

SENATE BILL 449

P3

11r0477
CF HB 183

By: **Senator Kagan**

Introduced and read first time: January 20, 2021

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Public Information Act – Revisions**
3 **(Equitable Access to Records Act)**

4 FOR the purpose of requiring each official custodian to adopt a certain policy of proactive
5 disclosure; providing that the policy may vary in a certain manner and include the
6 publication of certain records, to the extent practicable, or certain information;
7 requiring each official custodian to publish a certain annual report on a certain
8 website, to the extent practicable or, under certain circumstances, store the report
9 in a certain manner; requiring the report of an official custodian to include certain
10 information; requiring a certain member of the Public Information Act Compliance
11 Board to have served as a custodian, rather than an official custodian, in the State;
12 requiring that two members of the Board, rather than one member, be attorneys;
13 requiring that one member of the Board be knowledgeable about electronic records;
14 requiring the Office of the Attorney General to provide at least a certain number of
15 staff members to assist the Board and requiring the Office of the Public Access
16 Ombudsman to carry out certain duties; requiring the Board to receive, review, and
17 resolve certain complaints from applicants and applicants' designated
18 representatives and certain complaints from a custodian; altering the minimum fee
19 charged under which the Board is required to take certain actions with regard to a
20 complaint; requiring the Board to order a custodian to take certain actions under
21 certain circumstances; requiring the Board to issue an order authorizing a custodian
22 to take certain actions under certain circumstances; requiring the Board to adopt
23 certain regulations; altering the circumstances under which an applicant or an
24 applicant's designated representative is authorized to file a certain written
25 complaint; authorizing a custodian to file a certain complaint under certain
26 circumstances; altering the time period within which a certain complaint must be
27 filed; altering the time period within which a certain response must be filed;
28 requiring a custodian to provide certain information to the Board on request;
29 requiring a custodian or an applicant, on request of the Board, to provide a certain
30 affidavit or statement; requiring the Board to maintain the confidentiality of certain

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 records and information; prohibiting a custodian from being civilly or criminally
 2 liable for taking certain actions; providing for the construction of certain actions
 3 taken under this Act; altering certain time periods within which the Board must
 4 issue certain decisions under certain circumstances; prohibiting a person from
 5 appealing a certain decision under certain provisions of law; repealing the limitation
 6 on the time period for which a certain appeal stays a certain decision; altering the
 7 list of disputes that the Ombudsman is required to make reasonable attempts to
 8 resolve; requiring the Ombudsman to issue a certain final determination within a
 9 certain period of time except under certain circumstances; requiring the
 10 Ombudsman to inform the applicant and the custodian of the availability of certain
 11 review by the Board under certain circumstances; authorizing the Ombudsman to
 12 disclose certain information to certain persons; prohibiting a certain individual from
 13 disclosing certain information under certain circumstances; authorizing the
 14 Ombudsman to transfer certain information to the Board under certain
 15 circumstances; requiring the Ombudsman to submit a certain annual report to the
 16 Governor and the General Assembly; requiring the Ombudsman's report to include
 17 certain information; prohibiting a custodian from failing to respond to an application
 18 for the inspection of a public record within certain time limits except under certain
 19 circumstances; altering the circumstances under which certain time limits are
 20 required to be extended pending the resolution of a dispute; altering a certain
 21 definition; altering certain terminology; making stylistic and conforming changes;
 22 requiring the Office of the Attorney General to allocate certain staff members on or
 23 before a certain date; and generally relating to the Public Information Act.

24 BY repealing and reenacting, without amendments,
 25 Article – General Provisions
 26 Section 4–101(a) and (c), 4–1B–01, and 4–203(a)
 27 Annotated Code of Maryland
 28 (2019 Replacement Volume and 2020 Supplement)

29 BY repealing and reenacting, with amendments,
 30 Article – General Provisions
 31 Section 4–101(j), 4–1A–02(a), 4–1A–03(d), 4–1A–04 through 4–1A–08, 4–1A–10,
 32 4–1B–02(b), 4–1B–04, 4–203(d), and 4–362(a)
 33 Annotated Code of Maryland
 34 (2019 Replacement Volume and 2020 Supplement)

35 BY adding to
 36 Article – General Provisions
 37 Section 4–104 and 4–105
 38 Annotated Code of Maryland
 39 (2019 Replacement Volume and 2020 Supplement)

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

42 **Article – General Provisions**

1 4-101.

2 (a) In this title the following words have the meanings indicated.

3 (c) "Board" means the State Public Information Act Compliance Board.

4 (j) (1) "Public record" means the original or any copy of any documentary
5 material that:

6 (i) is made by a unit or an instrumentality of the State or of a
7 political subdivision or received by the unit or instrumentality in connection with the
8 transaction of public business; and

9 (ii) is in any form, including:

- 10 1. a card;
- 11 2. a computerized record;
- 12 3. correspondence;
- 13 4. a drawing;
- 14 5. film or microfilm;
- 15 6. a form;
- 16 7. a map;
- 17 8. a photograph or photostat;
- 18 9. a recording; or
- 19 10. a tape.

20 (2) "Public record" includes a document that lists the salary of an employee
21 of a unit or an instrumentality of the State or of a political subdivision.

22 (3) "Public record" does not include:

23 (I) a digital photographic image or signature of an individual, or the
24 actual stored data of the image or signature, recorded by the Motor Vehicle Administration;
25 **OR**

26 (II) **A RECORD OR ANY INFORMATION SUBMITTED TO THE**

1 **BOARD UNDER SUBTITLE 1A OF THIS TITLE.**

2 **4-104.**

3 (A) EACH OFFICIAL CUSTODIAN SHALL ADOPT A POLICY OF PROACTIVE
4 DISCLOSURE OF PUBLIC RECORDS THAT ARE AVAILABLE FOR INSPECTION UNDER
5 THIS TITLE.

6 (B) THE POLICY ADOPTED UNDER SUBSECTION (A) OF THIS SECTION MAY:

7 (1) VARY AS APPROPRIATE TO THE TYPE OF PUBLIC RECORD AND TO
8 REFLECT THE STAFF AND BUDGETARY RESOURCES OF THE GOVERNMENTAL UNIT;
9 AND

10 (2) INCLUDE PUBLICATION OF PUBLIC RECORDS ON THE WEBSITE OF
11 THE GOVERNMENTAL UNIT, TO THE EXTENT PRACTICABLE, OR PUBLICATION OF
12 PRIOR RESPONSES TO REQUESTS FOR INSPECTION MADE UNDER THIS TITLE.

13 **4-105.**

14 (A) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, ON OR
15 BEFORE JULY 1 EACH YEAR, EACH OFFICIAL CUSTODIAN SHALL PUBLISH ON THE
16 WEBSITE OF THE GOVERNMENTAL UNIT, TO THE EXTENT PRACTICABLE, A REPORT
17 ON THE REQUESTS RECEIVED DURING THE IMMEDIATELY PRECEDING CALENDAR
18 YEAR UNDER THIS TITLE FOR INSPECTION OF PUBLIC RECORDS OF THE
19 GOVERNMENTAL UNIT.

20 (2) IF THE GOVERNMENTAL UNIT DOES NOT HAVE A WEBSITE, THE
21 CUSTODIAN SHALL STORE THE REPORT IN A PLACE THAT IS EASILY ACCESSIBLE TO
22 THE PUBLIC.

23 (B) THE REPORT SHALL INCLUDE:

24 (1) THE NUMBER OF REQUESTS RECEIVED UNDER THIS TITLE,
25 INCLUDING:

26 (I) THE NUMBER OF REQUESTS GRANTED OR DENIED WITHIN
27 10 BUSINESS DAYS;

28 (II) THE NUMBER OF REQUESTS GRANTED OR DENIED WITHIN
29 30 DAYS; AND

30 (III) THE NUMBER OF REQUESTS GRANTED OR DENIED IN MORE

1 THAN 30 DAYS AND THE REASONS FOR THE DELAYS, INCLUDING THE NUMBER OF
2 EXTENSIONS REQUESTED AND THE NUMBER OF REQUESTS THAT WERE THE
3 SUBJECT OF DISPUTE RESOLUTION UNDER § 4-1B-04 OF THIS TITLE;

4 (2) THE OUTCOMES OF THE REQUESTS, INCLUDING:

5 (I) THE TOTAL NUMBER OF REQUESTS GRANTED IN FULL;

6 (II) THE TOTAL NUMBER OF REQUESTS GRANTED IN PART;

7 (III) THE TOTAL NUMBER OF REQUESTS DENIED IN FULL; AND

8 (IV) THE TOTAL NUMBER OF REQUESTS FOR WHICH REDACTED
9 PUBLIC RECORDS WERE PROVIDED;

10 (3) THE AMOUNT OF FEES CHARGED UNDER § 4-206 OF THIS TITLE;

11 (4) THE NUMBER OF FEE WAIVERS GRANTED UNDER § 4-206(E) OF
12 THIS TITLE; AND

13 (5) A DESCRIPTION OF EFFORTS BY THE GOVERNMENTAL UNIT TO
14 PROACTIVELY DISCLOSE INFORMATION IN ACCORDANCE WITH THE POLICY
15 ADOPTED UNDER § 4-104 OF THIS SUBTITLE.

16 4-1A-02.

17 (a) (1) The Board consists of five members.

18 (2) (i) One member of the Board shall be a representative:

19 1. from a nongovernmental nonprofit group that is organized
20 in the State;

21 2. who works on issues related to transparency or open
22 government; and

23 3. who is nominated by representatives of the open
24 government and news media communities.

25 (ii) One member of the Board shall:

26 1. have knowledge of the provisions of this title;

27 2. have served as [an official] A custodian in the State as
28 defined in § 4-101(d) of this title; and

1 1. consider the need for geographic, political, racial, ethnic,
2 cultural, and gender diversity on the Board; and

3 2. ensure the neutrality of the Board.

4 **[(5)] (6)** Subject to paragraphs (2) [and (3)] **THROUGH (4)** of this
5 subsection and with the advice and consent of the Senate, the Governor shall appoint the
6 members of the Board from the pool of applicants under paragraph **[(4)] (5)** of this
7 subsection.

8 4-1A-03.

9 (d) **(1)** [The] **SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE**
10 Office of the Attorney General shall provide staff and office space for the Board.

11 **(2)** **THE OFFICE OF THE ATTORNEY GENERAL SHALL PROVIDE AT**
12 **LEAST FOUR STAFF MEMBERS TO ASSIST THE BOARD AND THE OFFICE OF THE**
13 **PUBLIC ACCESS OMBUDSMAN TO CARRY OUT THE DUTIES OF THE BOARD UNDER**
14 **THIS SUBTITLE AND THE OFFICE UNDER SUBTITLE 1B OF THIS TITLE.**

15 4-1A-04.

16 (a) The Board shall:

17 (1) receive, review, and, subject to § 4-1A-07 of this subtitle, resolve
18 complaints filed under § 4-1A-05 of this subtitle from any applicant or the applicant's
19 designated representative alleging that a custodian:

20 **(I)** **DENIED INSPECTION OF A PUBLIC RECORD IN VIOLATION OF**
21 **THIS TITLE;**

22 **(II)** charged an unreasonable fee under § 4-206 of this title **OF MORE**
23 **THAN \$200;**

24 **(III)** **UNREASONABLY FAILED TO WAIVE A FEE UNDER § 4-206(E)**
25 **OF THIS TITLE; OR**

26 **(IV)** **FAILED TO RESPOND TO A REQUEST FOR A PUBLIC RECORD**
27 **WITHIN THE TIME LIMITS ESTABLISHED UNDER § 4-203(A) OR (D) OF THIS TITLE;**

28 (2) issue a written [opinion] **DECISION** as to whether a violation has
29 occurred; and

30 (3) **ORDER THE CUSTODIAN TO:**

1 **(I) IF THE BOARD FINDS THAT THE CUSTODIAN HAS DENIED**
2 **INSPECTION OF A PUBLIC RECORD IN VIOLATION OF THIS TITLE, PRODUCE THE**
3 **PUBLIC RECORD FOR INSPECTION;**

4 **(II) if the Board finds that the custodian charged an unreasonable**
5 **fee under § 4–206 of this title, [order the custodian to] reduce the fee to an amount**
6 **determined by the Board to be reasonable and refund the difference;**

7 **(III) IF THE BOARD FINDS THAT THE CUSTODIAN**
8 **UNREASONABLY FAILED TO WAIVE A FEE UNDER § 4–206(E) OF THIS TITLE, WAIVE**
9 **ALL OR PART OF THE FEE OR RECONSIDER THE FEE WAIVER REQUEST; OR**

10 **(IV) IF THE BOARD FINDS THAT THE CUSTODIAN FAILED TO**
11 **RESPOND TO A REQUEST FOR A PUBLIC RECORD WITHIN THE TIME LIMITS**
12 **ESTABLISHED UNDER § 4–203(A) OR (D) OF THIS TITLE:**

13 1. **PROMPTLY RESPOND; AND**

14 2. **AT THE BOARD’S DISCRETION AND ONLY IF THE**
15 **WRITTEN DECISION INCLUDES THE BOARD’S REASONS FOR ORDERING THE WAIVER,**
16 **WAIVE ALL OR PART OF THE FEE THE CUSTODIAN IS OTHERWISE ENTITLED TO**
17 **CHARGE UNDER § 4–206 OF THIS TITLE.**

18 **(B) THE BOARD SHALL:**

19 **(1) RECEIVE, REVIEW, AND, SUBJECT TO § 4–1A–07 OF THIS**
20 **SUBTITLE, RESOLVE COMPLAINTS FILED UNDER § 4–1A–05 OF THIS SUBTITLE FROM**
21 **ANY CUSTODIAN ALLEGING THAT AN APPLICANT’S REQUEST OR PATTERN OF**
22 **REQUESTS IS FRIVOLOUS, VEXATIOUS, OR IN BAD FAITH;**

23 **(2) ISSUE A WRITTEN DECISION AS TO WHETHER THE APPLICANT’S**
24 **REQUEST OR PATTERN OF REQUESTS IS FRIVOLOUS, VEXATIOUS, OR IN BAD FAITH;**
25 **AND**

26 **(3) IF THE BOARD FINDS THAT THE APPLICANT’S REQUEST IS**
27 **FRIVOLOUS, VEXATIOUS, OR IN BAD FAITH, BASED ON THE TOTALITY OF THE**
28 **CIRCUMSTANCES INCLUDING THE NUMBER AND SCOPE OF THE APPLICANT’S PAST**
29 **REQUESTS AND THE CUSTODIAN’S RESPONSES TO PAST REQUESTS AND EFFORTS TO**
30 **COOPERATE WITH THE APPLICANT, ISSUE AN ORDER AUTHORIZING THE CUSTODIAN**
31 **TO:**

32 **(I) IGNORE THE REQUEST THAT IS THE SUBJECT OF THE**
33 **CUSTODIAN’S COMPLAINT; OR**

1 **(II) RESPOND TO A LESS BURDENSOME VERSION OF THE**
 2 **REQUEST WITHIN A REASONABLE TIME FRAME, AS DETERMINED BY THE BOARD.**

3 **[(b)] (C)** The Board shall:

4 **(1) ADOPT REGULATIONS TO CARRY OUT THIS SUBTITLE;**

5 **[(1)] (2)** study ongoing compliance with this title by custodians; and

6 **[(2)] (3)** make recommendations to the General Assembly for
 7 improvements to this title.

8 **[(c)] (D)** (1) On or before October 1 of each year, the Board shall submit a
 9 report to the Governor and, subject to § 2-1257 of the State Government Article, the
 10 General Assembly.

11 (2) The report shall:

12 (i) describe the activities of the Board;

13 (ii) describe the **[opinions] DECISIONS** of the Board;

14 (iii) state the number and nature of complaints filed with the Board;
 15 and

16 (iv) recommend any improvements to this title.

17 4-1A-05.

18 (a) Any applicant **[or]**, the applicant's designated representative, **OR A**
 19 **CUSTODIAN** may file a written complaint with the Board seeking a written **[opinion]**
 20 **DECISION** and order from the Board **UNDER § 4-1A-04 OF THIS SUBTITLE** if:

21 (1) **[a custodian charged a fee under § 4-206 of this title of more than \$350]**
 22 **THE COMPLAINANT HAS ATTEMPTED TO RESOLVE THE DISPUTE THROUGH THE**
 23 **OFFICE OF THE PUBLIC ACCESS OMBUDSMAN UNDER § 4-1B-04 OF THIS TITLE;** and

24 (2) **[the complainant alleges in the complaint that the fee is unreasonable]**
 25 **THE PUBLIC ACCESS OMBUDSMAN HAS ISSUED A FINAL DETERMINATION STATING**
 26 **THAT THE DISPUTE WAS NOT RESOLVED.**

27 (b) The complaint shall:

28 (1) identify the custodian **OR APPLICANT** that is the subject of the

1 complaint;

2 (2) describe the action of the custodian **OR APPLICANT**, the date of the
3 action, and the circumstances of the action;

4 (3) be signed by the complainant;

5 (4) if available, include a copy of the original request for public records **AND**
6 **THE CUSTODIAN'S RESPONSE, IF ANY**; and

7 (5) be filed within **[90] 45** days after the [action that is the subject of the
8 complaint occurred] **COMPLAINANT RECEIVES THE FINAL DETERMINATION OF THE**
9 **PUBLIC ACCESS OMBUDSMAN UNDER § 4-1B-04 OF THIS TITLE.**

10 4-1A-06.

11 (a) Except as provided in subsection (c) of this section, on receipt of a written
12 complaint, the Board promptly shall:

13 (1) send the complaint to the custodian **OR APPLICANT** identified in the
14 complaint; and

15 (2) request that a response to the complaint be sent to the Board.

16 (b) (1) The custodian **OR APPLICANT** shall file a written response to the
17 complaint within **[15] 30** days after [the custodian receives] **RECEIVING** the complaint.

18 (2) On request of the Board, the custodian shall [include with its written
19 response to the complaint] **PROVIDE:**

20 (I) **IF THE COMPLAINT ALLEGES THAT THE CUSTODIAN FAILED**
21 **TO RESPOND TO A REQUEST FOR A PUBLIC RECORD WITHIN THE TIME LIMITS**
22 **ESTABLISHED UNDER § 4-203 OF THIS TITLE, A RESPONSE TO THE REQUEST FOR**
23 **THE PUBLIC RECORD;**

24 (II) **IF THE COMPLAINT ALLEGES THAT THE CUSTODIAN DENIED**
25 **INSPECTION OF A PUBLIC RECORD IN VIOLATION OF THIS TITLE:**

26 1. **A COPY OF THE PUBLIC RECORD, DESCRIPTIVE INDEX**
27 **OF THE PUBLIC RECORD, OR WRITTEN REASON WHY THE RECORD CANNOT BE**
28 **DISCLOSED, AS APPROPRIATE; AND**

29 2. **THE PROVISION OF LAW ON WHICH THE CUSTODIAN**
30 **RELIED IN DENYING INSPECTION OF THE PUBLIC RECORD;**

1 (III) IF THE COMPLAINT ALLEGES THAT THE CUSTODIAN
2 CHARGED AN UNREASONABLE FEE UNDER § 4-206 OF THIS TITLE, the basis for the fee
3 that was charged; OR

4 (IV) IF THE COMPLAINT ALLEGES THAT THE CUSTODIAN
5 UNREASONABLY FAILED TO WAIVE A FEE UNDER § 4-206 OF THIS TITLE, THE BASIS
6 ON WHICH THE CUSTODIAN DENIED THE WAIVER REQUEST.

7 (3) ON REQUEST OF THE BOARD, A CUSTODIAN OR AN APPLICANT
8 SHALL PROVIDE AN AFFIDAVIT OR A STATEMENT CONTAINING THE FACTS THAT ARE
9 AT ISSUE IN THE COMPLAINT.

10 (4) THE BOARD SHALL MAINTAIN THE CONFIDENTIALITY OF ANY
11 RECORD OR INFORMATION SUBMITTED BY A CUSTODIAN OR AN APPLICANT UNDER
12 THIS SUBSECTION.

13 (5) A CUSTODIAN MAY NOT BE CIVILLY OR CRIMINALLY LIABLE FOR
14 PROVIDING OR DESCRIBING A PUBLIC RECORD TO THE BOARD UNDER THIS
15 SUBSECTION.

16 (6) THE PROVISION OF A RECORD OR A DESCRIPTION OF A RECORD
17 TO THE BOARD UNDER THIS SUBSECTION MAY NOT BE CONSTRUED AS A WAIVER OF
18 ANY APPLICABLE PRIVILEGE.

19 (c) If a written response OR INFORMATION REQUESTED UNDER SUBSECTION
20 (B) OF THIS SECTION is not received within [45] 30 days after the [notice] REQUEST is
21 sent, the Board shall decide the case on the facts before the Board.

22 4-1A-07.

23 (a) (1) The Board shall review the complaint and any response.

24 (2) [If the information in the complaint and response is sufficient for
25 making a determination based on the Board's own interpretation of the evidence,] THE
26 BOARD SHALL ISSUE A WRITTEN DECISION within 30 days after receiving [the response,
27 the Board shall issue a written opinion as to whether a violation of this title has occurred
28 or will occur] THE WRITTEN RESPONSE AND ALL INFORMATION REQUESTED UNDER §
29 4-1A-06(B) OF THIS SUBTITLE.

30 (b) (1) (i) Subject to subparagraph (ii) of this paragraph, if the Board is
31 unable to reach a determination based on the written submissions before it, the Board may
32 schedule an informal conference to hear from the complainant, the AFFECTED custodian
33 OR APPLICANT, or any other person with relevant information about the subject of the
34 complaint.

1 (ii) The Board shall hold the informal conference under
2 subparagraph (i) of this paragraph in a location that is as convenient as practicable to the
3 complainant and the **AFFECTED** custodian **OR APPLICANT**.

4 (2) When conducting a conference that is scheduled under paragraph (1) of
5 this subsection, the Board may allow the parties to testify by teleconference or submit
6 written testimony by electronic mail.

7 (3) An informal conference scheduled by the Board is not a contested case
8 within the meaning of § 10–202(d) of the State Government Article.

9 (4) The Board shall issue a written [opinion] **DECISION** within 30 days
10 after the informal conference.

11 (c) (1) If the Board is unable to issue [an opinion] **A DECISION** on a complaint
12 within the time periods specified in subsection (a) or (b) of this section, the Board shall:

13 (i) state in writing the reason for its inability to issue [an opinion]
14 **A DECISION**; and

15 (ii) issue [an opinion] **A DECISION** as soon as possible but not later
16 than [90] **120** days after the filing of the complaint.

17 (2) **(I)** [An opinion] **A DECISION** of the Board may state that the Board
18 is unable to resolve the complaint.

19 **(II) A PERSON MAY NOT APPEAL UNDER § 4–1A–10 OF THIS**
20 **SUBTITLE OR § 4–362(A)(2) OF THIS TITLE A DECISION OF THE BOARD STATING**
21 **THAT THE BOARD IS UNABLE TO RESOLVE THE COMPLAINT.**

22 (d) The Board shall send a copy of the written [opinion] **DECISION** to the
23 complainant and the affected custodian **OR APPLICANT**.

24 4–1A–08.

25 (a) The Board may send to any custodian in the State any written [opinion]
26 **DECISION** that will provide the custodian with guidance on compliance with this title.

27 (b) The Attorney General shall post on the website of the Office of the Attorney
28 General all of the Board's written [opinions] **DECISIONS** under this subtitle.

29 4–1A–10.

30 (a) A person or governmental unit need not exhaust the administrative remedy
31 under this subtitle before filing suit.

1 (b) (1) **[A] EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE, A**
2 complainant or custodian may appeal the decision issued by the Board under this subtitle
3 in accordance with § 4-362 of this title.

4 (2) An appeal under this subsection automatically stays the decision of the
5 Board pending the circuit court's decision [or no more than 30 days after the date on which
6 the defendant serves an answer or otherwise pleads to the complaint, whichever is sooner].

7 4-1B-01.

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

9 4-1B-02.

10 (b) **[The] SUBJECT TO § 4-1A-03(D)(2) OF THIS TITLE, THE** Office of the
11 Attorney General shall provide office space and staff for the Ombudsman, with appropriate
12 steps taken to protect the autonomy and independence of the Ombudsman.

13 4-1B-04.

14 (a) Subject to subsection **[(b)] (D)** of this section, the Ombudsman shall make
15 reasonable attempts to resolve disputes between applicants and custodians relating to
16 requests for public records under this title, including disputes over:

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

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

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

21 (4) overly broad requests for public records;

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

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

25 (7) repetitive or redundant requests from an applicant;

26 **(8) FEES IMPOSED UNDER § 4-206 OF THIS TITLE; AND**

27 **(9) A REQUEST OR PATTERN OF REQUESTS FROM AN APPLICANT THAT**
28 **IS ALLEGED TO BE FRIVOLOUS, VEXATIOUS, OR MADE IN BAD FAITH.**

1 **(B) WITHIN 90 DAYS AFTER RECEIVING A REQUEST FOR DISPUTE**
2 **RESOLUTION, UNLESS THE PARTIES MUTUALLY AGREE TO EXTEND THE DEADLINE,**
3 **THE OMBUDSMAN SHALL ISSUE A FINAL DETERMINATION STATING:**

4 **(1) THAT THE DISPUTE HAS BEEN RESOLVED; OR**

5 **(2) THAT THE DISPUTE HAS NOT BEEN RESOLVED.**

6 **(C) IF THE OMBUDSMAN ISSUES A FINAL DETERMINATION STATING THAT**
7 **THE DISPUTE HAS NOT BEEN RESOLVED, THE OMBUDSMAN SHALL INFORM THE**
8 **APPLICANT AND THE CUSTODIAN OF THE AVAILABILITY OF REVIEW BY THE BOARD**
9 **UNDER § 4-1A-04 OF THIS TITLE.**

10 **[(b)] (D) (1)** When resolving disputes under this section, the Ombudsman
11 may not:

12 (i) compel a custodian to disclose public records or redacted
13 information in the custodian's physical custody to the Ombudsman or an applicant; or

14 (ii) except as provided in **[paragraph] PARAGRAPHS (2) AND (3)** of
15 this subsection, disclose information received from an applicant or custodian without
16 written consent from the applicant and custodian.

17 **(2) (I)** The Ombudsman may disclose information received from an
18 applicant or custodian to the assistant Attorney General assigned to the Office of the
19 **PUBLIC ACCESS Ombudsman OR TO ANY OTHER PERSON WORKING UNDER THE**
20 **DIRECTION OF THE OMBUDSMAN.**

21 **(II) AN INDIVIDUAL TO WHOM THE OMBUDSMAN DISCLOSES**
22 **INFORMATION UNDER THIS PARAGRAPH MAY NOT DISCLOSE THE INFORMATION**
23 **WITHOUT WRITTEN CONSENT FROM THE APPLICANT AND CUSTODIAN.**

24 **(3) THE OMBUDSMAN MAY TRANSFER BASIC INFORMATION ABOUT A**
25 **DISPUTE, INCLUDING THE IDENTITY OF THE APPLICANT AND CUSTODIAN AND THE**
26 **NATURE OF THE DISPUTE, TO THE BOARD IF APPROPRIATE STEPS HAVE BEEN**
27 **TAKEN TO PROTECT THE CONFIDENTIALITY OF COMMUNICATIONS MADE OR**
28 **RECEIVED IN THE COURSE OF ATTEMPTING TO RESOLVE THE DISPUTE.**

29 **(E) (1) ON OR BEFORE OCTOBER 1 EACH YEAR, IN CONJUNCTION WITH**
30 **THE REPORT OF THE BOARD REQUIRED UNDER § 4-1A-04 OF THIS TITLE, THE**
31 **OMBUDSMAN SHALL SUBMIT A REPORT TO THE GOVERNOR AND, SUBJECT TO §**
32 **2-1257 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY.**

33 **(2) THE REPORT SHALL:**

1 (I) DESCRIBE THE ACTIVITIES OF THE OMBUDSMAN;

2 (II) STATE THE NUMBER AND NATURE OF REQUESTS FOR
3 DISPUTE RESOLUTION MADE TO THE OMBUDSMAN;

4 (III) DESCRIBE THE AGGREGATE OUTCOMES OF DISPUTE
5 RESOLUTIONS CONDUCTED BY THE OMBUDSMAN;

6 (IV) HIGHLIGHT ANY AREAS OF CONCERN AND RECOMMEND
7 BEST PRACTICES FOR GOVERNMENTAL UNITS IN RESPONDING TO REQUESTS FOR
8 PUBLIC RECORDS UNDER THIS TITLE; AND

9 (V) RECOMMEND ANY IMPROVEMENTS TO THIS TITLE.

10 4-203.

11 (a) (1) Except as provided in paragraph (2) of this subsection, the custodian
12 shall grant or deny the application promptly, but not more than 30 days after receiving the
13 application.

14 (2) The custodian shall grant or deny an application that is the subject of §
15 4-356 of this title not more than 50 days after receiving the application.

16 (d) Any time limit imposed under this section:

17 (1) with the consent of the applicant, may be extended for not more than
18 30 days; and

19 (2) if the applicant **OR CUSTODIAN** seeks resolution of a dispute under [§
20 4-1B-04] **SUBTITLE 1A OR 1B** of this title, shall be extended pending resolution of that
21 dispute.

22 4-362.

23 (a) (1) Subject to paragraph (3) of this subsection, whenever a person or
24 governmental unit is denied inspection of a public record or is not provided with a copy,
25 printout, or photograph of a public record as requested, the person or governmental unit
26 may file a complaint with the circuit court.

27 (2) [Subject] **EXCEPT AS OTHERWISE PROVIDED IN SUBTITLE 1A OF**
28 **THIS TITLE AND SUBJECT** to paragraph (3) of this subsection, a complainant or custodian
29 may appeal to the circuit court a decision issued by the State Public Information Act
30 Compliance Board as provided under § 4-1A-10 of this title.

1 (3) A complaint or an appeal under this subsection shall be filed with the
2 circuit court for the county where:

3 (i) the complainant resides or has a principal place of business; or

4 (ii) the public record is located.

5 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before July 1, 2022, the
6 Office of the Attorney General shall allocate any additional staff members required to be
7 assigned under § 4-1A-03(d)(2) of the General Provisions Article, as enacted by Section 1
8 of this Act.

9 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2021.