

Department of Legislative Services  
Maryland General Assembly  
2014 Session

**FISCAL AND POLICY NOTE**

House Bill 53

(Delegates Vitale and Carr)

Health and Government Operations

Education, Health, and Environmental Affairs

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**Public Records - Provision of Copies, Printouts, and Photographs - Required**

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This bill requires a custodian of a public record to provide a copy, printout, or photograph of a public record to an authorized applicant, if requested, under specified circumstances. A person or governmental unit that is not provided with a copy, printout, or photograph of a public record may file a complaint in circuit court. The defendant has the burden of sustaining a decision to deny the person or governmental unit a copy, printout, or photograph of a public record. The court may (1) enjoin the State; a political subdivision; or a unit, official, or employee of the State or of a political subdivision from withholding a copy, printout, or photograph of a public record; and (2) pass an order for a copy, printout, or photograph of the public record that was withheld. The defendant governmental unit is liable for actual damages if the court finds by clear and convincing evidence that any defendant knowingly and willfully failed to provide a copy, printout, or photograph of a record that was requested. The court is required to send a certified copy of its findings 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.

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**Fiscal Summary**

**State Effect:** Any costs incurred by State entities to provide a copy of a public record will be offset by applicant fees.

**Local Effect:** Potential expenditure increase to accommodate for civil actions brought in circuit court. The actual impact depends on the increase of complaints filed. Any costs incurred by local governments to provide a copy of a public record will be offset by applicant fees.

**Small Business Effect:** Minimal.

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## Analysis

**Current Law:** The Maryland Public Information Act grants the public a broad right of access to records that are in the possession of State and local government agencies. The Act's basic mandate is to enable people to have access to government records without unnecessary cost or delay. Custodians have a responsibility to provide such access unless the requested records fall within one of the exceptions in the statute.

An applicant who is authorized to inspect a public record may have a copy, printout, or photograph of the public record; or, if the custodian does not have facilities to reproduce the public record, access to the public record to make the copy, printout, or photograph. The copy, printout, or photograph must be made while the public record is in the custody of the custodian; and whenever practicable, where the public record is kept. The official custodian may set a reasonable time schedule to make copies, printouts, or photographs.

A custodian of a public record is required to provide a copy of a public record in a searchable and analyzable electronic format under specified circumstances. However, a custodian of a public record is not required to (1) reconstruct a public record in an electronic format if the custodian no longer has the public record available in an electronic format; (2) create, compile, or program a new public record; or (3) 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. A custodian of a public record is authorized to remove metadata from an electronic document before providing it to an applicant, and a custodian may charge an applicant a reasonable fee for making or supervising the making of an electronic copy. The official custodian of a public record must comply with this requirement even if the public record is in the physical custody or control of another person.

**Background:** The purpose of this bill is to (1) ensure the applicability of judicial review when a governmental unit denies a request for a copy and (2) place the burden on the governmental unit to show why it refused to provide a copy of the record.

Generally, a custodian of a public record must permit inspection of the record at a reasonable time. A custodian has to deny inspection of a public record or any part of a public record if (1) the public record is privileged or confidential by law or (2) the inspection would be contrary to a State statute, a federal statute or regulation, the Maryland Rules, or an order of a court of record. Denial of inspection is also mandatory for public records relating to adoption, welfare records, letters of reference, specified information about an individual maintained by a library, retirement records, certain police records, criminal charging documents, arrest warrants, personnel records, certain hospital and school records, records of certain State agencies, and certain recorded and surveillance images. Denial of inspection is required for information in a public record

relating to certain medical, psychological, sociological, and financial information; trade secrets; certain personal information about public employees; information about the security of an information system; and licensing records.

Unless otherwise specified, if a custodian believes that inspection of a part of a public record by an applicant would be contrary to the public interest, the custodian may deny inspection to the applicant of that part of the record. Other permissible denials include information relating to documents that would not be available through discovery in a lawsuit, certain information about publicly administered tests, research projects conducted by an institution of the State or a political subdivision, real estate appraisals of property to be acquired by the State prior to its acquisition, certain information on inventions owned by State public higher educational institutions, and trade secrets or confidential information owned by the Maryland Technology Development Corporation.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland Department of Agriculture; Department of Business and Economic Development; Department of Budget and Management; Department of Human Resources; Maryland Department of Planning; Maryland State Department of Education; Maryland Department of the Environment; Maryland Higher Education Commission; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of State Police; Department of Public Safety and Correctional Services; Maryland Department of Transportation; Department of Legislative Services

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