

# HOUSE BILL 755

P3

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CF SB 695

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: April 1, 2015

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **General Provisions – Public Information Act – Enforcement, Fees, and**  
3 **Exemptions**

4 FOR the purpose of ~~altering certain provisions of law regarding the maintenance of public~~  
5 ~~records relating to certain agricultural operations and programs~~; establishing the  
6 State Public Information Act Compliance Board and Office of the Public Access  
7 Ombudsman; requiring the Governor and the Attorney General to publish on ~~the~~  
8 ~~Governor's Office Web site~~ their Web sites certain notice relating to certain  
9 applications for membership on the Board and the names and qualifications of  
10 certain applicants; requiring the Governor to solicit certain recommendations from  
11 certain individuals; ~~authorizing the Governor to broadcast certain interviews on the~~  
12 ~~Governor's Office Web site~~; requiring the Governor, with the advice and consent of  
13 the Senate, and the Attorney General to ~~appoint the members of the Board~~ make  
14 certain appointments from a certain pool of applicants; providing for the composition,  
15 chair, terms, and meetings of the Board; prohibiting a member of the Board from  
16 receiving certain compensation, but authorizing the reimbursement of certain  
17 expenses; requiring the Office of the Attorney General to provide staff and office  
18 space for the Board and the Ombudsman; providing for the powers and duties of the  
19 Board; requiring the Board to report on certain matters to the Governor and the  
20 General Assembly on or before a certain date; authorizing any person to file a certain

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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 complaint with the Board; requiring that the complaint contain certain information  
2 ~~and, be signed by the complainant, and filed within a certain time period;~~ requiring  
3 the Board to take certain action regarding a complaint ~~and filed within a certain~~  
4 ~~time period;~~ requiring a custodian who receives a complaint from the Board to file a  
5 certain response within a certain time period; ~~requiring the Board to maintain the~~  
6 ~~confidentiality of a certain public record;~~ authorizing the Board, under certain  
7 circumstances, to hold a certain conference; requiring the Board to hold a certain  
8 conference in a certain location under certain circumstances; authorizing the Board  
9 to allow certain testimony by teleconference or electronic mail; providing that a  
10 certain conference held by the Board is not a contested case; ~~requiring the Board to~~  
11 ~~assess certain statutory damages and reimbursement of certain fees under certain~~  
12 ~~circumstances;~~ providing that compliance by a custodian with an order of the Board  
13 is not a certain admission and may not be used as evidence in a certain proceeding;  
14 providing that a complainant is not required to exhaust certain administrative  
15 remedies before seeking certain judicial review; authorizing a complainant or  
16 custodian to appeal a decision of the Board in accordance with certain provisions of  
17 law; requiring that a decision of the Board is stayed for a certain period of time under  
18 certain circumstances; providing for the staffing of the Office of the Public Access  
19 Ombudsman; providing for the qualifications, term, and salary of the Ombudsman;  
20 requiring the Ombudsman to be a full-time State employee; establishing the powers  
21 and the duties of the Ombudsman; repealing certain provisions of law related to the  
22 administrative review of a decision to deny inspection of a public record; ~~requiring a~~  
23 ~~person receiving benefits from the State to relinquish certain public records to a~~  
24 ~~certain custodian;~~ requiring a certain custodian to provide certain written  
25 information under certain circumstances; establishing that failure to ~~comply~~ produce  
26 a public record in accordance with a certain provision of law constitutes a denial of a  
27 certain application and may not be considered the result of a bona fide dispute unless  
28 the custodian complies with a certain provision of law and is working with a certain  
29 applicant in good faith; altering a certain provision of law to require a custodian who  
30 denies an application to inspect public records to provide certain information to the  
31 applicant within certain periods of time; repealing a certain limitation on the  
32 requirement that a custodian allow inspection of any part of a record that is subject  
33 to disclosure; prohibiting a custodian from ~~denying or~~ ignoring an application to  
34 inspect public records on certain grounds; altering certain provisions of law that  
35 authorize a custodian to charge a reasonable fee for certain tasks relating to public  
36 records requests; ~~authorizing a custodian to require a certain statement from an~~  
37 ~~applicant under certain circumstances; prohibiting an applicant from obtaining any~~  
38 ~~part of a public record under certain circumstances; requiring the Board to establish~~  
39 ~~a penalty for a certain violation of a certain provision of this Act; requiring a~~  
40 ~~custodian within a certain period of time to provide certain evidence to the Board if~~  
41 ~~the custodian refuses to waive a certain fee under certain circumstances;~~ requiring  
42 a custodian to provide certain proof demonstrate to the Board Ombudsman certain  
43 applicability or harm if an applicant challenges a certain denial to disclose certain  
44 public records or the application of a certain exemption; authorizing a complainant  
45 or custodian to appeal a certain decision to a certain circuit court; establishing that  
46 ~~certain defendants are~~ a certain defendant is liable for certain statutory damages  
47 under certain circumstances; ~~repealing~~ altering certain burdens of proof that a

1 complainant must show to recover certain damages in a certain court; defining  
 2 certain terms; specifying the initial terms of the members of the Board; requiring the  
 3 Attorney General, in consultation with certain persons, to report on certain matters  
 4 to the Governor and the General Assembly on or before a certain date; making  
 5 conforming changes; ~~providing for the effective dates of this Act;~~ and generally  
 6 relating to the Public Information Act.

7 ~~BY repealing and reenacting, with amendments,~~  
 8 ~~Article – Agriculture~~  
 9 ~~Section 8–801.1 and 8–1010~~  
 10 ~~Annotated Code of Maryland~~  
 11 ~~(2007 Replacement Volume and 2014 Supplement)~~

12 BY repealing and reenacting, with amendments,  
 13 Article – General Provisions  
 14 Section 4–101, ~~4–201,~~ 4–203, 4–206, ~~4–343,~~ 4–301, and 4–362; and the amended part  
 15 designation “Part VI. Judicial Review” immediately preceding Section 4–361  
 16 Annotated Code of Maryland  
 17 (2014 Volume)

18 BY adding to  
 19 Article – General Provisions  
 20 Section 4–1A–01 through 4–1A–10 to be under the new subtitle “Subtitle 1A. State  
 21 Public Information Act Compliance Board” and 4–1B–01 through 4–1B–04 to  
 22 be under the new subtitle “Subtitle 1B. Public Access Ombudsman”  
 23 Annotated Code of Maryland  
 24 (2014 Volume)

25 BY repealing  
 26 Article – General Provisions  
 27 Section 4–361  
 28 Annotated Code of Maryland  
 29 (2014 Volume)

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

32 ~~Article – Agriculture~~

33 ~~§ 801.1.~~

34 ~~(A) IN THIS SECTION, “PERSONAL INFORMATION” MEANS AN INDIVIDUAL’S~~  
 35 ~~NAME, HOME TELEPHONE NUMBER, PERSONAL EMAIL ADDRESS, AND SOCIAL~~  
 36 ~~SECURITY NUMBER.~~

37 ~~[(a)] (B) (1) Each nutrient management plan shall be developed considering~~  
 38 ~~factors including:~~

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- 1                   (i) ~~Levels of bioavailable nitrogen and phosphorus in the soil;~~
- 2                   (ii) ~~Levels of bioavailable nitrogen and phosphorus in all fertilizer~~  
3 ~~materials to be applied;~~
- 4                   (iii) ~~The amount of nitrogen and phosphorus necessary to achieve the~~  
5 ~~expected crop yield for the land that is the subject of the nutrient management plan, as~~  
6 ~~determined by:~~
- 7                         1. ~~The field's actual yield record and soil productivity for that~~  
8 ~~crop; or~~
- 9                         2. ~~If information concerning actual yield record and soil~~  
10 ~~productivity for a crop is unavailable, relevant information concerning similar fields and~~  
11 ~~soil;~~
- 12                   (iv) ~~Soil erodibility and nutrient retention capacity;~~
- 13                   (v) 1. ~~The best reasonable scientific methods accepted by the~~  
14 ~~Department and the University of Maryland Cooperative Extension Service; or~~
- 15                         2. ~~Scientifically validated data for the development of a~~  
16 ~~nutrient management plan as defined by the Department in regulation; and~~
- 17                   (vi) ~~Existing best management practices.~~

18                   (2) ~~Each nutrient management plan shall provide flexibility for~~  
19 ~~management decisions that may be required by conditions beyond the control of the farmer.~~

20                   ~~[(b)] (C) (1) A summary of each nutrient management plan shall be filed and~~  
21 ~~updated with the Department at a time and in a form that the Department requires by~~  
22 ~~regulation.~~

23                   (2) ~~The Department shall maintain a copy of each summary for 3 years in~~  
24 ~~a manner that protects the [identity] PERSONAL INFORMATION of the individual for~~  
25 ~~whom the nutrient management plan was prepared.~~

26 ~~§ 1010.~~

27                   (A) ~~IN THIS SECTION, "PERSONAL INFORMATION" MEANS AN INDIVIDUAL'S~~  
28 ~~NAME, HOME TELEPHONE NUMBER, PERSONAL EMAIL ADDRESS, AND SOCIAL~~  
29 ~~SECURITY NUMBER.~~

30                   ~~[(a)] (B) Except as provided in § 8-1007(b) of this subtitle, all records and~~  
31 ~~information concerning any agricultural operation certified by the Department under this~~

~~1 subtitle shall be maintained by the Department and made available for public review in a  
2 manner that provides the greatest public disclosure of records and information while  
3 protecting the identity of the person for whom the records or information relates.~~

~~4 **[(b)] (C)** Except as provided in § 8-1008(b) of this subtitle, a certified verifier  
5 shall maintain all records and information concerning a certified agricultural operation in  
6 a manner that protects the identity of the person for whom the records or information  
7 relates.~~

~~8 **[(e)] (D)** (1) Except as otherwise provided by law, the Department of the  
9 Environment shall maintain all records and information received from the Department  
10 under §§ 8-1004(e)(2) and 8-1007(b) of this subtitle in a manner that protects the [identity]  
11 **PERSONAL INFORMATION** of the person for whom the records or information relates.~~

~~12 (2) This subsection does not affect the maintenance and disclosure of  
13 records and information obtained from any other source by the Department of the  
14 Environment, even if the records and information are duplicative of information provided  
15 to the Department of the Environment by the Department under this subtitle.~~

~~16 **[(d)] (E)** Except as provided in § 8-1007(b) of this subtitle, records and  
17 information relating to an agricultural operation that are generated or obtained solely for  
18 the purpose of obtaining certification may not be disclosed by any State agency,  
19 department, or certified verifier before the agricultural operation is certified under this  
20 subtitle.~~

~~21 **[(e)] (F)** On or before December 31, 2014, and each December 31 thereafter, the  
22 Department shall submit an annual report to the Governor and, in accordance with §  
23 2-1246 of the State Government Article, the Senate Education, Health, and Environmental  
24 Affairs Committee and the House Environmental Matters Committee on:~~

~~25 (1) Participation in the Program; and~~

~~26 (2) Recommendations of the oversight committee established in § 8-1013  
27 of this subtitle.~~

~~28 **SECTION 2. AND BE IT FURTHER ENACTED,** That the Laws of Maryland read  
29 as follows:~~

### ~~Article – General Provisions~~

~~31 4-101.~~

~~32 (a) In this title the following words have the meanings indicated.~~

~~33 (b) “Applicant” means a person or governmental unit that asks to inspect a public  
34 record.~~

1           **(C) “BOARD” MEANS THE STATE PUBLIC INFORMATION ACT COMPLIANCE**  
2 **BOARD.**

3           **[(c)] (D)**       “Custodian” means:

4                   (1)     the official custodian; or

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

7           **[(d)] (E)**       “Official custodian” means an officer or employee of the State or of a  
8 political subdivision who is responsible for keeping a public record, whether or not the  
9 officer or employee has physical custody and control of the public record.

10          **[(e)] (F)**       “Person in interest” means:

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

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

15                   (3)     as to requests for correction of certificates of death under §  
16 5–310(d)(2) of the Health – General Article, the spouse, adult child, parent, adult sibling,  
17 grandparent, or guardian of the person of the deceased at the time of the deceased’s death.

18          **[(f)] (G)**       (1)     “Personal information” means information that identifies an  
19 individual.

20                   (2)     Except as provided in § 4–355 of this title, “personal information”  
21 includes an individual’s:

22                           (i)     name;

23                           (ii)    address;

24                           (iii)  driver’s license number or any other identification number;

25                           (iv)   medical or disability information;

26                           (v)    photograph or computer-generated image;

27                           (vi)  Social Security number; and

28                           (vii)  telephone number.

1 (3) "Personal information" does not include an individual's:

- 2 (i) driver's status;
- 3 (ii) driving offenses;
- 4 (iii) five-digit zip code; or
- 5 (iv) information on vehicular accidents.

6 **[(g)] (H)** "Political subdivision" means:

- 7 (1) a county;
- 8 (2) a municipal corporation;
- 9 (3) an unincorporated town;
- 10 (4) a school district; or
- 11 (5) a special district.

12 **[(h)] (I)** (1) "Public record" means the original or any copy of any  
13 documentary material that:

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

17 (ii) is in any form, including:

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

1 9. a recording; or

2 10. a tape.

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

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

8 **SUBTITLE 1A. STATE PUBLIC INFORMATION ACT COMPLIANCE BOARD.**

9 **4-1A-01.**

10 **THERE IS A STATE PUBLIC INFORMATION ACT COMPLIANCE BOARD.**

11 **4-1A-02.**

12 (A) (1) **THE BOARD CONSISTS OF ~~THREE~~ FIVE MEMBERS.**

13 ~~(2) AT LEAST ONE OF THE MEMBERS OF THE BOARD SHALL BE AN~~  
14 ~~ATTORNEY ADMITTED TO THE MARYLAND BAR.~~

15 ~~(3) AT LEAST ONE OF THE MEMBERS~~

16 (2) (I) **ONE MEMBER OF THE BOARD SHALL BE A**  
17 **REPRESENTATIVE;**

18 **1. FROM A NONGOVERNMENTAL NONPROFIT GROUP**  
19 **THAT IS ORGANIZED IN THE STATE;**

20 **2. WHO WORKS ON ISSUES RELATED TO TRANSPARENCY**  
21 **OR OPEN GOVERNMENT; AND**

22 **3. WHO IS NOMINATED BY REPRESENTATIVES OF THE**  
23 **OPEN GOVERNMENT AND NEWS MEDIA COMMUNITIES.**

24 (II) **ONE MEMBER OF THE BOARD SHALL:**

25 **1. HAVE KNOWLEDGE OF THE PROVISIONS OF THIS**  
26 **TITLE;**



1                                   **2. HAVE SERVED AS AN OFFICIAL CUSTODIAN IN THE**  
2 **STATE AS DEFINED IN § 4-101(D) OF THIS TITLE; AND**

3                                   **3. BE NOMINATED BY THE MARYLAND ASSOCIATION OF**  
4 **COUNTIES AND THE MARYLAND MUNICIPAL LEAGUE.**

5                                   **(III) 1. THREE MEMBERS OF THE BOARD SHALL BE PRIVATE**  
6 **CITIZENS OF THE STATE.**

7                                   **2. A PRIVATE CITIZEN MEMBER OF THE BOARD MAY NOT**  
8 **BE:**

9                                   **A. A CUSTODIAN OF A PUBLIC RECORD;**

10                                  **B. A MEMBER OF THE NEWS MEDIA; OR**

11                                  **C. A STAFF MEMBER OR SPOKESPERSON FOR AN**  
12 **ORGANIZATION THAT REPRESENTS THE INTERESTS OF CUSTODIANS OR APPLICANTS**  
13 **FOR PUBLIC RECORDS.**

14                                  **(3) AT LEAST ONE MEMBER OF THE BOARD SHALL BE AN ATTORNEY**  
15 **ADMITTED TO THE MARYLAND BAR.**

16                                  **(4) (I) THE GOVERNOR SHALL PUBLISH, ON THE GOVERNOR'S**  
17 **OFFICE WEB SITE OF THE OFFICE OF THE GOVERNOR, NOTICE OF THE GOVERNOR'S**  
18 **INTENT TO CONSIDER APPLICANTS FOR POSITIONS ON THE BOARD.**

19                                  **(II) THE NOTICE SHALL INCLUDE:**

20                                  **1. APPLICATION PROCEDURES;**

21                                  **2. CRITERIA FOR EVALUATING AN APPLICANT'S**  
22 **QUALIFICATIONS; AND**

23                                  **3. PROCEDURES FOR RESOLVING ANY CONFLICTS OF**  
24 **INTEREST.**

25                                  **(III) THE GOVERNOR SHALL SOLICIT RECOMMENDATIONS FOR**  
26 **POSITIONS ON THE BOARD FROM REPRESENTATIVES OF THE CUSTODIAN, NEWS**  
27 **MEDIA, AND NONPROFIT COMMUNITIES.**

28                                  ~~**(III)**~~ **(IV) 1. AN INDIVIDUAL MAY SUBMIT TO THE**  
29 **GOVERNOR AN APPLICATION FOR MEMBERSHIP ON THE BOARD AS PROVIDED**  
30 **UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH.**



1 (1) MAY NOT RECEIVE COMPENSATION AS A MEMBER OF THE BOARD;  
2 BUT

3 (2) IS ENTITLED TO REIMBURSEMENT FOR EXPENSES UNDER THE  
4 STANDARD STATE TRAVEL REGULATIONS, AS PROVIDED IN THE STATE BUDGET.

5 (D) THE OFFICE OF THE ATTORNEY GENERAL SHALL PROVIDE STAFF AND  
6 OFFICE SPACE FOR THE BOARD.

7 4-1A-04.

8 (A) THE BOARD SHALL:

9 (1) RECEIVE, REVIEW, AND, SUBJECT TO § 4-1A-07 OF THIS  
10 SUBTITLE, RESOLVE COMPLAINTS FILED UNDER § 4-1A-05 OF THIS SUBTITLE FROM  
11 ANY PERSON APPLICANT OR THE APPLICANT'S DESIGNATED REPRESENTATIVE  
12 ALLEGING THAT A CUSTODIAN CHARGED AN UNREASONABLE FEE UNDER § 4-206 OF  
13 THIS TITLE; CUSTODIAN;

14 ~~(I) DENIED INSPECTION OF A PUBLIC RECORD IN VIOLATION OF~~  
15 ~~THIS TITLE;~~

16 ~~(II) CHARGED AN UNREASONABLE FEE OF MORE THAN \$250~~  
17 ~~UNDER § 4-206 OF THIS TITLE; OR~~

18 ~~(III) IMPROPERLY DENIED A FEE WAIVER UNDER § 4-206(E) OF~~  
19 ~~THIS TITLE;~~

20 (2) ISSUE A WRITTEN OPINION AS TO WHETHER A VIOLATION HAS  
21 OCCURRED; AND

22 (3) ~~ORDER THE CUSTODIAN TO:~~

23 ~~(I) IF THE BOARD FINDS THAT THE CUSTODIAN DENIED~~  
24 ~~INSPECTION OF A PUBLIC RECORD IN VIOLATION OF THIS TITLE, PRODUCE THE~~  
25 ~~PUBLIC RECORD FOR INSPECTION;~~

26 ~~(II) IF THE BOARD FINDS THAT THE CUSTODIAN CHARGED AN~~  
27 ~~UNREASONABLE FEE OF MORE THAN \$250 UNDER § 4-206 OF THIS TITLE, ORDER~~  
28 ~~THE CUSTODIAN TO REDUCE THE FEE TO AN AMOUNT DETERMINED BY THE BOARD~~  
29 ~~TO BE REASONABLE AND REFUND THE DIFFERENCE; OR DIFFERENCE.~~

~~(H) IF THE BOARD FINDS THAT THE CUSTODIAN IMPROPERLY DENIED A FEE WAIVER UNDER § 4-206(E) OF THIS TITLE, WAIVE THE FEE.~~

(B) THE BOARD SHALL:

~~(1) ADOPT REGULATIONS TO CARRY OUT THIS TITLE;~~

~~(2) (1) STUDY ONGOING COMPLIANCE WITH THIS TITLE BY CUSTODIANS; AND~~

~~(3) (2) MAKE RECOMMENDATIONS TO THE GENERAL ASSEMBLY FOR IMPROVEMENTS TO THIS TITLE.~~

(C) (1) ON OR BEFORE OCTOBER 1 OF EACH YEAR, THE BOARD SHALL SUBMIT A REPORT TO THE GOVERNOR AND, SUBJECT TO § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY.

(2) THE REPORT SHALL:

(I) DESCRIBE THE ACTIVITIES OF THE BOARD;

(II) DESCRIBE THE OPINIONS OF THE BOARD;

~~(III) STATE THE NUMBER AND NATURE OF COMPLAINTS FILED WITH THE BOARD AND DISCUSS COMPLAINTS THAT THE INSPECTION OF PUBLIC RECORDS WAS DENIED; AND~~

(IV) RECOMMEND ANY IMPROVEMENTS TO THIS TITLE.

4-1A-05.

(A) ANY ~~PERSON~~ APPLICANT OR THE APPLICANT'S DESIGNATED REPRESENTATIVE MAY FILE A WRITTEN COMPLAINT WITH THE BOARD SEEKING A WRITTEN OPINION AND ORDER FROM THE BOARD IF:

(1) A CUSTODIAN CHARGED A FEE UNDER § 4-206 OF THIS TITLE OF MORE THAN \$350; AND

(2) THE COMPLAINANT ALLEGES IN THE COMPLAINT THAT THE FEE IS UNREASONABLE. ALLEGING THAT A CUSTODIAN:

~~(1) DENIED INSPECTION OF A PUBLIC RECORD IN VIOLATION OF THIS TITLE;~~

~~(2) CHARGED AN UNREASONABLE FEE OF MORE THAN \$250 UNDER § 4-206 OF THIS TITLE; OR~~

~~(3) IMPROPERLY DENIED A FEE WAIVER UNDER § 4-206(E) OF THIS TITLE.~~

(B) THE COMPLAINT SHALL:

(1) IDENTIFY THE CUSTODIAN THAT IS THE SUBJECT OF THE COMPLAINT;

(2) DESCRIBE THE ACTION OF THE CUSTODIAN, THE DATE OF THE ACTION, AND THE CIRCUMSTANCES OF THE ACTION;

(3) BE SIGNED BY THE COMPLAINANT;

(4) IF AVAILABLE, INCLUDE A COPY OF THE ORIGINAL REQUEST FOR PUBLIC RECORDS; AND

(5) BE FILED WITHIN 90 DAYS AFTER THE ACTION THAT IS THE SUBJECT OF THE COMPLAINT OCCURRED.

4-1A-06.

(A) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, ON RECEIPT OF A WRITTEN COMPLAINT, THE BOARD PROMPTLY SHALL:

(1) SEND THE COMPLAINT TO THE CUSTODIAN IDENTIFIED IN THE COMPLAINT; AND

(2) REQUEST THAT A RESPONSE TO THE COMPLAINT BE SENT TO THE BOARD.

(B) (1) THE CUSTODIAN SHALL FILE A WRITTEN RESPONSE TO THE COMPLAINT WITHIN 15 DAYS AFTER THE CUSTODIAN RECEIVES THE COMPLAINT.

(2) ON REQUEST OF THE BOARD, THE CUSTODIAN SHALL INCLUDE WITH ITS WRITTEN RESPONSE TO THE COMPLAINT THE BASIS FOR THE FEE THAT WAS CHARGED.

~~(1) IF THE COMPLAINT ALLEGES THAT THE CUSTODIAN DENIED INSPECTION OF A PUBLIC RECORD IN VIOLATION OF THIS TITLE;~~

~~1. A COPY OF THE PUBLIC RECORD; AND~~

1 ~~2. THE PROVISION OF LAW THAT THE CUSTODIAN~~  
2 ~~ALLEGES ALLOWS THE CUSTODIAN TO DENY INSPECTION OF THE PUBLIC RECORD;~~

3 ~~(H) IF THE COMPLAINT ALLEGES THAT THE CUSTODIAN~~  
4 ~~CHARGED AN UNREASONABLE FEE OF MORE THAN \$250 UNDER § 4-206 OF THIS~~  
5 ~~TITLE, THE BASIS FOR THE FEE THAT WAS CHARGED; OR~~

6 ~~(HH) IF THE COMPLAINT ALLEGES THAT THE CUSTODIAN~~  
7 ~~IMPROPERLY DENIED A FEE WAIVER UNDER § 4-206(E) OF THIS TITLE, THE BASIS~~  
8 ~~FOR THE DENIAL.~~

9 ~~(3) THE BOARD SHALL MAINTAIN THE CONFIDENTIALITY OF A~~  
10 ~~PUBLIC RECORD SUBMITTED BY A CUSTODIAN UNDER PARAGRAPH (2) OF THIS~~  
11 ~~SUBSECTION.~~

12 (C) IF A WRITTEN RESPONSE IS NOT RECEIVED WITHIN 45 DAYS AFTER THE  
13 NOTICE IS SENT, THE BOARD SHALL DECIDE THE CASE ON THE FACTS BEFORE THE  
14 BOARD.

15 4-1A-07.

16 (A) (1) THE BOARD SHALL REVIEW THE COMPLAINT AND ANY RESPONSE.

17 (2) IF THE INFORMATION IN THE COMPLAINT AND RESPONSE IS  
18 SUFFICIENT FOR MAKING A DETERMINATION BASED ON THE BOARD'S OWN  
19 INTERPRETATION OF THE EVIDENCE, WITHIN 30 DAYS AFTER RECEIVING THE  
20 RESPONSE, THE BOARD SHALL ISSUE A WRITTEN OPINION AS TO WHETHER A  
21 VIOLATION OF THIS TITLE HAS OCCURRED OR WILL OCCUR.

22 (B) (1) (I) ~~IF~~ SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH,  
23 IF THE BOARD IS UNABLE TO REACH A DETERMINATION BASED ON THE WRITTEN  
24 SUBMISSIONS BEFORE IT, THE BOARD MAY SCHEDULE AN INFORMAL CONFERENCE  
25 TO HEAR FROM THE COMPLAINANT, THE CUSTODIAN, OR ANY OTHER PERSON WITH  
26 RELEVANT INFORMATION ABOUT THE SUBJECT OF THE COMPLAINT.

27 (II) THE BOARD SHALL HOLD THE INFORMAL CONFERENCE  
28 UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH IN A LOCATION THAT IS AS  
29 CONVENIENT AS PRACTICABLE TO THE COMPLAINANT AND THE CUSTODIAN.

30 (2) WHEN CONDUCTING A CONFERENCE THAT IS SCHEDULED UNDER  
31 PARAGRAPH (1) OF THIS SUBSECTION, THE BOARD MAY ALLOW THE PARTIES TO  
32 TESTIFY BY TELECONFERENCE OR SUBMIT WRITTEN TESTIMONY BY ELECTRONIC  
33 MAIL.

1           ~~(2)~~ **(3)**       AN INFORMAL CONFERENCE SCHEDULED BY THE BOARD IS  
2 NOT A CONTESTED CASE WITHIN THE MEANING OF § 10-202(D) OF THE STATE  
3 GOVERNMENT ARTICLE.

4           ~~(3)~~ **(4)**       THE BOARD SHALL ISSUE A WRITTEN OPINION WITHIN 30  
5 DAYS AFTER THE INFORMAL CONFERENCE.

6           **(C) (1)**   IF THE BOARD IS UNABLE TO ISSUE AN OPINION ON A COMPLAINT  
7 WITHIN THE TIME PERIODS SPECIFIED IN SUBSECTION (A) OR (B) OF THIS SECTION,  
8 THE BOARD SHALL:

9                   **(I)**   STATE IN WRITING THE REASON FOR ITS INABILITY TO ISSUE  
10 AN OPINION; AND

11                   **(II)**   ISSUE AN OPINION AS SOON AS POSSIBLE BUT NOT LATER  
12 THAN 90 DAYS AFTER THE FILING OF THE COMPLAINT.

13           **(2)**   AN OPINION OF THE BOARD MAY STATE THAT THE BOARD IS  
14 UNABLE TO RESOLVE THE COMPLAINT.

15           **(D)**   THE BOARD SHALL SEND A COPY OF THE WRITTEN OPINION TO THE  
16 COMPLAINANT AND THE AFFECTED CUSTODIAN.

17           ~~**(E) (1)**   A CUSTODIAN IS LIABLE TO THE COMPLAINANT FOR DAMAGES AS  
18 DETERMINED UNDER PARAGRAPH (2) OF THIS SUBSECTION IF THE BOARD FINDS  
19 THAT THE CUSTODIAN, IN THE ABSENCE OF A BONA FIDE DISPUTE, WILLFULLY AND  
20 KNOWINGLY:~~

21                   ~~**(I)**   FAILED TO DISCLOSE A PUBLIC RECORD THAT THE  
22 COMPLAINANT WAS ENTITLED TO INSPECT UNDER THIS TITLE;~~

23                   ~~**(II)**   CHARGED AN UNREASONABLE FEE OF MORE THAN \$250  
24 UNDER § 4-206 OF THIS TITLE; OR~~

25                   ~~**(III)**   IMPROPERLY DENIED A FEE WAIVER UNDER § 4-206(E) OF  
26 THIS TITLE.~~

27           ~~**(2) (i) 1.**   IF THE BOARD DETERMINES THAT A CUSTODIAN IS  
28 LIABLE UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE BOARD SHALL ASSESS  
29 DAMAGES AGAINST THE CUSTODIAN AT A RATE OF \$100 FOR EACH DAY THAT THE  
30 CUSTODIAN TOOK TO DENY THE COMPLAINANT'S INITIAL REQUEST FOR PUBLIC  
31 RECORDS.~~

1 ~~2. THE STATUTORY DAMAGES IMPOSED UNDER THIS~~  
2 ~~SUBPARAGRAPH MAY NOT EXCEED \$1,000 PER VIOLATION OF THIS TITLE.~~

3 ~~(H) IF THE BOARD DETERMINES THAT THE COMPLAINANT~~  
4 ~~SUBSTANTIALLY PREVAILED, THE BOARD SHALL ORDER THE REIMBURSEMENT OF~~  
5 ~~REASONABLE ATTORNEY'S FEES AND OTHER LITIGATION COSTS.~~

6 4-1A-08.

7 (A) THE BOARD MAY SEND TO ANY CUSTODIAN IN THE STATE ANY WRITTEN  
8 OPINION THAT WILL PROVIDE THE CUSTODIAN WITH GUIDANCE ON COMPLIANCE  
9 WITH THIS TITLE.

10 (B) THE ATTORNEY GENERAL SHALL POST ON THE ~~ATTORNEY GENERAL'S~~  
11 WEB SITE OF THE OFFICE OF THE ATTORNEY GENERAL ALL OF THE BOARD'S  
12 WRITTEN OPINIONS UNDER THIS SUBTITLE.

13 4-1A-09.

14 COMPLIANCE BY A CUSTODIAN WITH AN ORDER OF THE BOARD:

15 (1) IS NOT AN ADMISSION TO A VIOLATION OF THIS TITLE BY THE  
16 CUSTODIAN; AND

17 (2) MAY NOT BE USED AS EVIDENCE IN A PROCEEDING CONDUCTED IN  
18 ACCORDANCE WITH § 4-362 OF THIS TITLE.

19 4-1A-10.

20 (A) A PERSON OR GOVERNMENTAL UNIT NEED NOT EXHAUST THE  
21 ADMINISTRATIVE REMEDY UNDER THIS SUBTITLE BEFORE FILING SUIT.

22 (B) (1) A COMPLAINANT OR CUSTODIAN MAY APPEAL THE DECISION  
23 ISSUED BY THE BOARD UNDER THIS SUBTITLE IN ACCORDANCE WITH § 4-362 OF  
24 THIS TITLE.

25 (2) AN APPEAL UNDER THIS SUBSECTION AUTOMATICALLY STAYS  
26 THE DECISION OF THE BOARD PENDING THE CIRCUIT COURT'S DECISION OR NO  
27 MORE THAN 30 DAYS AFTER THE DATE ON WHICH THE DEFENDANT SERVES AN  
28 ANSWER OR OTHERWISE PLEADS TO THE COMPLAINT, WHICHEVER IS SOONER.

29 SUBTITLE 1B. PUBLIC ACCESS OMBUDSMAN.

30 4-1B-01.



1 IN THIS SUBTITLE, "OMBUDSMAN" MEANS THE PUBLIC ACCESS OMBUDSMAN.

2 4-1B-02.

3 (A) THERE IS AN OFFICE OF THE PUBLIC ACCESS OMBUDSMAN.

4 (B) THE OFFICE OF THE ATTORNEY GENERAL SHALL PROVIDE OFFICE  
5 SPACE AND STAFF FOR THE OMBUDSMAN, WITH APPROPRIATE STEPS TAKEN TO  
6 PROTECT THE AUTONOMY AND INDEPENDENCE OF THE OMBUDSMAN.

7 4-1B-03.

8 (A) SUBJECT TO SUBSECTIONS (B) AND (C) OF THIS SECTION, THE  
9 ATTORNEY GENERAL SHALL APPOINT THE OMBUDSMAN.

10 (B) THE OMBUDSMAN SHALL HAVE BEEN ADMITTED TO PRACTICE LAW IN  
11 THE STATE.

12 (C) (1) THE OFFICE OF THE ATTORNEY GENERAL SHALL PUBLISH, ON  
13 ITS WEB SITE, NOTICE OF THE ATTORNEY GENERAL'S INTENT TO CONSIDER  
14 APPLICANTS FOR THE OMBUDSMAN POSITION.

15 (2) THE NOTICE SHALL INCLUDE:

16 (I) APPLICATION PROCEDURES;

17 (II) CRITERIA FOR EVALUATING AN APPLICANT'S  
18 QUALIFICATIONS; AND

19 (III) PROCEDURES FOR RESOLVING ANY CONFLICTS OF  
20 INTEREST.

21 (3) (I) AN INDIVIDUAL MAY SUBMIT TO THE ATTORNEY GENERAL  
22 AN APPLICATION FOR THE OMBUDSMAN POSITION AS PROVIDED UNDER  
23 PARAGRAPH (2) OF THIS SUBSECTION.

24 (II) THE OFFICE OF THE ATTORNEY GENERAL SHALL POST ON  
25 ITS WEB SITE THE NAMES AND QUALIFICATIONS OF APPLICANTS.

26 (D) (1) THE TERM OF THE OMBUDSMAN IS 4 YEARS.

27 (2) AT THE END OF A TERM, THE OMBUDSMAN CONTINUES TO SERVE  
28 UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

1           **(3) AN OMBUDSMAN WHO IS APPOINTED AFTER A TERM BEGINS**  
2 **SERVES FOR THE REMAINDER OF THE TERM UNTIL A SUCCESSOR IS APPOINTED AND**  
3 **QUALIFIES.**

4           **(E) THE OMBUDSMAN SHALL BE A FULL-TIME STATE EMPLOYEE.**

5           **(F) THE OMBUDSMAN IS ENTITLED TO AN ANNUAL SALARY AS PROVIDED**  
6 **FOR IN THE STATE BUDGET.**

7 **4-1B-04.**

8           **(A) SUBJECT TO SUBSECTION (B) OF THIS SECTION, THE OMBUDSMAN**  
9 **SHALL MAKE REASONABLE ATTEMPTS TO RESOLVE DISPUTES BETWEEN**  
10 **APPLICANTS AND CUSTODIANS RELATING TO REQUESTS FOR PUBLIC RECORDS**  
11 **UNDER THIS TITLE, INCLUDING DISPUTES OVER:**

12           **(1) THE CUSTODIAN'S APPLICATION OF AN EXEMPTION;**

13           **(2) REDACTIONS OF INFORMATION IN THE PUBLIC RECORD;**

14           **(3) THE FAILURE OF THE CUSTODIAN TO PRODUCE A PUBLIC RECORD**  
15 **IN A TIMELY MANNER OR TO DISCLOSE ALL RECORDS RELEVANT TO THE REQUEST;**

16           **(4) OVERLY BROAD REQUESTS FOR PUBLIC RECORDS;**

17           **(5) THE AMOUNT OF TIME A CUSTODIAN NEEDS, GIVEN AVAILABLE**  
18 **STAFF AND RESOURCES, TO PRODUCE PUBLIC RECORDS;**

19           **(6) A REQUEST FOR OR DENIAL OF A FEE WAIVER UNDER § 4-206(E)**  
20 **OF THIS TITLE; AND**

21           **(7) REPETITIVE OR REDUNDANT REQUESTS FROM AN APPLICANT.**

22           **(B) (1) WHEN RESOLVING DISPUTES UNDER THIS SECTION, THE**  
23 **OMBUDSMAN MAY NOT:**

24           **(I) COMPEL A CUSTODIAN TO DISCLOSE PUBLIC RECORDS OR**  
25 **REDACTED INFORMATION IN THE CUSTODIAN'S PHYSICAL CUSTODY TO THE**  
26 **OMBUDSMAN OR AN APPLICANT; OR**

27           **(II) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**  
28 **SUBSECTION, DISCLOSE INFORMATION RECEIVED FROM AN APPLICANT OR**  
29 **CUSTODIAN WITHOUT WRITTEN CONSENT FROM THE APPLICANT AND CUSTODIAN.**

1           **(2) THE OMBUDSMAN MAY DISCLOSE INFORMATION RECEIVED FROM**  
2 **AN APPLICANT OR CUSTODIAN TO THE ASSISTANT ATTORNEY GENERAL ASSIGNED**  
3 **TO THE OFFICE OF THE OMBUDSMAN.**

4 ~~4-201.~~

5           ~~(a) (1) Except as otherwise provided by law, a custodian shall allow a person~~  
6 ~~or governmental unit to inspect any public record at any reasonable time.~~

7           ~~(2) TO ENSURE COMPLIANCE WITH THIS SUBSECTION, A PERSON~~  
8 ~~RECEIVING BENEFITS FROM THE STATE, INCLUDING A CONTRACTOR OR~~  
9 ~~SUBCONTRACTOR OF THE STATE, SHALL PROMPTLY RELINQUISH TO THE~~  
10 ~~APPROPRIATE CUSTODIAN ANY PUBLIC RECORD IN THE POSSESSION OF THE~~  
11 ~~PERSON.~~

12           ~~[(2)] (3) Inspection or copying of a public record may be denied only to the~~  
13 ~~extent provided under this title.~~

14           ~~(b) To protect public records and to prevent unnecessary interference with official~~  
15 ~~business, each official custodian shall adopt reasonable rules or regulations that, subject to~~  
16 ~~this title, govern timely production and inspection of a public record.~~

17           ~~(c) Each official custodian shall consider whether to:~~

18           ~~(1) designate types of public records of the governmental unit that are to~~  
19 ~~be made available to any applicant immediately on request; and~~

20           ~~(2) maintain a current list of the types of public records that have been~~  
21 ~~designated as available to any applicant immediately on request.~~

22 4-203.

23           (a) The custodian shall grant or deny the application promptly, but not more than  
24 30 days after receiving the application.

25           (b) **(1)** A custodian who approves the application shall produce the public  
26 record immediately or within a reasonable period that is needed to retrieve the public  
27 record, but not more than 30 days after receipt of the application.

28           **(2) IF THE CUSTODIAN REASONABLY BELIEVES THAT IT WILL TAKE**  
29 **MORE THAN 10 WORKING DAYS TO PRODUCE THE PUBLIC RECORD, THE CUSTODIAN**  
30 **SHALL INDICATE IN WRITING OR BY ELECTRONIC MAIL WITHIN 10 WORKING DAYS**  
31 **AFTER RECEIPT OF THE REQUEST:**

32           **(I) THE AMOUNT OF TIME THAT THE CUSTODIAN ANTICIPATES**  
33 **IT WILL TAKE TO PRODUCE THE PUBLIC RECORD;**

1 (II) ~~THE DOCUMENTS THAT ARE BEING RETRIEVED; AN~~  
 2 ESTIMATE OF THE RANGE OF FEES THAT MAY BE CHARGED TO COMPLY WITH THE  
 3 REQUEST FOR PUBLIC RECORDS; AND

4 (III) THE REASON FOR THE DELAY.

5 (3) ~~IF THE CUSTODIAN FAILS TO COMPLY WITH PARAGRAPH (1) OF~~  
 6 ~~THIS SUBSECTION, THE FAILURE CONSTITUTES A DENIAL OF AN APPLICATION AND~~  
 7 ~~THE DENIAL MAY NOT BE CONSIDERED THE RESULT OF A BONA FIDE DISPUTE~~  
 8 FAILURE TO PRODUCE THE PUBLIC RECORD IN ACCORDANCE WITH THIS  
 9 SUBSECTION CONSTITUTES A DENIAL OF AN APPLICATION THAT MAY NOT BE  
 10 CONSIDERED THE RESULT OF A BONA FIDE DISPUTE UNLESS THE CUSTODIAN HAS  
 11 COMPLIED WITH PARAGRAPH (2) OF THIS SUBSECTION AND IS WORKING WITH THE  
 12 APPLICANT IN GOOD FAITH.

13 (c) (1) A custodian who denies the application shall:

14 ~~[(1)] (I) [immediately] WITHIN 4 WORKING DAYS, notify the applicant~~  
 15 ~~IN WRITING;~~

16 ~~[(2)] (II) (I)~~ within 10 working days, give the applicant a written statement  
 17 that gives:

18 ~~1. FOR EACH RECORD REQUESTED, AN ITEMIZED INDEX~~  
 19 ~~OF THE TITLE OR DESCRIPTION, DATE MADE, AND AUTHOR;~~

20 [(i)] ~~2. 1.~~ the reasons for the denial, ~~INCLUDING AN AND, IF~~  
 21 INSPECTION IS DENIED UNDER § 4-343 OF THIS TITLE, A BRIEF EXPLANATION OF  
 22 ~~HOW THE STATE'S INTEREST IN PROTECTING THE PRIVACY OF A PERSON IN~~  
 23 ~~INTEREST OUTWEIGHS THE PUBLIC'S INTEREST IN DISCLOSURE~~ WHY THE DENIAL IS  
 24 NECESSARY;

25 [(ii)] ~~3. 2.~~ the legal authority for the denial; ~~and~~

26 3. WITHOUT DISCLOSING THE PROTECTED  
 27 INFORMATION, A BRIEF DESCRIPTION OF THE UNDISCLOSED RECORD THAT WILL  
 28 ENABLE THE APPLICANT TO ASSESS THE APPLICABILITY OF THE LEGAL AUTHORITY  
 29 FOR THE DENIAL; AND

30 [(iii)] 4. notice of the remedies under this title for review of the  
 31 denial; and

1            [(3)] ~~(III)~~ (II) allow inspection of any part of the record that is subject to  
2 inspection [and is reasonably severable].

3            **(2) A CUSTODIAN MAY NOT ~~DENY OR~~ IGNORE AN APPLICATION TO**  
4 **INSPECT PUBLIC RECORDS ON THE GROUNDS THAT THE APPLICATION WAS**  
5 **INTENDED FOR PURPOSES OF HARASSMENT.**

6            (d) ~~With the consent of the applicant, any~~ ANY time limit imposed under this  
7 section;

8            **(1) WITH THE CONSENT OF THE APPLICANT,** may be extended for not  
9 more than 30 days; **AND**

10            **(2) IF THE APPLICANT SEEKS RESOLUTION OF A DISPUTE UNDER §**  
11 **4-1B-04 OF THIS TITLE, SHALL BE EXTENDED PENDING RESOLUTION OF THAT**  
12 **DISPUTE.**

13 4-206.

14            (a) **(1)** In this section[, reasonable fee] **THE FOLLOWING WORDS HAVE THE**  
15 **MEANINGS INDICATED.**

16            ~~**(2) (I) “COMMERCIAL PURPOSE” MEANS THE DIRECT OR INDIRECT**~~  
17 ~~**USE OF ANY PART OF A PUBLIC RECORD IN ANY FORM FOR SALE, RESALE,**~~  
18 ~~**SOLICITATION, RENT, OR LEASE OF A SERVICE, OR ANY USE BY WHICH THE**~~  
19 ~~**APPLICANT EXPECTS A PROFIT THROUGH COMMISSION, SALARY, OR FEE.**~~

20            ~~**(II) “COMMERCIAL PURPOSE” DOES NOT INCLUDE USE OF A**~~  
21 ~~**PUBLIC RECORD:**~~

22                            ~~**1. FOR PUBLICATION OR A RELATED USE BY A**~~  
23 ~~**NEWSPAPER OR PERIODICAL;**~~

24                            ~~**2. BY A RADIO OR TELEVISION STATION IN ITS NEWS OR**~~  
25 ~~**OTHER INFORMATIONAL PROGRAMS;**~~

26                            ~~**3. TO PREPARE FOR LITIGATION OR ANY SETTLEMENT**~~  
27 ~~**BY THE PARTIES OR ATTORNEYS INVOLVED IN THE LITIGATION; OR**~~

28                            ~~**4. BY A NONPROFIT ORGANIZATION ACTING IN THE**~~  
29 ~~**PUBLIC INTEREST.**~~

1           ~~(3)~~ (2)       “INDIGENT” MEANS AN INDIVIDUAL’S FAMILY HOUSEHOLD  
2 INCOME IS LESS THAN 50% OF THE MEDIAN FAMILY INCOME FOR THE STATE AS  
3 REPORTED IN THE FEDERAL REGISTER.

4           ~~(4)~~ (3)       “REASONABLE FEE” means a fee bearing a reasonable  
5 relationship to the recovery of actual costs incurred by a governmental unit.

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

8                    (I)    the search for, preparation of, and reproduction of a public  
9 record;

10                           ~~1.    REQUESTED FOR A COMMERCIAL PURPOSE; OR~~

11                           ~~2.    REQUESTED FOR A NONCOMMERCIAL PURPOSE IF~~  
12 ~~THE RECORD IS~~ PREPARED, ON REQUEST OF THE APPLICANT, IN A CUSTOMIZED  
13 FORMAT; AND

14                           (II)   THE ACTUAL COSTS OF ~~REPRODUCING~~ THE SEARCH FOR,  
15 PREPARATION OF, AND REPRODUCTION OF A PUBLIC RECORD IN STANDARD  
16 FORMAT ~~REQUESTED FOR A NONCOMMERCIAL PURPOSE~~, INCLUDING MEDIA AND  
17 MECHANICAL PROCESSING COSTS.

18                    (2)    THE STAFF AND ATTORNEY REVIEW COSTS INCLUDED IN THE  
19 CALCULATION OF ACTUAL COSTS INCURRED UNDER THIS SECTION SHALL BE  
20 PRORATED FOR EACH INDIVIDUAL’S SALARY AND ACTUAL TIME ATTRIBUTABLE TO  
21 THE SEARCH FOR AND PREPARATION OF A PUBLIC RECORD UNDER THIS SECTION.

22                    ~~(2)    (I)    THE OFFICIAL CUSTODIAN MAY REQUIRE A CERTIFIED~~  
23 ~~STATEMENT FROM THE APPLICANT THAT INCLUDES THE COMMERCIAL PURPOSE~~  
24 ~~FOR WHICH THE RECORD IS INTENDED.~~

25                    ~~(H)    AN APPLICANT MAY NOT OBTAIN A COPY OF ANY PART OF A~~  
26 ~~PUBLIC RECORD IF THE APPLICANT WILL USE OR KNOWINGLY ALLOW THE USE OF~~  
27 ~~THE PUBLIC RECORD FOR A PURPOSE OTHER THAN THAT STATED IN THE~~  
28 ~~APPLICATION OR CERTIFIED STATEMENT.~~

29                    ~~(HH)   THE BOARD SHALL DETERMINE THE APPROPRIATE~~  
30 ~~PENALTY FOR A VIOLATION OF SUBPARAGRAPH (H) OF THIS PARAGRAPH.~~

31            (c)    ~~(1)~~    The official custodian may not charge a fee for the first ~~[2]~~ 5 hours that  
32 are needed to search for a public record and prepare it for inspection.

1           ~~(2) THE SEARCH FEE UNDER PARAGRAPH (1) OF THIS SUBSECTION~~  
 2 ~~SHALL BE BASED ON THE SALARY OF THE LOWEST PAID STAFF MEMBER~~  
 3 ~~PERFORMING THE SEARCH.~~

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

6           (2) [The official custodian otherwise may charge any reasonable fee for  
 7 making or supervising the making of a copy, an electronic copy, a printout, or a photograph  
 8 of a public record.

9           (3) The official custodian may charge for the cost of providing facilities for  
 10 the reproduction of the public record if the custodian did not have the facilities.

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

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

13           ~~(2) (I) THE APPLICANT IS INDIGENT AND FILES AN AFFIDAVIT OF~~  
 14 ~~INDIGENCY; OR~~

15           ~~(2) (II) after consideration of the ability of the applicant to pay the fee~~  
 16 ~~and other relevant factors, the official custodian determines that the waiver would be in~~  
 17 ~~the public interest OR THAT THE APPLICANT IS INDIGENT.~~

18 ~~4-343.~~

19           ~~(A) [Unless] SUBJECT TO THE LIMITATIONS IN SUBSECTION (B) OF THIS~~  
 20 ~~SECTION AND UNLESS otherwise provided by law, if a custodian believes that inspection~~  
 21 ~~of a part of a public record by the applicant would be contrary to the public interest, the~~  
 22 ~~custodian may deny inspection by the applicant of that part of the record, as provided in~~  
 23 ~~this part.~~

24           ~~(B) IF AN APPLICANT FILES A COMPLAINT WITH THE BOARD CHALLENGING~~  
 25 ~~A DISCRETIONARY DENIAL UNDER THIS PART, THE CUSTODIAN SHALL PROVE THAT:~~

26           ~~(1) THE DENIAL RELATES TO THE STATE'S INTEREST IN PROTECTING~~  
 27 ~~THE PRIVACY OF A PERSON IN INTEREST;~~

28           ~~(2) THE DISCLOSURE THREATENS TO CAUSE REASONABLY~~  
 29 ~~FORESEEABLE, ARTICULABLE, AND SUBSTANTIAL HARM TO A PERSON IN INTEREST;~~  
 30 ~~AND~~

31           ~~(3) THE HARM FROM THE DISCLOSURE IS GREATER THAN THE PUBLIC~~  
 32 ~~INTEREST IN ACCESS TO THE INFORMATION.~~

1 4-301.

2 **(A) [A] SUBJECT TO SUBSECTION (B) OF THIS SECTION, A custodian shall deny**  
 3 **inspection of a public record or any part of a public record if:**

4 (1) by law, the public record is privileged or confidential; or

5 (2) the inspection would be contrary to:

6 (i) a State statute;

7 (ii) a federal statute or a regulation that is issued under the statute  
 8 and has the force of law;

9 (iii) the rules adopted by the Court of Appeals; or

10 (iv) an order of a court of record.

11 **(B) IF AN APPLICANT FILES A COMPLAINT WITH THE OMBUDSMAN**  
 12 **CHALLENGING A DENIAL OR THE APPLICATION OF AN EXEMPTION UNDER THIS**  
 13 **SUBTITLE, THE CUSTODIAN SHALL DEMONSTRATE THAT:**

14 **(1) THE DENIAL OR THE EXEMPTION IS CLEARLY APPLICABLE TO THE**  
 15 **REQUESTED PUBLIC RECORD; AND**

16 **(2) IF INSPECTION IS DENIED UNDER PART IV OF THIS SUBTITLE, THE**  
 17 **HARM FROM DISCLOSURE OF THE PUBLIC RECORD IS GREATER THAN THE PUBLIC**  
 18 **INTEREST IN ACCESS TO THE INFORMATION IN THE PUBLIC RECORD.**

19 Part VI. [Administrative and] Judicial Review.

20 [4-361.

21 (a) This section does not apply when the official custodian denies inspection  
 22 temporarily under § 4-358 of this subtitle.

23 (b) If a unit is subject to Title 10, Subtitle 2 of the State Government Article, a  
 24 person or governmental unit may seek administrative review in accordance with that  
 25 subtitle of a decision of the unit, under this subtitle, to deny inspection of any part of a  
 26 public record.

27 (c) A person or governmental unit need not exhaust the remedy under this section  
 28 before filing suit.]

29 4-362.



1 (a) ~~(1) Whenever~~ **SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION,**  
 2 **WHENEVER** a person or governmental unit is denied inspection of a public record or is not  
 3 provided with a copy, printout, or photograph of a public record as requested, the person or  
 4 governmental unit may file a complaint with the circuit court ~~for the county where:~~

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

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

7 **(2) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, A**  
 8 **COMPLAINANT OR CUSTODIAN MAY APPEAL TO THE CIRCUIT COURT A DECISION**  
 9 **ISSUED BY THE STATE PUBLIC INFORMATION ACT COMPLIANCE BOARD AS**  
 10 **PROVIDED UNDER § 4-1A-10 OF THIS TITLE.**

11 **(3) A COMPLAINT OR AN APPEAL UNDER THIS SUBSECTION SHALL BE**  
 12 **FILED WITH THE CIRCUIT COURT FOR THE COUNTY WHERE:**

13 **(I) THE COMPLAINANT RESIDES OR HAS A PRINCIPAL PLACE OF**  
 14 **BUSINESS; OR**

15 **(II) THE PUBLIC RECORD IS LOCATED.**

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

19 (2) The defendant:

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

21 1. deny inspection of a public record; or

22 2. deny the person or governmental unit a copy, printout, or  
 23 photograph of a public record; and

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

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

28 (i) take precedence on the docket;

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

1 (iii) be expedited in every way.

2 (2) The court may examine the public record in camera to determine  
3 whether any part of the public record may be withheld under this title.

4 (3) The court may:

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

7 1. withholding the public record; or

8 2. withholding a copy, printout, or photograph of the public  
9 record;

10 (ii) issue an order for the production of the public record or a copy,  
11 printout, or photograph of the public record that was withheld from the complainant; and

12 (iii) for noncompliance with the order, punish the responsible  
13 employee for contempt.

14 (d) (1) A defendant governmental unit is liable to the complainant for  
15 **STATUTORY DAMAGES AND** actual damages that the court considers appropriate if the  
16 court finds [by clear and convincing evidence] that any defendant ~~¶~~ knowingly and  
17 willfully ~~], IN THE ABSENCE OF A BONA FIDE DISPUTE,~~ failed to:

18 (i) disclose or fully to disclose a public record that the complainant  
19 was entitled to inspect under this title; or

20 (ii) provide a copy, printout, or photograph of a public record that the  
21 complainant requested under § 4-205 of this title.

22 (2) An official custodian is liable for ~~STATUTORY DAMAGES AND~~ actual  
23 damages that the court considers appropriate if the court finds that, after temporarily  
24 denying inspection of a public record, the official custodian failed to petition a court for an  
25 order to continue the denial.

26 (3) ~~(I) STATUTORY DAMAGES IMPOSED BY THE COURT UNDER~~  
27 ~~PARAGRAPHS PARAGRAPH (1) OR (2) OF THIS SUBSECTION SHALL BE ASSESSED BY~~  
28 ~~THE COURT AT A RATE OF \$100 FOR EACH DAY THAT THE CUSTODIAN TOOK TO DENY~~  
29 ~~THE COMPLAINANT'S INITIAL REQUEST FOR PUBLIC RECORDS.~~

30 ~~(II) THE STATUTORY DAMAGES IMPOSED UNDER PARAGRAPHS~~  
31 ~~(1) OR (2) OF THIS SUBSECTION MAY NOT EXCEED \$1,000 PER VIOLATION OF THIS~~  
32 ~~TITLE.~~

1 (e) (1) Whenever the court orders the production of a public record or a copy,  
2 printout, or photograph of a public record that was withheld from the applicant and, in  
3 addition, finds that the custodian acted arbitrarily or capriciously in withholding the public  
4 record or the copy, printout, or photograph of the public record, the court shall send a  
5 certified copy of its finding to the appointing authority of the custodian.

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

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

12 SECTION ~~2~~ 2. AND BE IT FURTHER ENACTED, That the terms of the initial  
13 members of the State Public Information Act Compliance Board shall expire as follows:

14 (1) one member on June 30, 2017;

15 (2) ~~one member~~ two members on June 30, 2018; and

16 (3) ~~one member~~ two members on June 30, 2019.

17 SECTION 3. AND BE IT FURTHER ENACTED, That the Office of the Attorney  
18 General, in consultation with the Maryland Association of Counties, the Maryland  
19 Municipal League, and stakeholders from the custodian, news media, and open government  
20 communities, shall submit an interim report on or before December 31, 2016, on its  
21 preliminary findings and a final report on or before December 31, 2017, to the Governor  
22 and, in accordance with § 2-1246 of the State Government Article, the General Assembly,  
23 on its findings and recommendations for improving the implementation of the Public  
24 Information Act, including:

25 (1) whether the neutrality and the statutory duties of the State Public  
26 Information Act Compliance Board are appropriate, including whether the Board should  
27 be authorized to impose statutory damages and whether the functions of the Board and the  
28 Public Access Ombudsman should be modified;

29 (2) the merits and feasibility of merging the State Open Meetings Law  
30 Compliance Board with the State Public Information Act Compliance Board;

31 (3) the use of fee waivers in general and for reasons of indigency, including  
32 how often waivers are requested, denied, or granted, to include the amount of the fees that  
33 have been waived as a result;

34 (4) an analysis of the denial process used by custodians;

1           (5) an analysis of requested public records that are held by a  
2 nongovernmental custodian and the appropriate remedies to ensure public access to those  
3 records; and

4           (6) an analysis of State law exemptions outside of the Public Information  
5 Act.

6           SECTION 4. AND BE IT FURTHER ENACTED, That ~~Section 1~~ of this Act shall take  
7 effect October 1, ~~2016~~ 2015.

8           ~~SECTION 5. AND BE IT FURTHER ENACTED, That, except as provided in Section~~  
9 ~~4 of this Act, this Act shall take effect October 1, 2015.~~

Approved:

\_\_\_\_\_  
Governor.

\_\_\_\_\_  
Speaker of the House of Delegates.

\_\_\_\_\_  
President of the Senate.