–206
22 Annotated Code of Maryland
23 (2014 Volume and 2015 Supplement)

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

26 **Article – General Provisions**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 4-1A-01.

2 There is a State Public Information Act Compliance Board.

3 4-1A-04.

4 (a) The Board shall:

5 (1) receive, review, and, subject to § 4-1A-07 of this subtitle, resolve
6 complaints filed under § 4-1A-05 of this subtitle from any applicant or the applicant's
7 designated representative alleging that a custodian charged an unreasonable fee under §
8 4-206 of this title;

9 (2) issue a written opinion as to whether a violation has occurred; and

10 (3) if the Board finds that the custodian charged an unreasonable fee under
11 § 4-206 of this title, order the custodian to reduce the fee to an amount determined by the
12 Board to be reasonable and refund the difference.

13 4-1A-05.

14 (a) Any applicant or the applicant's designated representative may file a written
15 complaint with the Board seeking a written opinion and order from the Board if:

16 (1) a custodian charged a fee under § 4-206 of this title of more than \$350;
17 and

18 (2) the complainant alleges in the complaint that the fee is unreasonable.

19 4-1B-01.

20 In this subtitle, "Ombudsman" means the Public Access Ombudsman.

21 4-1B-04.

22 (a) Subject to subsection (b) of this section, the Ombudsman shall make
23 reasonable attempts to resolve disputes between applicants and custodians relating to
24 requests for public records under this title, including disputes over:

25 (1) the custodian's application of an exemption;

26 (2) redactions of information in the public record;

27 (3) the failure of the custodian to produce a public record in a timely
28 manner or to disclose all records relevant to the request;

1 (4) overly broad requests for public records;

2 (5) the amount of time a custodian needs, given available staff and
3 resources, to produce public records;

4 (6) a request for or denial of a fee waiver under § 4–206(e) of this title; and

5 (7) repetitive or redundant requests from an applicant.

6 4–206.

7 (a) (1) In this section the following words have the meanings indicated.

8 (2) “Indigent” means an individual’s family household income is less than
9 50% of the median family income for the State as reported in the Federal Register.

10 (3) “Reasonable fee” means a fee bearing a reasonable relationship to the
11 recovery of actual costs incurred by a governmental unit.

12 (b) (1) Subject to the limitations in this section, the official custodian may
13 charge an applicant a reasonable fee for:

14 (i) the search for, preparation of, and reproduction of a public record
15 prepared, on request of the applicant, in a customized format; and

16 (ii) the actual costs of the search for, preparation of, and
17 reproduction of a public record in standard format, including media and mechanical
18 processing costs.

19 (2) The staff and attorney review costs included in the calculation of actual
20 costs incurred under this section shall be prorated for each individual’s salary and actual
21 time attributable to the search for and preparation of a public record under this section.

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

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

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

28 (e) The official custodian may waive a fee under this section if:

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

30 (2) (i) the applicant is indigent and files an affidavit of indigency; or

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

4 **(F) IN HOWARD COUNTY, IF THE CUSTODIAN OF A PUBLIC RECORD FOR THE**
5 **HOWARD COUNTY PUBLIC SCHOOL SYSTEM CHARGES AN APPLICANT A FEE UNDER**
6 **SUBSECTION (B) OF THIS SECTION, THE CUSTODIAN SHALL PROVIDE WRITTEN**
7 **NOTICE TO THE APPLICANT THAT THE APPLICANT MAY FILE A COMPLAINT WITH THE**
8 **BOARD TO CONTEST THE FEE.**

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

10 (1) in addition to the duties prescribed under § 4–1B–04(a) of the General
11 Provisions Article of the Code, on or before January 1, 2017, the Public Access Ombudsman
12 shall investigate, evaluate, and issue a report to the public concerning the Howard County
13 Public School System, to cover the period from July 1, 2012 through December 31, 2015,
14 concerning:

15 (i) the integrity and propriety of any refusal by the custodian of a
16 public record for the Howard County Public School System, on the request of an applicant,
17 to disclose the public record;

18 (ii) the validity of any declaration by the custodian of a public record
19 for the Howard County Public School System that a public record requested by an applicant
20 does not exist and cannot be produced; and

21 (iii) the reasonableness of any complaint by an applicant for a public
22 record from the Howard County Public School System as to:

23 1. any delay by a custodian in furnishing the public record
24 that was requested; and

25 2. any other matter involving compliance by a custodian with
26 the requirements of Title 4 of the General Provisions Article of the Code (the Public
27 Information Act); and

28 (2) (i) on the request of the Ombudsman, the Howard County Board of
29 Education, Howard County Superintendent, or Howard County Public School System, as
30 applicable, shall provide the Ombudsman with any public record that the Ombudsman
31 deems necessary to conduct the review, evaluation, and publication of the report required
32 under paragraph (1) of this section; and

33 (ii) the Ombudsman shall maintain and preserve as confidential any
34 public record that the Ombudsman obtains from the Howard County Board of Education,
35 Howard County Superintendent of Schools, or the Howard County Public School System

1 for the purposes of this section that the board, county superintendent, or public school
2 system has determined to be confidential.

3 **SECTION 3. AND BE IT FURTHER ENACTED,** That this Act shall take effect July
4 1, 2016.