

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	02/14/2022	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 3/25/2022

2. COMAR Codification

Title	Subtitle	Chapter	Regulation
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14	02	01	01-.07
14	02	02	01-.09
14	02	03	01-.09
14	02	04	01-.06
14	02	05	01-.07
14	02	06	01-.08
14	02	07	01-.05
14	02	08	01-.02

3. Name of Promulgating Authority

Public Access Unit

4. Name of Regulations Coordinator

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Title 14

INDEPENDENT AGENCIES

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Authority: General Provisions Article, §§ 4-101, 4-1A-04, 4-1A-05, 4-1A-06, 4-1A-07
Annotated Code of Maryland (eff. July 1, 2022)

Notice of Proposed Action

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The State Public Information Act Compliance Board proposes to adopt, under a new subtitle, Subtitle 02 State Public Information Act Compliance Board.

This action was considered at a February 4, 2022, public meeting of the State Public Information Act Compliance Board, held virtually.

Statement of Purpose

The purpose of this action is to provide regulations governing the policies and procedures of the State Public Information Act Compliance Board as it will operate after July 1, 2022, with the expanded jurisdiction provided by Ch. 658, Acts of 2021.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Sara Klemm, Assistant Attorney General, Office of the Attorney General, 200 St. Paul Place, Baltimore, MD 21202, or call 410-576-7034, or email to sklemm@oag.state.md.us, or fax to 410-576-7004. Comments will be accepted through April 25, 2022. A public hearing has not been scheduled.

Open Meeting

Final action on the proposal will be considered by the State Public Information Act Compliance Board during a public meeting to be held on early May, at a virtual meeting through Microsoft Teams.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 2022

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

No

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

The Office of the Attorney General will continue to support the Board with the existing staff (one Assistant Attorney General and one Administrative Officer).

E. If these regulations have no economic impact under Part A, indicate reason briefly:

The regulations are procedural in nature and do not impose any fees or fines.

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

Small private businesses are not subject to the Public Information Act and therefore do not have matters before the Board.

G. Small Business Worksheet:

Impact Statement Part C — Legislative Information

Part C requests agencies to provide information required by the Department of Legislative Services in its report to the AELR Committee. Answer the questions in the space provided. Part C is not printed in the Maryland Register.

Small Business Analysis Worksheet

This worksheet is designed to assist the agency in determining if and how the proposal impacts small businesses. Quantify the number of affected small businesses and estimates of costs and benefits to small businesses if possible. State Government Article, §2-1505.2, includes the following definitions which are relevant to the analysis:

“Economic impact analysis” means an estimate of the cost or the economic benefit to small businesses that may be affected by a regulation proposed by an agency pursuant to Title 10, Subtitle 1 of this article.

“Small business” means a corporation, partnership, sole proprietorship, or other business entity, including its affiliates, that: (i) is independently owned and operated; (ii) is not dominant in its field; and (iii) employs 50 or fewer full-time employees.

1a. Intended Beneficiaries. Who are the intended beneficiaries of the proposed regulation? Are these intended beneficiaries primarily households or businesses?

The Board and any entity associated with the regulatory promulgation process are the intended beneficiaries.

1b. Intended Beneficiaries: Households. If households are the primary intended beneficiaries, will the proposal affect their income or purchasing power such that the volume or patterns of their consumer spending will change? If so, what directions of change would you anticipate? Will these expected spending changes have a disproportionate impact on small businesses? Can you descriptively identify the industries or types of business activities that are impacted?

Households will not be affected by the proposed action.

1c. Intended Beneficiaries: Businesses. If businesses are the intended beneficiaries, identify the businesses by industry or by types of business activities. How will businesses be impacted? Are these Maryland establishments disproportionately small businesses? If so, how will these Maryland small businesses be affected? Can you identify or estimate the present number of small businesses affected? Can you estimate the present total payroll or total employment of small businesses affected?

Businesses will not be affected by the proposed action.

2a. Other Direct or Indirect Impacts: Adverse. Businesses may not be the intended beneficiaries of the proposal. Instead, the proposal may direct or otherwise cause businesses to incur additional expenses of doing business in Maryland. Does this proposal require Maryland businesses to respond in such a fashion that they will incur additional work-time costs or monetary costs in order to comply? Describe how Maryland establishments may be adversely affected. Will Maryland small businesses bear a disproportionate financial burden or suffer consequences that affect their ability

to compete? Can you estimate the possible number of Maryland small businesses adversely affected? (Note that small business compliance costs in the area of regulation are the sum of out-of-pocket (cash) costs plus time costs — usually expressed as payroll, akin to calculations for legislative fiscal notes. Precise compliance costs may be difficult to estimate, but the general nature of procedures that businesses must accomplish to comply can be described.)

None.

2b. Other Direct or Indirect Impacts: Positive. Maryland businesses may positively benefit by means other than or in addition to changed consumer spending patterns. How may Maryland businesses be positively impacted by this initiative? Will Maryland small businesses share proportionately or disproportionately in these gains? Can you estimate the possible number of Maryland small businesses positively affected?

None.

3. Long-Term Impacts. There are instances where the longer run economic impact effect from regulations differ significantly from immediate impact. For example, regulations may impose immediate burdens on Maryland small businesses to comply, but the overall restructuring of the industry as a consequence of monitoring and compliance may provide offsetting benefits to the affected small businesses in subsequent years. Can you identify any long run economic impact effects on Maryland small businesses that over time (a) may compound or further aggravate the initial economic impact described above, or (b) may mitigate or offset the initial economic impact described above?

There is no long-term economic impact.

4. Estimates of Economic Impact. State Government Article, §2-1505.2 requires that an agency include estimates, as appropriate, directly relating to: (1) cost of providing goods and services; (2) effect on the work force; (3) effect on the cost of housing; (4) efficiency in production and marketing; (5) capital investment, taxation, competition, and economic development; and (6) consumer choice.

(1) There is no anticipated effect on the cost of providing goods and services; (2) There is no anticipated effect on the work force; (3) There is no anticipated effect on the cost of housing; (4) There is no anticipated effect on efficiency in production and marketing; (5) There is no anticipated capital investment, taxation, competition, and economic development; and (6) There is no anticipated effect on consumer choice.

Attached Document:

Title 14 INDEPENDENT AGENCIES

Subtitle 02 State Public Information Act Compliance Board

14.02.01 Definitions; General Provisions

General Provisions Article, § 4-1A-04, Annotated Code of Maryland (eff. July 1, 2022)

.01 Definitions.

A. In this subtitle, the following terms have the meanings indicated.

B. Terms Defined.

- (1) "Act" means the Maryland Public Information Act, General Provisions Article, Title 4, Annotated Code of Maryland.
- (2) "Applicant" has the meaning stated in General Provisions Article, § 4-101(b), Annotated Code of Maryland.
- (3) "Board" means the State Public Information Act Compliance Board, as described in General Provisions Article, § 4-1A-02, Annotated Code of Maryland.
- (4) "Custodian" has the meaning stated in General Provisions Article, § 4-101(d), Annotated Code of Maryland.
- (5) "Designated representative" means an attorney, an employee organization representative, or any other individual authorized in writing by a party to represent the party.
- (6) "Dispute" has the meaning stated in COMAR 14.37.01.01B(4).
- (7) "Exemption" has the meaning stated in COMAR 14.37.01.01B(5).
- (8) "Final Determination" means the written document issued by the Public Access Ombudsman pursuant to General Provisions Article, § 4-1B-04(b), Annotated Code of Maryland, stating that a specific dispute has been resolved, partially resolved, or not resolved.
- (9) "Inmate" means an individual who:
 - (a) Is confined in a correctional or other detention facility pursuant to a court order in a criminal or juvenile delinquency case; and
 - (b) Has no direct access to the U.S. Postal Service or the ability to submit a complaint or other information electronically.
- (10) "Official custodian" has the meaning stated in General Provisions Article, § 4-101(f), Annotated Code of Maryland.
- (11) "Ombudsman" means the Public Access Ombudsman, as described in General Provisions, § 4-1B-03, Annotated Code of Maryland.
- (12) "Public record" has the meaning stated in General Provisions Article, § 4-101(k), Annotated Code of Maryland.
- (13) "Sociological information" means any of the following information concerning a person that may be contained in a record of the Board:
 - (a) Social security number;
 - (b) Personal address;
 - (c) Personal phone number;
 - (d) Personal email address; and
 - (e) Date of birth.
- (14) "Unreasonable fee" means a fee that does not bear a reasonable relationship to the recovery of actual costs incurred by a governmental unit responding to a request for a public record.

02. Jurisdiction.

A. Subject to the procedure outlined in COMAR 14.02.02, the Board shall review and resolve complaints from an applicant or the applicant's designated representative alleging that a custodian:

- (1) Denied inspection of a public record in violation of the Act;
- (2) Charged an unreasonable fee or charged an unreasonable estimated fee of more than \$350 under General Provisions Article, § 4-206, Annotated Code of Maryland; or
- (3) Failed to respond to a request for a public record within the time limits established under General Provisions Article, § 4-203(a) or (d), Annotated Code of Maryland.

B. Subject to the procedure outlined in COMAR 14.02.03, the Board shall review and resolve complaints from a custodian alleging that an applicant's request or pattern of requests is frivolous, vexatious, or in bad faith.

03. Recusal of Board Members.

A. Standard for Recusal.

(1) A Board member shall recuse himself or herself from Board proceedings that involve circumstances in which the Board member:

- (a) Has a conflict of interest; or
- (b) Cannot participate fairly and impartially.

(2) Personal familiarity with an applicant or custodian does not, of itself, require recusal of a Board member.

B. The Board member who is recused from a matter before the Board may not:

- (1) Participate in the Board's discussion or decision on the matter; or
- (2) Discuss the matter or the Board's review of the matter with members of the Board, the parties, or staff or counsel to the Board.

C. The Board shall document the recusal of the Board member from a matter in its written decision on the matter.

04. Consolidation of Complaints.

In its discretion, the Board may consolidate complaints filed under COMAR 14.02.02 and 14.02.03 if both complaints involve the same applicant and same custodian, and if consolidation will promote efficient and fair resolution of the complaints.

05. Computation of Time.

Computation of a period of time shall be governed by General Provisions Article, § 1-302, Annotated Code of Maryland.

06. Date of Receipt.

A. A complaint, response, or reply to a response is deemed received on the date that it is postmarked or sent by email to the Board.

B. Inmate Applicants.

(1) A complaint, response, or reply to a response is deemed received on the date that the complaint, response, or reply to a response, in mailable form and with proper postage affixed is:

- (a) Deposited by the inmate applicant into a receptacle designated by the facility for outgoing mail; or
- (b) Personally delivered to an employee of the facility authorized by the facility to collect such mail.

(2) A date stamp affixed pursuant to COMAR 12.02.20.04A or 12.12.20.04A, or a similar date stamp affixed by a county detention center or other detention facility not within the control of the Division of Correction, is evidence of the date on which an inmate applicant sent a complaint, response, or reply to a response under § B(1) of this regulation.

07. Record.

A. The Board shall maintain a record of each matter, including an index.

B. The Board's internal record of a matter shall consist of the following, if filed in a matter:

- (1) The complaint;
- (2) The response to a complaint;
- (3) The reply to the response;
- (4) Written notices;
- (5) Written requests for information;
- (6) Records or additional information received by the Board pursuant to COMAR 14.02.05.03;
- (7) The recording of an informal conference; and
- (8) The Board's written decision.

C. The public record of a matter shall consist of the records listed in § B of this regulation, if filed, except that records or additional information received by the Board pursuant to COMAR 14.02.05.03 may not be included.

14.02.02 Complaint Process – Applicants

Authority: General Provisions Article, §§ 4-1A-04(a) and (c), 4-1A-05, 4-1A-06, Annotated Code of Maryland (eff. July 1, 2022)

01. Filing a Complaint.

A. An applicant or the applicant's designated representative may file a complaint with the Board within 30 days of receiving a Final Determination from the Ombudsman that a specific dispute has not been resolved.

B. The complaint shall:

- (1) Pertain only to the dispute described in the Final Determination;
- (2) Be submitted in writing; and
- (3) Be signed by the applicant.

C. The substance of the complaint shall, at minimum:

- (1) Identify the custodian that is the subject of the complaint; and
- (2) Describe the action of the custodian, the date of the action, and the circumstances of the action.

D. A complaint may be filed by email or regular mail.

02. Documents Attached to Complaint.

A. If available, an applicant shall attach to the complaint:

- (1) A copy of the original request for a public record;
- (2) A copy of the custodian's response; and
- (3) The Ombudsman's Final Determination.

B. An applicant may attach to the complaint additional documents relevant to the dispute, including correspondence between the applicant and the custodian.

03. Response to Complaint.

A. Upon receipt of a complaint, the Board shall:

- (1) Promptly send the complaint to the custodian identified in the complaint; and
- (2) Request that the custodian send a response to the Board.

B. A custodian shall file a written response to a complaint within 30 days after receiving the complaint and request for a response from the Board.

C. Complaints alleging that a custodian denied inspection of a public record in violation of the Act.

(1) If a complaint alleges that a custodian denied inspection of a public record in violation of the Act, the custodian's response shall, to the extent relevant to the dispute:

(a) Explain why denial was necessary;
(b) Explain why redacting information would not address the reasons for denial;
(c) Provide the legal authority for the denial; and
(d) Without disclosing protected information or creating a descriptive index, provide a brief description of the undisclosed records that allows the Board to assess the applicability of the legal authority for the denial.

(2) If the custodian's response to the applicant's request for public records contains all of the information required by § C(1) of this regulation, then it is sufficient for the custodian to attach the response.

D. If a complaint alleges that a custodian charged an unreasonable fee or charged an unreasonable estimated fee of more than \$350 under General Provisions Article, § 4-206, Annotated Code of Maryland, the response shall, to the extent relevant to the dispute, include:

(1) The hourly salary rates for the staff who responded or who are likely to respond to the applicant's request for a public record;

(2) The number of hours expended by each staff, or the number of hours the custodian anticipates will be expended by each staff, to respond to the applicant's request for a public record;

(3) A description of the tasks each staff performed or is likely to perform to respond to the applicant's request for public records; and

(4) An explanation of how fees for reproduction of the records are calculated.

E. If a complaint alleges that a custodian failed to respond to a request for a public record within the time limits established by General Provisions Article, § 4-203(a) or (d), Annotated Code of Maryland, the response shall, to the extent relevant to the dispute:

(1) Provide the date and nature of correspondence with the applicant, if any;

(2) Describe the circumstances that prevented the custodian from timely responding; and

(3) Explain how the custodian intends to respond to the applicant's request for public records.

F. A custodian may not attach to its response records that it claims are confidential, privileged, or otherwise exempt from disclosure.

G. A custodian shall send a copy of the response to the applicant.

04. Reply to Response.

A. The Board may, in its discretion, permit the applicant to file a reply to the custodian's response.

B. If permitted to file a reply, the applicant shall:

(1) File the reply within 15 days of receiving the custodian's response; and

(2) Send a copy of the reply to the custodian.

05. Effect of Failure to Respond.

If a written response from a custodian is not received within 30 days after the Board notifies the custodian of the complaint and requests a response and the Board has not requested any additional information, the Board shall decide the case on the facts before it.

06. Transfer of Information from Ombudsman.

A. The Ombudsman may transfer basic information about a dispute to the Board, including:

(1) The identity of the applicant and custodian;

(2) A brief summary of the nature of the dispute; and

(3) A copy of the Final Determination relevant to the complaint.

B. Confidential communications or information.

(1) The Ombudsman may not disclose to the Board any confidential communications or information, defined in COMAR 14.37.01.01B(8) and (10), that are made or received in the course of attempting to resolve a dispute.

(2) The Ombudsman may disclose confidential communications or information referenced in § B(1) of this regulation if all parties have consented to the disclosure in writing.

07. Withdrawal of Complaint.

An applicant may withdraw a complaint at any time until the Board's decision is issued.

08. Dismissal of Complaint.

A. The Board shall dismiss a complaint if:

(1) The Board lacks jurisdiction to review the complaint;

(2) The complaint is filed more than 30 days after the applicant received the Ombudsman's Final Determination;

or

(3) The complaint is not signed by the applicant.

B. If the Board dismisses a complaint because it is not signed by the applicant, the applicant may refile a signed complaint within the same 30 days of receiving the Final Determination from the Ombudsman.

09. Effect of Filing.

A complaint, the custodian's response to a complaint, and a reply to the custodian's response are public records of the Board subject to inspection under the Act.

14.02.03 Complaint Process – Custodians

Authority: General Provisions Article, §§ 4-1A-04(b) and (c), 4-1A-05, 4-1A-06, Annotated Code of Maryland (eff. July 1, 2022)

01. Filing a Complaint.

A. A custodian may file a complaint with the Board within 30 days of receiving a Final Determination from the Ombudsman that a dispute has not been resolved.

B. The complaint shall:

- (1) Pertain only to the dispute described in the Final Determination;
- (2) Be submitted in writing; and
- (3) Be signed by the custodian.

C. The substance of the complaint shall, at minimum:

- (1) Identify the applicant that is the subject of the complaint;
- (2) Describe the action of the applicant, the date of the action, and the circumstance of the action, including:
 - (a) The number and scope of the applicant's past requests, if any;
 - (b) The custodian's responses to past requests, if any;
 - (c) Efforts to cooperate with the applicant; and
- (3) Explain why, in the custodian's opinion, the applicant's request or pattern of requests is frivolous, vexatious, or in bad faith.

D. A complaint may be filed by email or regular mail.

02. Documents Attached to Complaint.

A. If available, a custodian shall attach to the complaint:

- (1) A copy of the original request for a public record;
- (2) A copy of the custodian's response; and
- (3) The Ombudsman's Final Determination.

B. A custodian may attach to the complaint additional documents relevant to the dispute, including correspondence between the applicant and the custodian.

03. Response to Complaint.

A. Upon receipt of a complaint, the Board shall:

- (1) Promptly send the complaint to the applicant identified in the complaint; and
- (2) Request that the applicant send a response to the Board.

B. An applicant shall file a written response to a complaint within 30 days after receiving the complaint and request for a response from the Board.

C. An applicant shall send a copy of the response to the custodian.

04. Reply to Response.

A. The Board may, in its discretion, permit the custodian to file a reply to the applicant's response.

B. If permitted to file a reply, the custodian shall:

- (1) File the reply within 15 days of receiving the applicant's response; and
- (2) Send a copy of the reply to the applicant.

05. Effect of Failure to Respond.

If a written response from an applicant is not received within 30 days after the Board notifies the applicant of the complaint and requests a response and the Board has not requested any additional information, the Board shall decide the case on the facts before it.

06. Transfer of Information from Ombudsman.

A. The Ombudsman may transfer basic information about a dispute to the Board, including:

- (1) The identity of the applicant and custodian;
- (2) A brief summary of the nature of the dispute; and
- (3) A copy of the Final Determination relevant to the complaint.

B. Confidential communications or information.

(1) The Ombudsman may not disclose to the Board any confidential communications or information, defined in COMAR 14.37.01.01B(8) and (10), that are made or received in the course of attempting to resolve a dispute.

(2) The Ombudsman may disclose confidential communications or information referenced in § B(1) of this regulation if all parties have consented to the disclosure in writing.

07. Withdrawal of Complaint.

A custodian may withdraw a complaint at any time until the Board's decision is issued.

08. Dismissal of Complaint.

- A. The Board shall dismiss a complaint if:
- (1) The Board lacks jurisdiction to review the complaint;
 - (2) The complaint is filed more than 30 days after the custodian received the Ombudsman's Final Determination;
- or
- (3) The complaint is not signed by the custodian.
- B. If the Board dismisses a complaint because it is not signed by the custodian, the custodian may refile a signed complaint within the same 30 days of receiving the Final Determination from the Ombudsman.

09. Effect of Filing.

A complaint, the custodian's response to a complaint, and a reply to the custodian's response are public records of the Board subject to inspection under the Act.

14.02.04 Informal Conference

Authority: General Provisions Article, §§ 4-1A-04(c), 4-1A-07(b), Annotated Code of Maryland (eff. July 1, 2022)

01. Board's Discretion.

If the Board is unable to reach a decision based on the written submissions before it, the Board may schedule an informal conference to hear from the complainant and affected custodian or applicant, or any other person with relevant information about the subject of the complaint.

02. Notice of Informal Conference.

A. After receipt of a complaint, the response, and a reply to the response, if one is filed, the Board shall notify the parties if it intends to hold an informal conference.

B. Notice of an informal conference shall state:

- (1) The names of the complainant and affected custodian or applicant;
- (2) The matter number;
- (3) The date and time of the informal conference; and
- (4) The location of the informal conference.

C. The Board may coordinate the date, time, and location of the informal conference with the complainant and the affected custodian or applicant prior to issuing the notice under § B of this regulation.

D. Notice of an informal conference shall be sent by email, if provided, and regular mail to the address provided.

03. Location of Informal Conference.

A. An informal conference shall be held in a location that is as convenient as practicable to the complainant and the affected custodian or applicant.

B. An informal conference may be held by videoconference or teleconference, at the Board's discretion.

04. Timing of Informal Conference.

An informal conference shall be held as soon as practicably possible after receipt of all written submissions, but no later than 30 days after receipt of all written submissions unless extenuating circumstances require an extension.

05. Procedure During Informal Conference.

A. Charge of Informal Conference.

(1) The Chair of the Board shall have charge over the conduct of an informal conference.

(2) If the Chair is recused from a matter under COMAR 14.02.01.03, then a Board member designated by the Chair shall have charge over the conduct of an informal conference.

B. Evidence.

(1) Testimony.

(a) In addition to live testimony, the Board may allow the parties to testify by teleconference or to submit written testimony by email or regular mail, provided that any written testimony is also submitted to the other party.

(b) The Board may ask questions of and elicit testimony from the parties during the informal conference.

(c) Cross-examination may be conducted as the Chair, or the Board member designated by the Chair to have charge over the informal conference, finds it required for full and true disclosure of the facts.

(2) The Board may allow documentary or other non-testimonial evidence to be submitted at an informal conference, provided that it is also sent to the other party.

(3) The strict rules of evidence observed by the courts do not apply to an informal conference.

(4) In its discretion, the Board may exclude irrelevant or unduly repetitive evidence.

C. An informal conference is not a contested case within the meaning of State Government Article, §10-202(d), Annotated Code of Maryland.

06. Record of Informal Conference.

The Board shall record an informal conference.

14.02.05 Request for Records or Additional Information

Authority: General Provisions Article §§ 4-1A-04(c), 4-1A-06(b), Annotated Code of Maryland (eff. July 1, 2022)

01. Form of Request.

- A. The Board may send a request for additional information by email or regular mail.
- B. The Board shall send a copy of a request for additional information to all parties.
- C. The Board may direct the party providing the additional information to send a copy of the additional information provided in response to the Board's request to the other party.

02. Request for Custodian's Response to Request for Public Record.

If a complaint alleges that a custodian failed to respond to a request for a public record within the time limits established under General Provisions Article, § 4-203, Annotated Code of Maryland, the Board may request the response to the request for a public record.

03. Requests Related to Public Records.

A. If a complaint alleges that a custodian denied inspection of a public record in violation of the Act, the Board may request that the custodian provide, as appropriate in the Board's discretion:

- (1) A copy of the public record for in camera inspection, unless the custodian's response to the request for a public record denied inspection under General Provisions Article, § 4-301(a)(2)(ii), Annotated Code of Maryland;
- (2) A descriptive index of the public record; or
- (3) A written reason why the record cannot be disclosed.

B. The Board shall maintain the confidentiality of records or information provided under § A of this regulation.

04. Request for Basis for Fee Charged.

If a complaint alleges that a custodian charged an unreasonable fee or estimated fee under General Provisions Article, § 4-206, Annotated Code of Maryland, the Board may request that the custodian provide information about the basis for the fee or estimated fee charged.

05. Frivolous, Vexatious, or Bad Faith Requests.

If necessary to resolve the complaint, the Board may request more information related to an alleged frivolous, vexation, or bad faith request, including information about the applicant's pattern or history of requests.

06. Request for Affidavit or Statement.

The Board may request that a custodian or applicant provide an affidavit, in the form provided by Rule 1-304, Maryland Rules, or a statement containing the facts that are at issue in the complaint.

07. Timing.

- A. The Board shall request additional records or information, if needed, as soon as practicably possible.
- B. A custodian or applicant shall send to the Board the additional records or information requested as soon as practicably possible after receipt of the Board's request, but no later than 30 days after receipt of the request.

14.02.06 Confidential Records or Information Provided Under COMAR 14.02.05.03

Authority: General Provisions Article, §§ 4-101(k), 4-1A-04(c), 4-1A-06(b), Annotated Code of Maryland (eff. July 1, 2022)

01. General Confidentiality Provisions.

- A. Records or information received by the Board.
 - (1) A record or information received by the Board pursuant to COMAR 14.02.05.03 is not a public record of the Board subject to inspection under the Act.
 - (2) A complaint, the response, and a reply to the response received by the Board are public records of the Board subject to inspection under the Act.
- B. The Board shall maintain the confidentiality of a record or information received by the Board from a custodian pursuant to COMAR 14.02.05.03.

02. Provision of Confidential Records or Information.

- A. Records or information received by the Board pursuant to COMAR 14.02.05.03 may be sent by regular mail, certified mail, email, or hand-delivery.
- B. Records or information sent to the Board under this regulation shall contain an inspection index.
- C. Each individual record or information sent to the Board under this regulation shall be Bates numbered consecutively and correspond to the numbers as listed in the index.

03. Storage of Confidential Records or Information.

A. *Hardcopy records or information received by the Board pursuant to COMAR 14.02.05.03 shall be stored on behalf of the Board in a locked file of the Public Access Unit of the Office of the Attorney General.*

B. *Electronic records or information received by the Board pursuant to COMAR 14.02.05.03 shall be stored on behalf of the Board in a secure electronic file.*

04. Access to Confidential Records or Information.

A. *Only the Board, an Assistant Attorney General assigned to the Public Access Unit, the administrator to the Board, and individuals working under the supervision and at the direction of the staff of the Public Access Unit may inspect records or information received by the Board pursuant to COMAR 14.02.05.03.*

B. *The individuals listed in § A of this regulation shall safeguard the confidentiality of records or information received by the Board pursuant to COMAR 14.02.05.03.*

05. Reference to Confidential Records or Information.

References in the Board's decision to specific records or information received by the Board pursuant to COMAR 14.02.05.03 shall be by the Bates numbers or by generic descriptions or characterizations as set forth in the inspection index.

06. Return or Destruction of Confidential Records or Information.

A. *No appeal of Board decision filed.*

(1) *After 45 days from the issuance of the Board's decision, the Board shall notify the custodian to make appropriate arrangements for the return of all records or information received by the Board pursuant to COMAR 14.02.05.03.*

(2) *If a custodian fails to make arrangements for the return of records or information received by the Board pursuant to COMAR 14.02.05.03, the Board shall destroy the records or information after 90 days from the issuance of the Board's decision.*

(a) *Destruction of electronic records or information shall be accomplished by deleting the records or information from email and the internal network drive of the Public Access Unit.*

(b) *Destruction of hardcopy records or information shall be accomplished by shredding the records.*

B. *Appeal of Board decision filed.*

(1) *The Board shall continue to store records or information received by the Board pursuant to COMAR 14.02.05.03 according to Regulation .03 of this chapter.*

(2) *Once the opinion of the circuit court has issued, the Board shall return or destroy the records or information received by the Board pursuant to COMAR 14.02.05.03 according to the time periods provided in § A of this regulation.*

07. Effect of Providing Confidential Records or Information.

A. *A custodian may not be civilly or criminally liable under Maryland law for providing or describing a public record to the Board under COMAR 14.02.05.03.*

B. *The provision of a record or a description of a record to the Board under COMAR 14.02.05.03 may not be construed as a waiver of any applicable privilege.*

08. Record on Appeal.

A. *The Board shall prepare and transmit the record in accordance with the Maryland Rules.*

B. *The Board shall transmit any part of the record that contains records or information received by the Board pursuant to COMAR 14.02.05.03, or that are otherwise not open to public inspection, under seal.*

14.02.07 Decisions of Board

Authority: General Provisions Article, §§ 4-1A-04, 4-1A-07, 4-362(a)(2) Annotated Code of Maryland (eff. July 1, 2022)

01. Written Decision.

A. *The Board shall issue a written decision.*

B. *In its written decision, the Board shall refer to any confidential records or information in accordance with COMAR 14.02.06.05*

C. *A decision of the Board may state that it is unable to resolve the complaint.*

D. *The Board shall send a copy of the written decision to the complainant and the affected custodian or applicant.*

E. *The Board may send to any custodian in the State any written decision that will provide the custodian with guidance on compliance with the Act.*

F. *As required by statute, the Attorney General shall post on the website of the Office of the Attorney General all of the Board's written decisions.*

02. Timing Generally.

A. *Except as provided in Regulation .03 of this chapter, the Board shall issue a written decision within 30 days after receiving the written response, a reply, if filed, and all records or information requested under COMAR 14.02.05.*

B. Except as provided in Regulation .03 of this chapter, if the Board holds an informal conference under COMAR 14.02.04, the Board shall issue a written decision within 30 days after the informal conference.

03. Statement of Delay.

A. If the Board is unable to issue a decision within the time periods specified in Regulation .02 of this chapter, it shall state in writing the reason for its inability to issue a decision.

B. The Board shall issue a decision as soon as possible, but no later than 120 days after the filing of the complaint.

04. Remedies.

A. If the Board finds that a custodian has denied inspection of all or part of a public record in violation of the Act, the Board may order the custodian to produce the public record for inspection.

B. If the Board finds that a custodian charged an unreasonable fee or charged an unreasonable estimated fee under General Provisions Article, § 4-206, Annotated Code of Maryland, the Board may order the custodian to reduce the fee or estimated fee to an amount the Board determines is reasonable and refund the difference, if applicable.

C. Remedies for custodian's failure to respond.

(1) If the Board finds that a custodian failed to respond to a request for a public record within the time limits established under General Provisions Article, § 4-203(a) or (d), the Board may order the custodian to promptly respond.

(2) The Board may order a custodian to waive all or part of the fee that the custodian is entitled to charge under General Provisions Article, § 4-206, Annotated Code of Maryland, if:

(a) The Board finds that a custodian failed to respond to a request for a public record within the time limits established under General Provisions Article, § 4-203(a) or (d), Annotated Code of Maryland; and

(b) The Board includes its reasons for ordering the waiver in its written decision.

D. If the Board finds that an applicant's request is frivolous, vexatious, or in bad faith, the Board may issue an order authorizing the custodian to:

(1) Ignore the request that is the subject of the custodian's complaint;

(2) Ignore any future requests that are substantially the same as the request that is the subject of the custodian's complaint; or

(3) Respond to a less burdensome version of the request within a time frame that the Board determines is reasonable.

05. Appeal Rights.

A. A complainant or custodian may appeal the Board's decision in accordance with General Provisions, § 4-362(a)(2), Annotated Code of Maryland.

B. An appeal filed pursuant to § A of this regulation automatically stays the Board's decision pending the circuit court's decision.

C. A party may not appeal a decision of the Board that states that the Board is unable to resolve the complaint.

14.02.08 Meetings of Board

Authority: General Provisions Article, § 4-1A-04(c), Annotated Code of Maryland (eff. July 1, 2022)

01. Deliberations.

A. To resolve a complaint, the Board may deliberate by email, teleconference, videoconference, or in person.

B. Deliberations under this regulation shall pertain only to the resolution of a complaint.

02. Meetings.

A. The Board may elect to convene regular standing meetings to deliberate and resolve complaints, and to address any other business of the Board.

B. All meetings shall be held in accordance with General Provisions Article, Title 3, Annotated Code of Maryland, to the extent applicable to the meeting.

C. All meetings shall be governed by commonly accepted rules of parliamentary procedure as determined by the Board Chair.