

Chapter 584

(House Bill 53)

AN ACT concerning

Public Records – Provision of Copies, Printouts, and Photographs – Required

FOR the purpose of requiring a custodian of a public record to provide a copy, printout, or photograph of a public record to an applicant under certain circumstances; authorizing a person or governmental unit that is not provided with a copy, printout, or photograph of a public record to file a complaint with a certain circuit court; providing that the defendant has the burden of sustaining a certain decision; authorizing the court to take certain action regarding the failure to provide a copy, printout, or photograph of a public record; providing that a defendant governmental unit is liable for certain damages under certain circumstances; requiring the court to send a certain copy of its finding regarding the failure to provide a copy, printout, or photograph of a public record to the appointing authority of the custodian of the public record; and generally relating to the provision of copies, printouts, and photographs of public records by custodians.

~~BY repealing and reenacting, with amendments,
Article – State Government
Section 10-620 and 10-623
Annotated Code of Maryland
(2009 Replacement Volume and 2013 Supplement)~~

BY repealing and reenacting, with amendments,
Article – General Provisions
Section 4-205 and 4-362
Annotated Code of Maryland
(As enacted by Chapter 94 (H.B. 270) of the Acts of the General Assembly of
2014)

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

~~Article – State Government~~

~~10-620.~~

~~(a) (1) Except as otherwise provided in this subsection, IF an applicant who is authorized to inspect a public record [may have] REQUESTS A COPY,~~

~~PRINTOUT, OR PHOTOGRAPH OF THE PUBLIC RECORD, THE CUSTODIAN SHALL PROVIDE THE APPLICANT WITH:~~

- ~~(i) a copy, printout, or photograph of the public record; or~~
- ~~(ii) if the custodian does not have facilities to reproduce the public record, access to the public record to make the copy, printout, or photograph.~~

~~(2) (i) Except as provided in subparagraph (ii) of this paragraph, 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:~~

~~1. the public record is in a searchable and analyzable electronic format;~~

~~2. the applicant requests a copy of the public record in a searchable and analyzable electronic format; and~~

~~3. 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:~~

~~A. confidential or protected information for which the custodian is required to deny inspection in accordance with §§ 10-615 through 10-617 of this subtitle; or~~

~~B. information for which a custodian has chosen to deny inspection in accordance with § 10-618 of this subtitle.~~

~~(ii) The 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 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.~~

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

~~1. using a software program or function; or~~

~~2. converting the electronic document into a different searchable and analyzable format.~~

~~(iv) This paragraph may not be construed to:~~

~~1. require the custodian to reconstruct a public record in an electronic format if the custodian no longer has the public record available in electronic format;~~

~~2. allow a custodian to make a public record available only in an electronic format;~~

~~3. require a custodian to create, compile, or program a new public record; or~~

~~4. 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 it is maintained.~~

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

~~(3) An applicant may not have a copy of a judgment until:~~

~~(i) the time for appeal expires; or~~

~~(ii) if an appeal is noted, the appeal is dismissed or adjudicated.~~

~~(b) (1) The copy, printout, or photograph shall be made:~~

~~(i) while the public record is in the custody of the custodian;~~

and

~~(ii) whenever practicable, where the public record is kept.~~

~~(2) The official custodian may set a reasonable time schedule to make copies, printouts, or photographs.~~

~~10-623.~~

~~(a) Whenever a person or governmental unit is denied inspection of a public record OR IS NOT PROVIDED WITH A COPY, PRINTOUT, OR PHOTOGRAPH OF A PUBLIC RECORD AS REQUESTED, the person or governmental unit may file a complaint with the circuit court for the county where:~~

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

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

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

~~(2) The defendant:~~

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

~~1. deny inspection of a public record; OR~~

~~2. DENY THE PERSON OR GOVERNMENTAL UNIT A COPY, PRINTOUT, OR PHOTOGRAPH OF A PUBLIC RECORD; and~~

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

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

~~(i) take precedence on the docket;~~

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

~~(iii) be expedited in every way.~~

~~(2) The court may examine the public record in camera to determine whether any part of it may be withheld under this Part III of this subtitle.~~

~~(3) The court may:~~

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

~~1. withholding the public record; OR~~

~~2. WITHHOLDING A COPY, PRINTOUT, OR PHOTOGRAPH OF THE PUBLIC RECORD;~~

~~(ii) pass an order for the production of the public record OR A COPY, PRINTOUT, OR PHOTOGRAPH OF THE PUBLIC RECORD that was withheld from the complainant; and~~

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

~~(d) (1) A defendant governmental unit is liable to the complainant for actual damages that the court considers appropriate if the court finds by clear and convincing evidence that any defendant knowingly and willfully failed to:~~

~~(I) disclose or fully to disclose a public record that the complainant was entitled to inspect under this Part III of this subtitle; OR~~

~~(II) PROVIDE A COPY, PRINTOUT, OR PHOTOGRAPH OF A PUBLIC RECORD THAT THE COMPLAINANT REQUESTED UNDER § 10-620 OF THIS SUBTITLE.~~

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

~~(e) (1) Whenever the court orders the production of a public record OR A COPY, PRINTOUT, OR PHOTOGRAPH OF A PUBLIC RECORD that was withheld from the applicant and, in addition, finds that the custodian acted arbitrarily or capriciously in withholding the public record OR THE COPY, PRINTOUT, OR PHOTOGRAPH OF THE PUBLIC RECORD, the court shall send a certified copy of its finding to the appointing authority of the custodian.~~

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

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

Article – General Provisions

4-205.

(a) (1) In this section, “metadata” means information, generally not visible when an electronic document is printed, describing the history, tracking, or management of the electronic document, including information about data in the electronic document that describes how, when, and by whom the data is collected, created, accessed, or modified and how the data is formatted.

(2) “Metadata” does not include:

(i) a spreadsheet formula;

(ii) a database field;

(iii) an externally or internally linked file; or

(iv) a reference to an external file or a hyperlink.

(b) Except as otherwise provided in this section, IF an applicant who is authorized to inspect a public record [may have] REQUESTS A COPY, PRINTOUT, OR PHOTOGRAPH OF THE PUBLIC RECORD, THE CUSTODIAN SHALL PROVIDE THE APPLICANT WITH:

(1) a copy, printout, or photograph of the public record; or

(2) if the custodian does not have facilities to reproduce the public record, access to the public record to make the copy, printout, or photograph.

(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.

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

(d) (1) The copy, printout, or photograph shall be made:

(i) while the public record is in the custody of the custodian;
and

(ii) whenever practicable, where the public record is kept.

(2) The official custodian may set a reasonable time schedule to make copies, printouts, or photographs.

(e) An applicant may not have a copy of a judgment until:

(1) the time for appeal expires; or

(2) if an appeal is noted, the appeal is dismissed or adjudicated.

4-362.

(a) Whenever a person or governmental unit is denied inspection of a public record OR IS NOT PROVIDED WITH A COPY, PRINTOUT, OR PHOTOGRAPH OF A PUBLIC RECORD AS REQUESTED, the person or governmental unit may file a complaint with the circuit court for the county where:

- (1) the complainant resides or has a principal place of business; or
- (2) the public record is located.

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

(2) The defendant:

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

1. deny inspection of a public record; OR

2. DENY THE PERSON OR GOVERNMENTAL UNIT A COPY, PRINTOUT, OR PHOTOGRAPH OF A PUBLIC RECORD; and

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

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

(i) take precedence on the docket;

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

(iii) be expedited in every way.

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

(3) The court may:

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

1. withholding the public record; OR

2. WITHHOLDING A COPY, PRINTOUT, OR PHOTOGRAPH OF THE PUBLIC RECORD;

(ii) issue an order for the production of the public record OR A COPY, PRINTOUT, OR PHOTOGRAPH OF THE PUBLIC RECORD that was withheld from the complainant; and

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

(d) (1) A defendant governmental unit is liable to the complainant for actual damages that the court considers appropriate if the court finds by clear and convincing evidence that any defendant knowingly and willfully failed to:

(I) disclose or fully to disclose a public record that the complainant was entitled to inspect under this title; OR

(II) PROVIDE A COPY, PRINTOUT, OR PHOTOGRAPH OF A PUBLIC RECORD THAT THE COMPLAINANT REQUESTED UNDER § 4-205 OF THIS TITLE.

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

(e) (1) Whenever the court orders the production of a public record OR A COPY, PRINTOUT, OR PHOTOGRAPH OF A PUBLIC RECORD that was withheld from the applicant and, in addition, finds that the custodian acted arbitrarily or capriciously in withholding the public record OR THE COPY, PRINTOUT, OR PHOTOGRAPH OF THE PUBLIC RECORD, the court shall send a certified copy of its finding to the appointing authority of the custodian.

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

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

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2014.

Approved by the Governor, May 15, 2014.