

SENATE BILL 695

P3

(5lr1284)

ENROLLED BILL

— Education, Health, and Environmental Affairs/Health and Government Operations —

Introduced by **Senator Raskin**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

President.

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 and the Attorney General to broadcast
12 ~~certain interviews on the Governor's Office Web site; their Web sites;~~ requiring the
13 Governor, with the advice and consent of the Senate, and the Attorney General to
14 ~~appoint the members of the Board~~ make certain appointments from a certain pool of
15 applicants; providing for the composition, chair, terms, and meetings of the Board;

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.

Italics indicate opposite chamber/conference committee amendments.



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

1 ~~Board Ombudsman~~ certain applicability or harm if an applicant challenges a certain
 2 denial to disclose certain public records or the application of a certain exemption;
 3 authorizing a complainant or custodian to appeal a certain decision to a certain
 4 circuit court; establishing that ~~certain defendants are~~ a certain defendant is liable
 5 for certain statutory damages under certain circumstances; ~~repealing~~ altering
 6 certain burdens of proof that a complainant must show to recover certain damages
 7 in a certain court; defining certain terms; specifying the initial terms of the members
 8 of the Board; requiring the Attorney General, in consultation with certain persons,
 9 to report on certain matters to the Governor and the General Assembly on or before
 10 a certain date; making conforming changes; ~~providing for the effective dates of this~~
 11 ~~Act;~~ and generally relating to the Public Information Act.

12 ~~BY repealing and reenacting, with amendments,~~

13 ~~Article – Agriculture~~

14 ~~Section 8–801.1 and 8–1010~~

15 ~~Annotated Code of Maryland~~

16 ~~(2007 Replacement Volume and 2014 Supplement)~~

17 BY repealing and reenacting, with amendments,

18 Article – General Provisions

19 Section 4–101, ~~4–201,~~ 4–203, 4–206, ~~4–343; and 4–301;~~ 4–301, and 4–362; and the
 20 amended part designation “Part VI. Judicial Review” immediately preceding

21 Section 4–361

22 Annotated Code of Maryland

23 (2014 Volume)

24 BY adding to

25 Article – General Provisions

26 Section 4–1A–01 through 4–1A–10 to be under the new subtitle “Subtitle 1A. State
 27 Public Information Act Compliance Board” and Section 4–1B–01 through
 28 4–1B–04 to be under the new subtitle “Subtitle 1B. Public Access
 29 Ombudsman”

30 Annotated Code of Maryland

31 (2014 Volume)

32 BY repealing

33 Article – General Provisions

34 Section 4–361

35 Annotated Code of Maryland

36 (2014 Volume)

37 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

38 That the Laws of Maryland read as follows:

39 ~~Article – Agriculture~~

40 ~~§ 801.1.~~

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

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

6 ~~(i) Levels of bioavailable nitrogen and phosphorus in the soil;~~

7 ~~(ii) Levels of bioavailable nitrogen and phosphorus in all fertilizer~~
 8 ~~materials to be applied;~~

9 ~~(iii) The amount of nitrogen and phosphorus necessary to achieve the~~
 10 ~~expected crop yield for the land that is the subject of the nutrient management plan, as~~
 11 ~~determined by:~~

12 ~~1. The field's actual yield record and soil productivity for that~~
 13 ~~crop; or~~

14 ~~2. If information concerning actual yield record and soil~~
 15 ~~productivity for a crop is unavailable, relevant information concerning similar fields and~~
 16 ~~soil;~~

17 ~~(iv) Soil erodibility and nutrient retention capacity;~~

18 ~~(v) 1. The best reasonable scientific methods accepted by the~~
 19 ~~Department and the University of Maryland Cooperative Extension Service; or~~

20 ~~2. Scientifically validated data for the development of a~~
 21 ~~nutrient management plan as defined by the Department in regulation; and~~

22 ~~(vi) Existing best management practices.~~

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

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

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

1 4-101.

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

3 (b) "Applicant" means a person or governmental unit that asks to inspect a public
4 record.

5 (c) **"BOARD" MEANS THE STATE PUBLIC INFORMATION ACT COMPLIANCE**
6 **BOARD.**

7 [(c)] (D) "Custodian" means:

8 (1) the official custodian; or

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

11 **(E) "NEWS MEDIA" MEANS:**

12 **(1) NEWSPAPERS;**

13 **(2) MAGAZINES;**

14 **(3) JOURNALS;**

15 **(4) PRESS ASSOCIATIONS;**

16 **(5) NEWS AGENCIES;**

17 **(6) WIRE SERVICES;**

18 **(7) RADIO;**

19 **(8) TELEVISION; AND**

20 **(9) ANY PRINTED, PHOTOGRAPHIC, MECHANICAL, OR ELECTRONIC**
21 **MEANS OF DISSEMINATING NEWS AND INFORMATION TO THE PUBLIC.**

22 [(d)] ~~(E)~~ (F) "Official custodian" means an officer or employee of the State or of a
23 political subdivision who is responsible for keeping a public record, whether or not the
24 officer or employee has physical custody and control of the public record.

25 [(e)] ~~(F)~~ (G) "Person in interest" means:

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

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

5 (3) as to requests for correction of certificates of death under §
6 5-310(d)(2) of the Health – General Article, the spouse, adult child, parent, adult sibling,
7 grandparent, or guardian of the person of the deceased at the time of the deceased's death.

8 ~~[(f)]~~ ~~(G)~~ (H) (1) “Personal information” means information that identifies an
9 individual.

10 (2) Except as provided in § 4-355 of this title, “personal information”
11 includes an individual's:

12 (i) name;

13 (ii) address;

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

15 (iv) medical or disability information;

16 (v) photograph or computer-generated image;

17 (vi) Social Security number; and

18 (vii) telephone number.

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

20 (i) driver's status;

21 (ii) driving offenses;

22 (iii) five-digit zip code; or

23 (iv) information on vehicular accidents.

24 ~~[(g)]~~ ~~(H)~~ (I) “Political subdivision” means:

25 (1) a county;

26 (2) a municipal corporation;

27 (3) an unincorporated town;

1 (4) a school district; or

2 (5) a special district.

3 ~~[(h)]~~ (J) (1) “Public record” means the original or any copy of any
4 documentary material that:

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

8 (ii) is in any form, including:

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

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

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

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

25 **4-1A-01.**

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

1 4-1A-02.

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

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

5 ~~(3) AT LEAST ONE OF THE MEMBERS OF THE BOARD SHALL BE A~~

6 (2) (I) ONE MEMBER OF THE BOARD SHALL BE A REPRESENTATIVE;
7 REPRESENTATIVE;

8 ~~(I)~~ 1. FROM A NONGOVERNMENTAL NONPROFIT GROUP
9 THAT IS ORGANIZED IN THE STATE;

10 ~~(II)~~ 2. WHO WORKS ON ISSUES RELATED TO TRANSPARENCY
11 OR OPEN GOVERNMENT; AND

12 ~~(III)~~ 3. WHO IS NOMINATED BY REPRESENTATIVES OF THE
13 OPEN GOVERNMENT AND NEWS MEDIA COMMUNITIES.

14 ~~(4)~~ (II) ONE MEMBER OF THE BOARD WHO SHALL:

15 ~~(I)~~ 1. HAS HAVE KNOWLEDGE OF THE PROVISIONS OF THIS
16 TITLE;

17 ~~(II)~~ 2. HAS HAVE SERVED AS AN OFFICIAL CUSTODIAN IN
18 THE STATE AS DEFINED IN § 4-101(D) OF THIS TITLE; AND

19 ~~(III)~~ 3. IS BE NOMINATED BY THE MARYLAND ASSOCIATION
20 OF COUNTIES AND THE MARYLAND MUNICIPAL LEAGUE.

21 (III) 1. THREE MEMBERS OF THE BOARD SHALL BE PRIVATE
22 CITIZENS OF THE STATE.

23 2. A PRIVATE CITIZEN MEMBER OF THE BOARD MAY NOT
24 BE:

25 A. A CUSTODIAN OF A PUBLIC RECORD;

26 B. A MEMBER OF THE NEWS MEDIA; OR

1 C. A STAFF MEMBER OR SPOKESPERSON FOR AN
 2 ORGANIZATION THAT REPRESENTS THE INTERESTS OF CUSTODIANS OR APPLICANTS
 3 FOR PUBLIC RECORDS.

4 (3) AT LEAST ONE MEMBER OF THE BOARD SHALL BE AN ATTORNEY
 5 ADMITTED TO THE MARYLAND BAR.

6 ~~(4) (5) (4)~~ (I) THE GOVERNOR SHALL PUBLISH, ON THE
 7 ~~GOVERNOR'S OFFICE~~ WEB SITE OF THE OFFICE OF THE GOVERNOR, NOTICE OF THE
 8 GOVERNOR'S INTENT TO CONSIDER APPLICANTS FOR POSITIONS ON THE BOARD.

9 (II) THE NOTICE SHALL INCLUDE:

- 10 1. APPLICATION PROCEDURES;
- 11 2. CRITERIA FOR EVALUATING AN APPLICANT'S
 12 QUALIFICATIONS; AND
- 13 3. PROCEDURES FOR RESOLVING ANY CONFLICTS OF
 14 INTEREST.

15 (III) THE GOVERNOR SHALL SOLICIT RECOMMENDATIONS FOR
 16 POSITIONS ON THE BOARD FROM REPRESENTATIVES OF THE CUSTODIAN, NEWS
 17 MEDIA, AND NONPROFIT COMMUNITIES.

18 ~~(III)~~ (IV) 1. AN INDIVIDUAL MAY SUBMIT TO THE
 19 GOVERNOR AN APPLICATION FOR MEMBERSHIP ON THE BOARD AS PROVIDED
 20 UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH.

21 2. THE NAMES AND QUALIFICATIONS OF APPLICANTS
 22 SHALL BE POSTED ON THE ~~GOVERNOR'S OFFICE~~ WEB SITE OF THE OFFICE OF THE
 23 ~~GOVERNOR AND INTERVIEWS MAY BE BROADCAST ON THE WEB SITE.~~

24 ~~(IV)~~ (V) WHEN EVALUATING AN APPLICANT, THE GOVERNOR
 25 SHALL:

26 ~~(1)~~ 1. CONSIDER THE NEED FOR GEOGRAPHIC ~~AND,~~
 27 POLITICAL, RACIAL, ETHNIC, CULTURAL, AND GENDER DIVERSITY ON THE BOARD;
 28 AND

29 ~~(2)~~ 2. ENSURE THE NEUTRALITY OF THE BOARD.

30 ~~(5) (6) (5)~~ SUBJECT TO PARAGRAPHS (2) AND (3) OF THIS SUBSECTION
 31 AND WITH THE ADVICE AND CONSENT OF THE SENATE, THE GOVERNOR SHALL

1 APPOINT THE MEMBERS OF THE BOARD FROM THE POOL OF APPLICANTS UNDER
2 PARAGRAPH ~~(4)~~ ~~(5)~~ (4) OF THIS SUBSECTION.

3 (B) FROM AMONG THE MEMBERS OF THE BOARD, THE GOVERNOR SHALL
4 APPOINT A CHAIR.

5 (C) (1) THE TERM OF A MEMBER IS 3 YEARS.

6 (2) THE TERMS OF MEMBERS ARE STAGGERED AS REQUIRED BY THE
7 TERMS PROVIDED FOR MEMBERS OF THE BOARD ON OCTOBER 1, 2015.

8 (3) AT THE END OF A TERM, A MEMBER CONTINUES TO SERVE UNTIL
9 A SUCCESSOR IS APPOINTED.

10 (4) A MEMBER WHO IS APPOINTED AFTER A TERM HAS BEGUN SERVES
11 ONLY FOR THE REST OF THE TERM AND UNTIL A SUCCESSOR IS APPOINTED.

12 (5) A MEMBER MAY NOT SERVE FOR MORE THAN TWO CONSECUTIVE
13 3-YEAR TERMS.

14 4-1A-03.

15 (A) A MAJORITY OF THE FULL AUTHORIZED MEMBERSHIP OF THE BOARD IS
16 A QUORUM.

17 (B) THE BOARD SHALL DETERMINE THE TIMES AND PLACES OF ITS
18 MEETINGS.

19 (C) A MEMBER OF THE BOARD:

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

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

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

26 4-1A-04.

27 (A) THE BOARD SHALL:

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

6 (I) ~~DENIED INSPECTION OF A PUBLIC RECORD IN VIOLATION OF~~
 7 ~~THIS TITLE;~~

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

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

12 (2) ISSUE A WRITTEN OPINION AS TO WHETHER A VIOLATION HAS
 13 OCCURRED; AND

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

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

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

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

24 (B) THE BOARD SHALL:

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

26 (2) (1) STUDY ONGOING COMPLIANCE WITH THIS TITLE BY
 27 CUSTODIANS; AND

28 (3) (2) MAKE RECOMMENDATIONS TO THE GENERAL ASSEMBLY
 29 FOR IMPROVEMENTS TO THIS TITLE.

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

4 (2) THE REPORT SHALL:

5 (I) DESCRIBE THE ACTIVITIES OF THE BOARD;

6 (II) DESCRIBE THE OPINIONS OF THE BOARD;

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

10 (IV) RECOMMEND ANY IMPROVEMENTS TO THIS TITLE.

11 4-1A-05.

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

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

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

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

21 (2) ~~CHARGED AN UNREASONABLE FEE OF MORE THAN \$250 UNDER §~~
 22 ~~4-206 OF THIS TITLE; OR~~

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

25 (B) THE COMPLAINT SHALL:

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

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

1 (3) BE SIGNED BY THE COMPLAINANT;

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

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

6 4-1A-06.

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

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

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

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

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

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

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

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

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

26 ~~(III) IF THE COMPLAINT ALLEGES THAT THE CUSTODIAN~~
27 ~~IMPROPERLY DENIED A FEE WAIVER UNDER § 4-206(E) OF THIS TITLE, THE BASIS~~
28 ~~FOR THE DENIAL.~~

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

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

7 4-1A-07.

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

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

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

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

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

26 ~~(2)~~ (3) AN INFORMAL CONFERENCE SCHEDULED BY THE BOARD IS
27 NOT A CONTESTED CASE WITHIN THE MEANING OF § 10-202(D) OF THE STATE
28 GOVERNMENT ARTICLE.

29 ~~(3)~~ (4) THE BOARD SHALL ISSUE A WRITTEN OPINION WITHIN 30
30 DAYS AFTER THE INFORMAL CONFERENCE.

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

1 (I) STATE IN WRITING THE REASON FOR ITS INABILITY TO ISSUE
2 AN OPINION; AND

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

5 (2) AN OPINION OF THE BOARD MAY STATE THAT THE BOARD IS
6 UNABLE TO RESOLVE THE COMPLAINT.

7 (D) THE BOARD SHALL SEND A COPY OF THE WRITTEN OPINION TO THE
8 COMPLAINANT AND THE AFFECTED CUSTODIAN.

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

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

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

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

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

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

26 ~~(ii) IF THE BOARD DETERMINES THAT THE COMPLAINANT
27 SUBSTANTIALLY PREVAILED, THE BOARD SHALL ORDER THE REIMBURSEMENT OF
28 REASONABLE ATTORNEY'S FEES AND OTHER LITIGATION COSTS.~~

29 4-1A-08.

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

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

4 4-1A-09.

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

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

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

10 4-1A-10.

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

13 (B) (1) A COMPLAINANT OR CUSTODIAN MAY APPEAL THE DECISION
14 ISSUED BY THE BOARD UNDER THIS SUBTITLE IN ACCORDANCE WITH ~~§ 10-222 OF~~
15 ~~THE STATE GOVERNMENT ARTICLE~~ § 4-362 OF THIS TITLE.

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

20 SUBTITLE 1B. PUBLIC ACCESS OMBUDSMAN.

21 4-1B-01.

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

23 4-1B-02.

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

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

28 4-1B-03.

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

3 (B) THE OMBUDSMAN SHALL HAVE BEEN ADMITTED TO PRACTICE LAW IN
4 THE STATE.

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

8 (2) THE NOTICE SHALL INCLUDE:

9 (I) APPLICATION PROCEDURES;

10 (II) CRITERIA FOR EVALUATING AN APPLICANT'S
11 QUALIFICATIONS; AND

12 (III) PROCEDURES FOR RESOLVING ANY CONFLICTS OF
13 INTEREST.

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

17 (II) THE OFFICE OF THE ATTORNEY GENERAL SHALL POST ON
18 ITS WEB SITE THE NAMES AND QUALIFICATIONS OF APPLICANTS ~~AND MAY~~
19 ~~BROADCAST INTERVIEWS OF APPLICANTS ON ITS WEB SITE.~~

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

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

23 (3) AN OMBUDSMAN WHO IS APPOINTED AFTER A TERM BEGINS
24 SERVES FOR THE REMAINDER OF THE TERM UNTIL A SUCCESSOR IS APPOINTED AND
25 QUALIFIES.

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

27 (F) THE OMBUDSMAN IS ENTITLED TO AN ANNUAL SALARY AS PROVIDED
28 FOR IN THE STATE BUDGET.

29 4-1B-04.

1 (A) SUBJECT TO SUBSECTION (B) OF THIS SECTION, THE OMBUDSMAN
 2 SHALL MAKE REASONABLE ATTEMPTS TO RESOLVE DISPUTES BETWEEN
 3 APPLICANTS AND CUSTODIANS RELATING TO REQUESTS FOR PUBLIC RECORDS
 4 UNDER THIS TITLE, INCLUDING DISPUTES OVER:

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

6 (2) REDACTIONS OF INFORMATION IN THE PUBLIC RECORD;

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

9 (4) OVERLY BROAD REQUESTS FOR PUBLIC RECORDS;

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

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

14 (7) REPETITIVE OR REDUNDANT REQUESTS FROM AN APPLICANT.

15 (B) (1) WHEN RESOLVING DISPUTES UNDER THIS SECTION, THE
 16 OMBUDSMAN MAY NOT:

17 (I) COMPEL A CUSTODIAN TO DISCLOSE PUBLIC RECORDS OR
 18 REDACTED INFORMATION IN THE CUSTODIAN'S PHYSICAL CUSTODY TO THE
 19 OMBUDSMAN OR AN APPLICANT; OR

20 (II) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
 21 SUBSECTION, DISCLOSE INFORMATION RECEIVED FROM AN APPLICANT OR
 22 CUSTODIAN WITHOUT WRITTEN CONSENT FROM THE APPLICANT AND CUSTODIAN.

23 (2) THE OMBUDSMAN MAY DISCLOSE INFORMATION RECEIVED FROM
 24 AN APPLICANT OR CUSTODIAN TO THE ASSISTANT ATTORNEY GENERAL ASSIGNED
 25 TO THE OFFICE OF THE OMBUDSMAN.

26 ~~4-201.~~

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

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

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

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

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

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

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

4-203.

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

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

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

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

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

(III) THE REASON FOR THE DELAY.

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

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

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

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

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

16 ~~[(i)] 2. 1.~~ the reasons for the denial, ~~INCLUDING AND, AN IF~~
 17 INSPECTION IS DENIED UNDER § 4-343 OF THIS TITLE, A BRIEF EXPLANATION OF
 18 HOW THE STATE'S INTEREST IN PROTECTING THE PRIVACY OF A PERSON IN
 19 INTEREST OFFICIAL CUSTODIAN'S INTEREST IN DENYING DISCLOSURE OF THE
 20 RECORD OUTWEIGHS THE PUBLIC'S INTEREST IN DISCLOSURE ACCESS TO THE
 21 INFORMATION IN THE RECORD WHY THE DENIAL IS NECESSARY;

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

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

27 ~~[(iii)] 4.~~ notice of the remedies under this title for review of the
 28 denial; and

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

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

1 (d) ~~With the consent of the applicant, any~~ ANY time limit imposed under this
 2 section:

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

5 (2) IF THE APPLICANT SEEKS RESOLUTION OF A DISPUTE UNDER §
 6 4-1B-04 OF THIS TITLE, SHALL BE EXTENDED PENDING RESOLUTION OF THAT
 7 DISPUTE.

8 4-206.

9 (a) (1) In this section[, reasonable fee] THE FOLLOWING WORDS HAVE THE
 10 MEANINGS INDICATED.

11 ~~(2) (I) "COMMERCIAL PURPOSE" MEANS THE DIRECT OR INDIRECT~~
 12 ~~USE OF ANY PART OF A PUBLIC RECORD IN ANY FORM FOR SALE, RESALE,~~
 13 ~~SOLICITATION, RENT, OR LEASE OF A SERVICE, OR ANY USE BY WHICH THE~~
 14 ~~APPLICANT EXPECTS A PROFIT THROUGH COMMISSION, SALARY, OR FEE.~~

15 ~~(H) "COMMERCIAL PURPOSE" DOES NOT INCLUDE USE OF A~~
 16 ~~PUBLIC RECORD:~~

17 ~~1. FOR PUBLICATION OR A RELATED USE BY A~~
 18 ~~NEWSPAPER OR PERIODICAL;~~

19 ~~2. BY A RADIO OR TELEVISION STATION IN ITS NEWS OR~~
 20 ~~OTHER INFORMATIONAL PROGRAMS;~~

21 ~~3. TO PREPARE FOR LITIGATION OR ANY SETTLEMENT~~
 22 ~~BY THE PARTIES OR ATTORNEYS INVOLVED IN THE LITIGATION; OR~~

23 ~~4. BY A NONPROFIT ORGANIZATION ACTING IN THE~~
 24 ~~PUBLIC INTEREST.~~

25 ~~(3) (2)~~ "INDIGENT" MEANS AN INDIVIDUAL'S FAMILY HOUSEHOLD
 26 INCOME IS LESS THAN 50% OF THE MEDIAN FAMILY INCOME FOR THE STATE AS
 27 REPORTED IN THE FEDERAL REGISTER.

28 ~~(4) (3)~~ "REASONABLE FEE" means a fee bearing a reasonable
 29 relationship to the recovery of actual costs incurred by a governmental unit.

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

1 (I) the search for, preparation of, and reproduction of a public
2 record;

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

4 ~~2. REQUESTED FOR A NONCOMMERCIAL PURPOSE IF~~
5 ~~THE RECORD IS~~ PREPARED, ON REQUEST OF THE APPLICANT, IN A CUSTOMIZED
6 FORMAT; AND

7 (II) THE ACTUAL COSTS OF ~~REPRODUCING~~ THE SEARCH FOR,
8 PREPARATION OF, AND REPRODUCTION OF A PUBLIC RECORD IN STANDARD
9 FORMAT ~~REQUESTED FOR A NONCOMMERCIAL PURPOSE~~, INCLUDING MEDIA AND
10 MECHANICAL PROCESSING COSTS.

11 (2) THE STAFF AND ATTORNEY REVIEW COSTS INCLUDED IN THE
12 CALCULATION OF ACTUAL COSTS INCURRED UNDER THIS SECTION SHALL BE
13 PRORATED FOR EACH INDIVIDUAL'S SALARY AND ACTUAL TIME ATTRIBUTABLE TO
14 THE SEARCH FOR AND PREPARATION OF A PUBLIC RECORD UNDER THIS SECTION.

15 ~~(2) (i) THE OFFICIAL CUSTODIAN MAY REQUIRE A CERTIFIED~~
16 ~~STATEMENT FROM THE APPLICANT THAT INCLUDES THE COMMERCIAL PURPOSE~~
17 ~~FOR WHICH THE RECORD IS INTENDED.~~

18 ~~(ii) AN APPLICANT MAY NOT OBTAIN A COPY OF ANY PART OF A~~
19 ~~PUBLIC RECORD IF THE APPLICANT WILL USE OR KNOWINGLY ALLOW THE USE OF~~
20 ~~THE PUBLIC RECORD FOR A PURPOSE OTHER THAN THAT STATED IN THE~~
21 ~~APPLICATION OR CERTIFIED STATEMENT.~~

22 ~~(iii) THE BOARD SHALL DETERMINE THE APPROPRIATE~~
23 ~~PENALTY FOR A VIOLATION OF SUBPARAGRAPH (II) OF THIS PARAGRAPH.~~

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

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

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

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

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

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

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

8 **(2) (I) THE APPLICANT IS INDIGENT AND FILES AN AFFIDAVIT OF**
9 **INDIGENCY; OR**

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

13 ~~4-343.~~

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

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

21 **(1) ~~THE DENIAL RELATES TO THE STATE'S INTEREST IN PROTECTING~~**
22 **~~THE PRIVACY OF A PERSON IN INTEREST;~~**

23 **(2) ~~THE DISCLOSURE THREATENS TO CAUSE REASONABLY~~**
24 **~~FORESEEABLE, ARTICULABLE, AND SUBSTANTIAL HARM TO A PERSON IN INTEREST;~~**
25 **~~AND~~**

26 **(3) ~~THE HARM FROM THE DISCLOSURE IS GREATER THAN THE PUBLIC~~**
27 **~~INTEREST IN ACCESS TO THE INFORMATION.~~**

28 ~~4-301.~~

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

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

1 (2) the inspection would be contrary to:

2 (i) a State statute;

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

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

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

7 **(B) IF AN APPLICANT FILES A COMPLAINT WITH THE OMBUDSMAN**
8 **CHALLENGING A DENIAL OR THE APPLICATION OF AN EXEMPTION UNDER THIS**
9 **SUBTITLE, THE CUSTODIAN SHALL ~~PROVE~~ DEMONSTRATE THAT:**

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

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

15 Part VI. [Administrative and] Judicial Review.

16 [4-361.

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

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

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

25 4-362.

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

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

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

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

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

8 **(I) THE COMPLAINANT RESIDES OR HAS A PRINCIPAL PLACE OF**
 9 **BUSINESS; OR**

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

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

14 (2) The defendant:

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

16 1. deny inspection of a public record; or

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

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

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

23 (i) take precedence on the docket;

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

25 (iii) be expedited in every way.

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

28 (3) The court may:

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

- 3 1. withholding the public record; or
4 2. withholding a copy, printout, or photograph of the public
5 record;

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

8 (iii) for noncompliance with the order, punish the responsible
9 employee for contempt.

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

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

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

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

22 **(3) ~~(4)~~ STATUTORY DAMAGES IMPOSED BY THE COURT UNDER**
23 **~~PARAGRAPHS PARAGRAPH (1) OR (2) OF THIS SUBSECTION SHALL BE ASSESSED BY~~**
24 **~~THE COURT AT A RATE OF \$100 FOR EACH DAY THAT THE CUSTODIAN TOOK TO DENY~~**
25 **~~THE COMPLAINANT'S INITIAL REQUEST FOR PUBLIC RECORDS.~~**

26 **~~(H) THE STATUTORY DAMAGES IMPOSED UNDER PARAGRAPHS~~**
27 **~~(1) OR (2) OF THIS SUBSECTION MAY NOT EXCEED \$1,000 PER VIOLATION OF THIS~~**
28 **~~TITLE.~~**

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

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

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

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

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

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

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

12 SECTION 3. AND BE IT FURTHER ENACTED, That ~~on or before December 31,~~
 13 ~~2016,~~ the Office of the Attorney General, in consultation with the Maryland Association of
 14 Counties, the Maryland Municipal League, and stakeholders from the custodian, news
 15 media, and open government communities, shall ~~report~~ *submit an interim report on or*
 16 *before December 31, 2016, on its preliminary findings and a final report on or before*
 17 *December 31, 2017, to the Governor and, in accordance with § 2-1246 of the State*
 18 *Government Article, the General Assembly, on its findings and recommendations for*
 19 *improving the implementation of the Public Information Act, including:*

20 (1) *whether the neutrality and the statutory duties of the State Public*
 21 *Information Act Compliance Board are appropriate, including whether the Board should*
 22 *be authorized to impose statutory damages and whether the functions of the Board and the*
 23 *Public Access Ombudsman should be modified;*

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

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

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

30 ~~(4) (5) the scope of public records generated in connection with the transaction~~
 31 ~~of public business~~ *an analysis of requested public records that are held by a*
 32 *nongovernmental custodian and the appropriate remedies to ensure public access to those*
 33 *records; and*

1 ~~(5) (6) whether the application~~ *an analysis* of State law *exemptions* outside of
2 the Public Information Act to justify the denial of access to public records is appropriate
3 ~~given the purpose of the Public Information Act.~~

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

6 ~~SECTION 5. AND BE IT FURTHER ENACTED, That, except as provided in Section~~
7 ~~4 of this Act, this Act shall take effect October 1, 2015.~~

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.