

SENATE BILL 758

P3

0lr3253
CF HB 401

By: **Senators Lam and Carter**

Introduced and read first time: February 3, 2020

Assigned to: Judicial Proceedings and Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Public Information Act – Remote Access, Fee Complaints, Fee Waivers, and**
3 **Inspection of Judicial Records**
4 **(Open Government, Better Government Act)**

5 FOR the purpose of establishing the intent of the General Assembly that each official
6 custodian adopt a certain policy to expand remote access to public records; requiring
7 the Public Information Act Compliance Board to receive, review, and resolve certain
8 complaints alleging that a custodian unreasonably failed to waive a fee under certain
9 circumstances; altering the minimum fee charged under which the Board has
10 authority to review a complaint; altering the circumstances under which the Board
11 is required to order a custodian to reduce a fee; altering the circumstances under
12 which an applicant or the applicant's designated representative may file a written
13 complaint with the Board seeking a written opinion and order from the Board;
14 establishing that a certain right for a custodian to provide a public record in
15 electronic format does not authorize a custodian of a judicial record to withhold the
16 names of certain judges or deny inspection of an administrative record under certain
17 circumstances; requiring, rather than authorizing, an official custodian to waive a
18 fee for an applicant who is indigent; requiring an official custodian to waive a fee or
19 a certain portion of a fee under certain circumstances; establishing that a certain
20 right to judicial review of the denial of a public record applies to certain records;
21 defining certain terms; and generally relating to the Public Information Act.

22 BY repealing and reenacting, with amendments,

23 Article – General Provisions

24 Section 4–101, 4–103, 4–1A–04(a), 4–1A–05, 4–205(c), 4–206(a) and (e), and 4–362(a)

25 Annotated Code of Maryland

26 (2019 Replacement Volume)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – General Provisions

4–101.

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

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

(c) “Board” means the State Public Information Act Compliance Board.

(d) “Custodian” means:

(1) the official custodian; or

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

(E) (1) “JUDICIAL RECORD” MEANS A RECORD OF THE JUDICIAL BRANCH THAT:

(I) PERTAINS TO THE ADMINISTRATION OF A COURT, A JUDICIAL AGENCY, OR THE JUDICIAL SYSTEM OF THE STATE;

(II) PERTAINS TO AN APPLICATION FOR A BUSINESS LICENSE ISSUED BY THE CLERK OF A COURT, INCLUDING THE APPLICATION FOR THE LICENSE AND A COPY OF THE LICENSE;

(III) IS ALL OR ANY PART OF A COURT PAPER, DOCUMENT, EXHIBIT, ORDER, NOTICE, DOCKET ENTRY, OR ANY OTHER RECORD, WHETHER IN PAPER, ELECTRONIC, OR ANY OTHER FORM, THAT IS MADE, ENTERED, FILED, OR MAINTAINED BY THE CLERK OF A COURT IN CONNECTION WITH AN ACTION OR PROCEEDING;

(IV) PERTAINS TO A MARRIAGE LICENSE ISSUED AND MAINTAINED BY THE COURT, INCLUDING, AFTER THE LICENSE IS ISSUED, THE APPLICATION FOR THE LICENSE;

(V) IS FILED WITH THE CLERK OF A COURT FOR THE PRINCIPAL PURPOSE OF GIVING PUBLIC NOTICE OF THE RECORD, INCLUDING:

1. DEEDS, MORTGAGES, AND OTHER DOCUMENTS FILED AMONG THE LAND RECORDS;

2. FINANCING STATEMENTS FILED IN ACCORDANCE

1 WITH TITLE 9 OF THE COMMERCIAL LAW ARTICLE; AND

2 3. TAX AND OTHER LIENS FILED AS REQUIRED BY LAW;

3 (V) IS A MISCELLANEOUS RECORD FILED WITH THE CLERK OF
4 THE COURT IN ACCORDANCE WITH LAW; OR

5 (VI) IS A RECORD OF THE FOLLOWING SPECIAL JUDICIAL UNITS:

6 1. THE STATE BOARD OF LAW EXAMINERS, THE
7 ACCOMMODATIONS REVIEW COMMITTEE, OR THE CHARACTER COMMITTEES;

8 2. THE ATTORNEY GRIEVANCE COMMISSION AND BAR
9 COUNSEL; OR

10 3. THE COMMISSION ON JUDICIAL DISABILITIES, THE
11 JUDICIAL INQUIRY BOARD, OR THE INVESTIGATIVE COUNSEL.

12 (2) "JUDICIAL RECORD" INCLUDES:

13 (I) A CIRCUIT OR LOCAL RULE ADOPTED BY A COURT
14 REGULATING:

15 1. COURT LIBRARIES;

16 2. MEMORIAL PROCEEDINGS;

17 3. AUDITORS;

18 4. COMPENSATION OF TRUSTEES IN JUDICIAL SALES;

19 AND

20 5. APPOINTMENT OF BAIL BOND COMMISSIONERS AND
21 LICENSING AND REGULATION OF BAIL BONDSMEN;

22 (II) AN ADMINISTRATIVE ORDER, POLICY, OR DIRECTIVE THAT
23 GOVERNS THE OPERATION OF A COURT OR JUDICIAL AGENCY;

24 (III) AN ANALYSIS OR A REPORT, EVEN IF DERIVED FROM
25 JUDICIAL RECORDS, THAT IS:

26 1. PREPARED BY OR FOR A COURT OR JUDICIAL AGENCY;

1 **2. USED BY THE COURT OR JUDICIAL AGENCY FOR**
2 **PURPOSES OF JUDICIAL ADMINISTRATION; AND**

3 **3. NOT FILED, AND NOT REQUIRED TO BE FILED, WITH**
4 **THE CLERK OF A COURT;**

5 **(IV) JUDICIAL EDUCATION MATERIALS PREPARED BY, FOR, OR**
6 **ON BEHALF OF A UNIT OF THE MARYLAND JUDICIARY FOR USE BY MARYLAND**
7 **JUDGES, MAGISTRATES, OR OTHER JUDICIAL PERSONNEL;**

8 **(V) A JURY PLAN ADOPTED BY A COURT;**

9 **(VI) A CASE MANAGEMENT PLAN ADOPTED BY A COURT;**

10 **(VII) A CONTINUITY OF OPERATIONS PLAN;**

11 **(VIII) AN ELECTRONIC FILING PLAN ADOPTED BY A COURT;**

12 **(IX) AN ADMINISTRATIVE ORDER ISSUED BY THE CHIEF JUDGE**
13 **OF THE COURT OF APPEALS TO PROHIBIT INSPECTION OF A RECORD;**

14 **(X) POLICIES, PROCEDURES, AND PLANS ADOPTED OR**
15 **APPROVED BY THE STATE COURT ADMINISTRATOR, THE COURT OF APPEALS, OR**
16 **THE CHIEF JUDGE OF THAT COURT IN ACCORDANCE WITH A MARYLAND RULE OR**
17 **A STATUTE; AND**

18 **(XI) JUDICIAL OR OTHER PROFESSIONAL WORK PRODUCT,**
19 **INCLUDING DRAFTS OF DOCUMENTS, NOTES, AND MEMORANDA PREPARED BY A**
20 **JUDGE OR OTHER JUDICIAL BRANCH PERSONNEL AT THE DIRECTION OF A JUDGE**
21 **OR OTHER JUDICIAL OFFICIAL AND INTENDED FOR USE IN THE PREPARATION OF A**
22 **DECISION, AN ORDER, A RECOMMENDATION, OR AN OPINION.**

23 **[(e)] (F) “News media” means:**

24 (1) newspapers;

25 (2) magazines;

26 (3) journals;

27 (4) press associations;

28 (5) news agencies;

(6) wire services;

(7) radio;

(8) television; and

(9) any printed, photographic, mechanical, or electronic means of disseminating news and information to the public.

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

[(g)] (H) “Person in interest” means:

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

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

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

[(h)] (I) (1) “Personal information” means information that identifies an individual.

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

(i) name;

(ii) address;

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

(iv) medical or disability information;

(v) photograph or computer-generated image;

(vi) Social Security number; and

(vii) telephone number.

(3) “Personal information” does not include an individual’s:

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

[(i)] (J) "Political subdivision" means:

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

[(j)] (K) (1) "Public record" means the original or any copy of any documentary material that:

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

(ii) is in any form, including:

- 1. a card;
- 2. a computerized record;
- 3. correspondence;
- 4. a drawing;
- 5. film or microfilm;
- 6. a form;
- 7. a map;
- 8. a photograph or photostat;
- 9. a recording; or

10. a tape.

(2) "Public record" includes:

(I) a document that lists the salary of an employee of a unit or an instrumentality of the State or of a political subdivision; AND

(II) A JUDICIAL RECORD.

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

4-103.

(a) All persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees.

(b) (1) To carry out the right set forth in subsection (a) of this section, unless an unwarranted invasion of the privacy of a person in interest would result, this title shall be construed in favor of allowing inspection of a public record, with the least cost and least delay to the person or governmental unit that requests the inspection.

(2) TO FACILITATE THE RIGHT SET FORTH IN SUBSECTION (A) OF THIS SECTION, IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT EACH OFFICIAL CUSTODIAN ADOPT A POLICY TO USE THE INTERNET AND OTHER TECHNOLOGICAL ADVANCEMENTS, TO THE EXTENT PRACTICABLE AND CONSISTENT WITH PUBLIC POLICY, TO EXPAND REMOTE ACCESS TO PUBLIC RECORDS AND INCREASE THE TRANSPARENCY OF GOVERNMENT.

(c) This title does not preclude a member of the General Assembly from acquiring the names and addresses of and statistical information about individuals who are licensed or, as required by a State law, registered.

4-1A-04.

(a) The Board shall:

(1) receive, review, and, subject to § 4-1A-07 of this subtitle, resolve complaints filed under § 4-1A-05 of this subtitle from any applicant or the applicant's designated representative alleging that a custodian charged an unreasonable fee under § 4-206 of this title OR UNREASONABLY FAILED TO WAIVE A FEE UNDER § 4-206(E) OF THIS TITLE;

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

(3) if the Board finds that the custodian charged an unreasonable fee under § 4–206 of this title **OR UNREASONABLY FAILED TO WAIVE A FEE UNDER § 4–206(E) OF THIS TITLE**, order the custodian to reduce the fee to an amount determined by the Board to be reasonable and refund the difference.

4–1A–05.

(a) Any 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] \$200**; and

(2) the complainant alleges in the complaint that:

(I) the fee is unreasonable; **OR**

(II) **THE CUSTODIAN UNREASONABLY FAILED TO WAIVE THE FEE 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.

4–205.

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

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

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

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

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

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

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

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

(i) using a software program or function; or

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

(4) This subsection may not be construed to:

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

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

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

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

(V) ALLOW A CUSTODIAN OF A JUDICIAL RECORD TO:

1. REDACT, ENCRYPT, OR OTHERWISE WITHHOLD THE NAMES OF JUDGES PRESIDING OVER UNSHIELDED AND UNSEALED ACTIONS FROM CASE RECORDS THAT HAVE BEEN POSTED FOR REMOTE ACCESS; OR

1 **2. DENY INSPECTION OF AN ADMINISTRATIVE RECORD**
2 **IF THE DENIAL WOULD FRUSTRATE OR CONSTRUCTIVELY LIMIT THE RIGHT OF**
3 **ACCESS BY THE PUBLIC TO INFORMATION ABOUT THE CONDUCT OF A JUDGE IN**
4 **OPEN PROCEEDINGS.**

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

8 4–206.

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

10 (2) “Indigent” means an individual’s family household income is less than
11 50% of the median family income for the State as reported in the Federal Register.

12 **(3) “PUBLIC INTEREST” MEANS THAT DISCLOSURE OF THE**
13 **REQUESTED INFORMATION:**

14 **(I) SHEDS LIGHT ON THE OPERATION OR ACTIVITIES OF THE**
15 **GOVERNMENT;**

16 **(II) IS LIKELY TO CONTRIBUTE SIGNIFICANTLY TO PUBLIC**
17 **UNDERSTANDING OF THOSE OPERATIONS OR ACTIVITIES OF THE GOVERNMENT;**
18 **AND**

19 **(III) IS NOT PRIMARILY IN THE COMMERCIAL INTEREST OF THE**
20 **APPLICANT.**

21 **[(3)] (4) “Reasonable fee” means a fee bearing a reasonable relationship**
22 **to the recovery of actual costs incurred by a governmental unit.**

23 **(5) “REPRESENTATIVE OF THE NEWS MEDIA” MEANS ANY PERSON**
24 **THAT:**

25 **(I) GATHERS INFORMATION OF POTENTIAL INTEREST TO A**
26 **SEGMENT OF THE PUBLIC;**

27 **(II) USES THE PERSON’S EDITORIAL SKILLS TO TURN THE RAW**
28 **MATERIALS INTO A DISTINCT WORK; AND**

29 **(III) DISTRIBUTES THAT WORK TO AN AUDIENCE.**

30 (e) **(1)** The official custodian may waive a fee under this section if:

1 [(1)] (I) the applicant asks for a waiver; and

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

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

6 **(2) THE OFFICIAL CUSTODIAN SHALL WAIVE A FEE UNDER THIS**
7 **SECTION IF:**

8 **(I) THE APPLICANT ASKS FOR A WAIVER; AND**

9 **(II) 1. THE APPLICANT IS INDIGENT AND FILES AN**
10 **AFFIDAVIT OF INDIGENCY; OR**

11 **2. A. THE APPLICANT IS AN INMATE WHO IS A PERSON**
12 **IN INTEREST OF THE PUBLIC RECORD;**

13 **B. THE PUBLIC RECORD RELATES TO THE INMATE'S**
14 **CONVICTION OR INCARCERATION; AND**

15 **C. THE APPLICANT HAS NOT PREVIOUSLY ASKED FOR A**
16 **FEE WAIVER FOR THE PUBLIC RECORD BEING REQUESTED.**

17 **(3) THE OFFICIAL CUSTODIAN SHALL WAIVE THE PART OF THE FEE**
18 **THAT IS NOT A STANDARD CHARGE FOR DOCUMENT DUPLICATION UNDER THIS**
19 **SECTION IF:**

20 **(I) THE APPLICANT ASKS FOR A WAIVER; AND**

21 **(II) THE APPLICANT IS A REPRESENTATIVE OF THE NEWS**
22 **MEDIA.**

23 4-362.

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

28 (2) Subject to paragraph (3) of this subsection, a complainant or custodian
29 may appeal to the circuit court a decision issued by the State Public Information Act
30 Compliance Board as provided under § 4-1A-10 of this title.

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

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

4 (ii) the public record is located.

5 **(4) THE RIGHT OF A PERSON OR GOVERNMENTAL UNIT TO SEEK**
6 **JUDICIAL REVIEW UNDER PARAGRAPH (1) OF THIS SUBSECTION APPLIES TO ANY**
7 **DENIAL OF THE INSPECTION OF A PUBLIC RECORD, WHETHER OR NOT THE**
8 **CUSTODIAN OF THE RECORD HAS APPLIED FOR A PRELIMINARY JUDICIAL**
9 **DETERMINATION AS TO WHETHER THE RECORD IS SUBJECT TO INSPECTION.**

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 2020.