

SENATE BILL 449

P3

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CF HB 183

By: **Senator Kagan**

Introduced and read first time: January 20, 2021

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 7, 2021

CHAPTER _____

1 AN ACT concerning

2 **Public Information Act – Revisions**
3 **(Equitable Access to Records Act)**

4 FOR the purpose of requiring each official custodian to adopt a certain policy of proactive
5 disclosure; providing that the policy may vary in a certain manner and include the
6 publication of certain records, to the extent practicable, or certain information;
7 ~~requiring each official custodian to publish a certain annual report on a certain~~
8 ~~website, to the extent practicable or, under certain circumstances, store the report~~
9 ~~in a certain manner; requiring the report of an official custodian to include certain~~
10 ~~information;~~ requiring a certain member of the Public Information Act Compliance
11 Board to have served as a custodian, rather than an official custodian, in the State;
12 requiring that two members of the Board, rather than one member, be attorneys;
13 requiring that one member of the Board be knowledgeable about electronic records;
14 requiring the Office of the Attorney General to provide at least a certain number of
15 staff members to assist the Board and requiring the Office of the Public Access
16 Ombudsman to carry out certain duties; requiring the Board to receive, review, and
17 resolve certain complaints from applicants and applicants' designated
18 representatives and certain complaints from a custodian; altering the minimum fee
19 charged under which the Board is required to take certain actions with regard to a
20 complaint; requiring the Board to order a custodian to take certain actions under
21 certain circumstances; requiring the Board to issue an order authorizing a custodian
22 to take certain actions under certain circumstances; requiring the Board to adopt
23 certain regulations; altering the circumstances under which an applicant or an
24 applicant's designated representative is authorized to file a certain written

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; authorizing a custodian to file a certain complaint under certain
 2 circumstances; altering the time period within which a certain complaint must be
 3 filed; altering the time period within which a certain response must be filed;
 4 requiring a custodian to provide certain information to the Board on request;
 5 providing that a custodian may not be required to produce a certain record for Board
 6 review under certain circumstances; authorizing the Board to request certain
 7 information from the custodian; requiring a custodian or an applicant, on request of
 8 the Board, to provide a certain affidavit or statement; requiring the Board to
 9 maintain the confidentiality of certain records and information; prohibiting a
 10 custodian from being civilly or criminally liable for taking certain actions; providing
 11 for the construction of certain actions taken under this Act; altering certain time
 12 periods within which the Board must issue certain decisions under certain
 13 circumstances; prohibiting a person from appealing a certain decision under certain
 14 provisions of law; repealing the limitation on the time period for which a certain
 15 appeal stays a certain decision; altering the list of disputes that the Ombudsman is
 16 required to make reasonable attempts to resolve; requiring the Ombudsman to issue
 17 a certain final determination within a certain period of time except under certain
 18 circumstances; requiring the Ombudsman to inform the applicant and the custodian
 19 of the availability of certain review by the Board under certain circumstances;
 20 authorizing the Ombudsman to disclose certain information to certain persons;
 21 prohibiting a certain individual from disclosing certain information under certain
 22 circumstances; authorizing the Ombudsman to transfer certain information to the
 23 Board under certain circumstances; ~~requiring the Ombudsman to submit a certain~~
 24 ~~annual report to the Governor and the General Assembly; requiring the~~
 25 ~~Ombudsman's report to include certain information;~~ prohibiting a custodian from
 26 failing to respond to an application for the inspection of a public record within certain
 27 time limits except under certain circumstances; altering the circumstances under
 28 which certain time limits are required to be extended pending the resolution of a
 29 dispute; altering a certain definition; altering certain terminology; providing for the
 30 application of this Act; making stylistic and conforming changes; requiring the Office
 31 of the Attorney General to allocate certain staff members on or before a certain date;
 32 providing for a delayed effective date; and generally relating to the Public
 33 Information Act.

34 BY repealing and reenacting, without amendments,
 35 Article – General Provisions
 36 Section 4–101(a) and (c), 4–1B–01, and 4–203(a)
 37 Annotated Code of Maryland
 38 (2019 Replacement Volume and 2020 Supplement)

39 BY repealing and reenacting, with amendments,
 40 Article – General Provisions
 41 Section 4–101(j), 4–1A–02(a), 4–1A–03(d), 4–1A–04 through 4–1A–08, 4–1A–10,
 42 4–1B–02(b), 4–1B–04, 4–203(d), and 4–362(a)
 43 Annotated Code of Maryland
 44 (2019 Replacement Volume and 2020 Supplement)

1 BY adding to
2 Article – General Provisions
3 Section ~~4–104 and 4–105~~
4 Annotated Code of Maryland
5 (2019 Replacement Volume and 2020 Supplement)

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

8 **Article – General Provisions**

9 4–101.

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

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

12 (j) (1) “Public record” means the original or any copy of any documentary
13 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;
- 26 9. a recording; or
- 27 10. a tape.

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

3 (3) "Public record" does not include:

4 (I) a digital photographic image or signature of an individual, or the
5 actual stored data of the image or signature, recorded by the Motor Vehicle Administration;
6 OR

7 (II) A RECORD OR ANY INFORMATION SUBMITTED TO THE
8 PUBLIC ACCESS OMBUDSMAN OR THE BOARD UNDER SUBTITLE 1A OF THIS TITLE.

9 4-104.

10 (A) EACH OFFICIAL CUSTODIAN SHALL ADOPT A POLICY OF PROACTIVE
11 DISCLOSURE OF PUBLIC RECORDS THAT ARE AVAILABLE FOR INSPECTION UNDER
12 THIS TITLE.

13 (B) THE POLICY ADOPTED UNDER SUBSECTION (A) OF THIS SECTION MAY:

14 (1) VARY AS APPROPRIATE TO THE TYPE OF PUBLIC RECORD AND TO
15 REFLECT THE STAFF AND BUDGETARY RESOURCES OF THE GOVERNMENTAL UNIT;
16 AND

17 (2) INCLUDE PUBLICATION OF PUBLIC RECORDS ON THE WEBSITE OF
18 THE GOVERNMENTAL UNIT, TO THE EXTENT PRACTICABLE, OR PUBLICATION OF
19 PRIOR RESPONSES TO REQUESTS FOR INSPECTION MADE UNDER THIS TITLE.

20 ~~4-105.~~

21 ~~(A) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, ON OR~~
22 ~~BEFORE JULY 1 EACH YEAR, EACH OFFICIAL CUSTODIAN SHALL PUBLISH ON THE~~
23 ~~WEBSITE OF THE GOVERNMENTAL UNIT, TO THE EXTENT PRACTICABLE, A REPORT~~
24 ~~ON THE REQUESTS RECEIVED DURING THE IMMEDIATELY PRECEDING CALENDAR~~
25 ~~YEAR UNDER THIS TITLE FOR INSPECTION OF PUBLIC RECORDS OF THE~~
26 ~~GOVERNMENTAL UNIT.~~

27 ~~(2) IF THE GOVERNMENTAL UNIT DOES NOT HAVE A WEBSITE, THE~~
28 ~~CUSTODIAN SHALL STORE THE REPORT IN A PLACE THAT IS EASILY ACCESSIBLE TO~~
29 ~~THE PUBLIC.~~

30 ~~(B) THE REPORT SHALL INCLUDE:~~

1 ~~(1) THE NUMBER OF REQUESTS RECEIVED UNDER THIS TITLE,~~
2 ~~INCLUDING:~~

3 ~~(I) THE NUMBER OF REQUESTS GRANTED OR DENIED WITHIN~~
4 ~~10 BUSINESS DAYS;~~

5 ~~(II) THE NUMBER OF REQUESTS GRANTED OR DENIED WITHIN~~
6 ~~30 DAYS; AND~~

7 ~~(III) THE NUMBER OF REQUESTS GRANTED OR DENIED IN MORE~~
8 ~~THAN 30 DAYS AND THE REASONS FOR THE DELAYS, INCLUDING THE NUMBER OF~~
9 ~~EXTENSIONS REQUESTED AND THE NUMBER OF REQUESTS THAT WERE THE~~
10 ~~SUBJECT OF DISPUTE RESOLUTION UNDER § 4-1B-04 OF THIS TITLE;~~

11 ~~(2) THE OUTCOMES OF THE REQUESTS, INCLUDING:~~

12 ~~(I) THE TOTAL NUMBER OF REQUESTS GRANTED IN FULL;~~

13 ~~(II) THE TOTAL NUMBER OF REQUESTS GRANTED IN PART;~~

14 ~~(III) THE TOTAL NUMBER OF REQUESTS DENIED IN FULL; AND~~

15 ~~(IV) THE TOTAL NUMBER OF REQUESTS FOR WHICH REDACTED~~
16 ~~PUBLIC RECORDS WERE PROVIDED;~~

17 ~~(3) THE AMOUNT OF FEES CHARGED UNDER § 4-206 OF THIS TITLE;~~

18 ~~(4) THE NUMBER OF FEE WAIVERS GRANTED UNDER § 4-206(E) OF~~
19 ~~THIS TITLE; AND~~

20 ~~(5) A DESCRIPTION OF EFFORTS BY THE GOVERNMENTAL UNIT TO~~
21 ~~PROACTIVELY DISCLOSE INFORMATION IN ACCORDANCE WITH THE POLICY~~
22 ~~ADOPTED UNDER § 4-104 OF THIS SUBTITLE.~~

23 4-1A-02.

24 (a) (1) The Board consists of five members.

25 (2) (i) One member of the Board shall be a representative:

26 1. from a nongovernmental nonprofit group that is organized
27 in the State;

28 2. who works on issues related to transparency or open
29 government; and

1 3. who is nominated by representatives of the open
2 government and news media communities.

3 (ii) One member of the Board shall:

4 1. have knowledge of the provisions of this title;

5 2. have served as [an official] A custodian in the State as
6 defined in § 4–101(d) of this title; and

7 3. be nominated by the Maryland Association of Counties
8 and the Maryland Municipal League.

9 (iii) 1. Three members of the Board shall be private citizens of
10 the State.

11 2. A private citizen member of the Board may not be:

12 A. a custodian of a public record;

13 B. a member of the news media; or

14 C. a staff member or spokesperson for an organization that
15 represents the interests of custodians or applicants for public records.

16 (3) At least [one member] **TWO MEMBERS** of the Board shall be [an
17 attorney] **ATTORNEYS** admitted to the Maryland Bar.

18 **(4) AT LEAST ONE MEMBER OF THE BOARD SHALL BE**
19 **KNOWLEDGEABLE ABOUT ELECTRONIC RECORDS, INCLUDING ELECTRONIC**
20 **STORAGE, RETRIEVAL, REVIEW, AND REPRODUCTION TECHNOLOGIES.**

21 [(4)] **(5)** (i) The Governor shall publish, on the website of the Office of
22 the Governor, notice of the Governor’s intent to consider applicants for positions on the
23 Board.

24 (ii) The notice shall include:

25 1. application procedures;

26 2. criteria for evaluating an applicant’s qualifications; and

27 3. procedures for resolving any conflicts of interest.

1 (iii) The Governor shall solicit recommendations for positions on the
2 Board from representatives of the custodian, news media, and nonprofit communities.

3 (iv) 1. An individual may submit to the Governor an application
4 for membership on the Board as provided under subparagraph (ii) of this paragraph.

5 2. The names and qualifications of applicants shall be posted
6 on the website of the Office of the Governor.

7 (v) When evaluating an applicant, the Governor shall:

8 1. consider the need for geographic, political, racial, ethnic,
9 cultural, and gender diversity on the Board; and

10 2. ensure the neutrality of the Board.

11 ~~[(5)]~~ **(6)** Subject to paragraphs (2) [and (3)] **THROUGH (4)** of this
12 subsection and with the advice and consent of the Senate, the Governor shall appoint the
13 members of the Board from the pool of applicants under paragraph ~~[(4)]~~ **(5)** of this
14 subsection.

15 4-1A-03.

16 (d) **(1)** [The] **SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE**
17 Office of the Attorney General shall provide staff and office space for the Board.

18 **(2) THE OFFICE OF THE ATTORNEY GENERAL SHALL PROVIDE AT**
19 **LEAST ~~FOUR~~ TWO STAFF MEMBERS TO ASSIST THE BOARD AND THE OFFICE OF THE**
20 **PUBLIC ACCESS OMBUDSMAN TO CARRY OUT THE DUTIES OF THE BOARD UNDER**
21 **THIS SUBTITLE AND THE OFFICE UNDER SUBTITLE 1B OF THIS TITLE.**

22 4-1A-04.

23 (a) The Board shall:

24 (1) receive, review, and, subject to § 4-1A-07 of this subtitle, resolve
25 complaints filed under § 4-1A-05 of this subtitle from any applicant or the applicant's
26 designated representative alleging that a custodian:

27 **(I) DENIED INSPECTION OF A PUBLIC RECORD IN VIOLATION OF**
28 **THIS TITLE;**

29 **(II) charged an unreasonable fee under § 4-206 of this title OF MORE**
30 **THAN ~~\$200~~, \$350; OR**

1 (III) ~~UNREASONABLY FAILED TO WAIVE A FEE UNDER § 4-206(E)~~
 2 ~~OF THIS TITLE; OR~~

3 ~~(IV)~~ FAILED TO RESPOND TO A REQUEST FOR A PUBLIC RECORD
 4 WITHIN THE TIME LIMITS ESTABLISHED UNDER § 4-203(A) OR (D) OF THIS TITLE;

5 (2) issue a written [opinion] DECISION as to whether a violation has
 6 occurred; and

7 (3) ORDER THE CUSTODIAN TO:

8 (I) IF THE BOARD FINDS THAT THE CUSTODIAN HAS DENIED
 9 INSPECTION OF A PUBLIC RECORD IN VIOLATION OF THIS TITLE, PRODUCE THE
 10 PUBLIC RECORD FOR INSPECTION;

11 (II) if the Board finds that the custodian charged an unreasonable
 12 fee under § 4-206 of this title, [order the custodian to] reduce the fee to an amount
 13 determined by the Board to be reasonable and refund the difference; OR

14 ~~(III) IF THE BOARD FINDS THAT THE CUSTODIAN~~
 15 ~~UNREASONABLY FAILED TO WAIVE A FEE UNDER § 4-206(E) OF THIS TITLE, WAIVE~~
 16 ~~ALL OR PART OF THE FEE OR RECONSIDER THE FEE WAIVER REQUEST; OR~~

17 ~~(IV)~~ IF THE BOARD FINDS THAT THE CUSTODIAN FAILED TO
 18 RESPOND TO A REQUEST FOR A PUBLIC RECORD WITHIN THE TIME LIMITS
 19 ESTABLISHED UNDER § 4-203(A) OR (D) OF THIS TITLE:

20 1. PROMPTLY RESPOND; AND

21 2. AT THE BOARD'S DISCRETION AND ONLY IF THE
 22 WRITTEN DECISION INCLUDES THE BOARD'S REASONS FOR ORDERING THE WAIVER,
 23 WAIVE ALL OR PART OF THE FEE THE CUSTODIAN IS OTHERWISE ENTITLED TO
 24 CHARGE UNDER § 4-206 OF THIS TITLE.

25 (B) THE BOARD SHALL:

26 (1) RECEIVE, REVIEW, AND, SUBJECT TO § 4-1A-07 OF THIS
 27 SUBTITLE, RESOLVE COMPLAINTS FILED UNDER § 4-1A-05 OF THIS SUBTITLE FROM
 28 ANY CUSTODIAN ALLEGING THAT AN APPLICANT'S REQUEST OR PATTERN OF
 29 REQUESTS IS FRIVOLOUS, VEXATIOUS, OR IN BAD FAITH;

30 (2) ISSUE A WRITTEN DECISION AS TO WHETHER THE APPLICANT'S
 31 REQUEST OR PATTERN OF REQUESTS IS FRIVOLOUS, VEXATIOUS, OR IN BAD FAITH;
 32 AND

1 **(3) IF THE BOARD FINDS THAT THE APPLICANT'S REQUEST IS**
2 **FRIVOLOUS, VEXATIOUS, OR IN BAD FAITH, BASED ON THE TOTALITY OF THE**
3 **CIRCUMSTANCES INCLUDING THE NUMBER AND SCOPE OF THE APPLICANT'S PAST**
4 **REQUESTS AND THE CUSTODIAN'S RESPONSES TO PAST REQUESTS AND EFFORTS TO**
5 **COOPERATE WITH THE APPLICANT, ISSUE AN ORDER AUTHORIZING THE CUSTODIAN**
6 **TO:**

7 **(I) IGNORE THE REQUEST THAT IS THE SUBJECT OF THE**
8 **CUSTODIAN'S COMPLAINT; OR**

9 **(II) RESPOND TO A LESS BURDENSOME VERSION OF THE**
10 **REQUEST WITHIN A REASONABLE TIME FRAME, AS DETERMINED BY THE BOARD.**

11 **[(b)] (C)** The Board shall:

12 **(1) ADOPT REGULATIONS TO CARRY OUT THIS SUBTITLE;**

13 **[(1)] (2)** study ongoing compliance with this title by custodians; and

14 **[(2)] (3)** make recommendations to the General Assembly for
15 improvements to this title.

16 **[(c)] (D)** (1) On or before October 1 of each year, the Board shall submit a
17 report to the Governor and, subject to § 2-1257 of the State Government Article, the
18 General Assembly.

19 (2) The report shall:

20 (i) describe the activities of the Board;

21 (ii) describe the **[opinions] DECISIONS** of the Board;

22 (iii) state the number and nature of complaints filed with the Board;

23 and

24 (iv) recommend any improvements to this title.

25 4-1A-05.

26 (a) Any applicant **[or]**, the applicant's designated representative, **OR A**
27 **CUSTODIAN** may file a written complaint with the Board seeking a written **[opinion]**
28 **DECISION** and order from the Board **UNDER § 4-1A-04 OF THIS SUBTITLE** if:

1 (1) [a custodian charged a fee under § 4-206 of this title of more than \$350]
2 **THE COMPLAINANT HAS ATTEMPTED TO RESOLVE THE DISPUTE THROUGH THE**
3 **OFFICE OF THE PUBLIC ACCESS OMBUDSMAN UNDER § 4-1B-04 OF THIS TITLE; and**

4 (2) [the complainant alleges in the complaint that the fee is unreasonable]
5 **THE PUBLIC ACCESS OMBUDSMAN HAS ISSUED A FINAL DETERMINATION STATING**
6 **THAT THE DISPUTE WAS NOT RESOLVED.**

7 (b) The complaint shall:

8 (1) identify the custodian **OR APPLICANT** that is the subject of the
9 complaint;

10 (2) describe the action of the custodian **OR APPLICANT**, the date of the
11 action, and the circumstances of the action;

12 (3) be signed by the complainant;

13 (4) if available, include a copy of the original request for public records **AND**
14 **THE CUSTODIAN'S RESPONSE, IF ANY; and**

15 (5) be filed within [90] ~~45~~ **30 CALENDAR** days after the [action that is the
16 subject of the complaint occurred] **COMPLAINANT RECEIVES THE FINAL**
17 **DETERMINATION OF THE PUBLIC ACCESS OMBUDSMAN UNDER § 4-1B-04 OF THIS**
18 **TITLE.**

19 4-1A-06.

20 (a) Except as provided in subsection (c) of this section, on receipt of a written
21 complaint, the Board promptly shall:

22 (1) send the complaint to the custodian **OR APPLICANT** identified in the
23 complaint; and

24 (2) request that a response to the complaint be sent to the Board.

25 (b) (1) The custodian **OR APPLICANT** shall file a written response to the
26 complaint within [15] **30 CALENDAR** days after [the custodian receives] **RECEIVING** the
27 complaint.

28 (2) On request of the Board, the custodian shall [include with its written
29 response to the complaint] **PROVIDE:**

30 (I) **IF THE COMPLAINT ALLEGES THAT THE CUSTODIAN FAILED**
31 **TO RESPOND TO A REQUEST FOR A PUBLIC RECORD WITHIN THE TIME LIMITS**

1 ESTABLISHED UNDER § 4-203 OF THIS TITLE, A RESPONSE TO THE REQUEST FOR
2 THE PUBLIC RECORD;

3 (II) IF THE COMPLAINT ALLEGES THAT THE CUSTODIAN DENIED
4 INSPECTION OF A PUBLIC RECORD IN VIOLATION OF THIS TITLE:

5 1. A COPY OF THE PUBLIC RECORD, DESCRIPTIVE INDEX
6 OF THE PUBLIC RECORD, OR WRITTEN REASON WHY THE RECORD CANNOT BE
7 DISCLOSED, AS APPROPRIATE; AND

8 2. THE PROVISION OF LAW ON WHICH THE CUSTODIAN
9 RELIED IN DENYING INSPECTION OF THE PUBLIC RECORD; OR

10 (III) IF THE COMPLAINT ALLEGES THAT THE CUSTODIAN
11 CHARGED AN UNREASONABLE FEE UNDER § 4-206 OF THIS TITLE, the basis for the fee
12 that was charged; ~~OR~~

13 ~~(IV) IF THE COMPLAINT ALLEGES THAT THE CUSTODIAN~~
14 ~~UNREASONABLY FAILED TO WAIVE A FEE UNDER § 4-206 OF THIS TITLE, THE BASIS~~
15 ~~ON WHICH THE CUSTODIAN DENIED THE WAIVER REQUEST.~~

16 (3) (I) IF THE COMPLAINT ALLEGES THAT THE CUSTODIAN DENIED
17 INSPECTION OF A PUBLIC RECORD UNDER § 4-301(A)(2)(II) OF THIS TITLE, THE
18 CUSTODIAN MAY NOT BE REQUIRED TO PRODUCE THE PUBLIC RECORD FOR BOARD
19 REVIEW.

20 (II) THE BOARD MAY REQUEST INFORMATION ABOUT THE
21 PUBLIC RECORD FROM THE CUSTODIAN.

22 ~~(3) (4)~~ (4) ON REQUEST OF THE BOARD, A CUSTODIAN OR AN
23 APPLICANT SHALL PROVIDE AN AFFIDAVIT OR A STATEMENT CONTAINING THE
24 FACTS THAT ARE AT ISSUE IN THE COMPLAINT.

25 ~~(4) (5)~~ (5) THE BOARD SHALL MAINTAIN THE CONFIDENTIALITY OF
26 ANY RECORD OR INFORMATION SUBMITTED BY A CUSTODIAN OR AN APPLICANT
27 UNDER THIS SUBSECTION.

28 ~~(5) (6)~~ (6) A CUSTODIAN MAY NOT BE CIVILLY OR CRIMINALLY LIABLE
29 UNDER MARYLAND LAW FOR PROVIDING OR DESCRIBING A PUBLIC RECORD TO THE
30 BOARD UNDER THIS SUBSECTION.

31 ~~(6) (7)~~ (7) THE PROVISION OF A RECORD OR A DESCRIPTION OF A
32 RECORD TO THE BOARD UNDER THIS SUBSECTION MAY NOT BE CONSTRUED AS A
33 WAIVER OF ANY APPLICABLE PRIVILEGE.

1 (c) If a written response **OR INFORMATION REQUESTED UNDER SUBSECTION**
2 **(B) OF THIS SECTION** is not received within [45] **30 CALENDAR** days after the [notice]
3 **REQUEST** is sent, the Board shall decide the case on the facts before the Board.

4 4-1A-07.

5 (a) (1) The Board shall review the complaint and any response.

6 (2) [If the information in the complaint and response is sufficient for
7 making a determination based on the Board's own interpretation of the evidence,] **THE**
8 **BOARD SHALL ISSUE A WRITTEN DECISION** within 30 **CALENDAR** days after receiving
9 [the response, the Board shall issue a written opinion as to whether a violation of this title
10 has occurred or will occur] **THE WRITTEN RESPONSE AND ALL INFORMATION**
11 **REQUESTED UNDER § 4-1A-06(B) OF THIS SUBTITLE.**

12 (b) (1) (i) Subject to subparagraph (ii) of this paragraph, if the Board is
13 unable to reach a determination based on the written submissions before it, the Board may
14 schedule an informal conference to hear from the complainant, the **AFFECTED** custodian
15 **OR APPLICANT**, or any other person with relevant information about the subject of the
16 complaint.

17 (ii) The Board shall hold the informal conference under
18 subparagraph (i) of this paragraph in a location that is as convenient as practicable to the
19 complainant and the **AFFECTED** custodian **OR APPLICANT.**

20 (2) When conducting a conference that is scheduled under paragraph (1) of
21 this subsection, the Board may allow the parties to testify by teleconference or submit
22 written testimony by electronic mail.

23 (3) An informal conference scheduled by the Board is not a contested case
24 within the meaning of § 10-202(d) of the State Government Article.

25 (4) The Board shall issue a written [opinion] **DECISION** within 30
26 **CALENDAR** days after the informal conference.

27 (c) (1) If the Board is unable to issue [an opinion] **A DECISION** on a complaint
28 within the time periods specified in subsection (a) or (b) of this section, the Board shall:

29 (i) state in writing the reason for its inability to issue [an opinion]
30 **A DECISION**; and

31 (ii) issue [an opinion] **A DECISION** as soon as possible but not later
32 than [90] **120** days after the filing of the complaint.

1 (2) **(I)** [An opinion] **A DECISION** of the Board may state that the Board
2 is unable to resolve the complaint.

3 **(II) A PERSON MAY NOT APPEAL UNDER § 4-1A-10 OF THIS**
4 **SUBTITLE OR § 4-362(A)(2) OF THIS TITLE A DECISION OF THE BOARD STATING**
5 **THAT THE BOARD IS UNABLE TO RESOLVE THE COMPLAINT.**

6 (d) The Board shall send a copy of the written [opinion] **DECISION** to the
7 complainant and the affected custodian **OR APPLICANT.**

8 4-1A-08.

9 (a) The Board may send to any custodian in the State any written [opinion]
10 **DECISION** that will provide the custodian with guidance on compliance with this title.

11 (b) The Attorney General shall post on the website of the Office of the Attorney
12 General all of the Board's written [opinions] **DECISIONS** under this subtitle.

13 4-1A-10.

14 (a) A person or governmental unit need not exhaust the administrative remedy
15 under this subtitle before filing suit.

16 (b) (1) **[A] EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE, A**
17 complainant or custodian may appeal the decision issued by the Board under this subtitle
18 in accordance with § 4-362 of this title.

19 (2) An appeal under this subsection automatically stays the decision of the
20 Board pending the circuit court's decision [or no more than 30 days after the date on which
21 the defendant serves an answer or otherwise pleads to the complaint, whichever is sooner].

22 4-1B-01.

23 In this subtitle, "Ombudsman" means the Public Access Ombudsman.

24 4-1B-02.

25 (b) **[The] SUBJECT TO § 4-1A-03(D)(2) OF THIS TITLE, THE** Office of the
26 Attorney General shall provide office space and staff for the Ombudsman, with appropriate
27 steps taken to protect the autonomy and independence of the Ombudsman.

28 4-1B-04.

29 (a) Subject to subsection [(b)] **(D)** of this section, the Ombudsman shall make
30 reasonable attempts to resolve disputes between applicants and custodians relating to
31 requests for public records under this title, including disputes over:

- 1 (1) the custodian's application of an exemption;
- 2 (2) redactions of information in the public record;
- 3 (3) the failure of the custodian to produce a public record in a timely
4 manner or to disclose all records relevant to the request;
- 5 (4) overly broad requests for public records;
- 6 (5) the amount of time a custodian needs, given available staff and
7 resources, to produce public records;
- 8 (6) a request for or denial of a fee waiver under § 4-206(e) of this title; [and]
- 9 (7) repetitive or redundant requests from an applicant;
- 10 (8) **FEES IMPOSED UNDER § 4-206 OF THIS TITLE; AND**
- 11 (9) **A REQUEST OR PATTERN OF REQUESTS FROM AN APPLICANT THAT**
12 **IS ALLEGED TO BE FRIVOLOUS, VEXATIOUS, OR MADE IN BAD FAITH.**

13 **(B) WITHIN 90 CALENDAR DAYS AFTER RECEIVING A REQUEST FOR**
14 **DISPUTE RESOLUTION, UNLESS THE PARTIES MUTUALLY AGREE TO EXTEND THE**
15 **DEADLINE, THE OMBUDSMAN SHALL ISSUE A FINAL DETERMINATION STATING:**

- 16 (1) **THAT THE DISPUTE HAS BEEN RESOLVED; OR**
- 17 (2) **THAT THE DISPUTE HAS NOT BEEN RESOLVED.**

18 **(C) IF THE OMBUDSMAN ISSUES A FINAL DETERMINATION STATING THAT**
19 **THE DISPUTE HAS NOT BEEN RESOLVED, THE OMBUDSMAN SHALL INFORM THE**
20 **APPLICANT AND THE CUSTODIAN OF THE AVAILABILITY OF REVIEW BY THE BOARD**
21 **UNDER § 4-1A-04 OF THIS TITLE.**

22 **[(b)] (D)** (1) When resolving disputes under this section, the Ombudsman
23 may not:

- 24 (i) compel a custodian to disclose public records or redacted
25 information in the custodian's physical custody to the Ombudsman or an applicant; or
- 26 (ii) except as provided in **[paragraph] PARAGRAPHS (2) AND (3)** of
27 this subsection, disclose information received from an applicant or custodian without
28 written consent from the applicant and custodian.

1 (2) (I) The Ombudsman may disclose information received from an
 2 applicant or custodian to the assistant Attorney General assigned to the Office of the
 3 **PUBLIC ACCESS Ombudsman OR TO ANY OTHER PERSON WORKING UNDER THE**
 4 **DIRECTION OF THE OMBUDSMAN.**

5 (II) AN INDIVIDUAL TO WHOM THE OMBUDSMAN DISCLOSES
 6 INFORMATION UNDER THIS PARAGRAPH MAY NOT DISCLOSE THE INFORMATION
 7 WITHOUT WRITTEN CONSENT FROM THE APPLICANT AND CUSTODIAN.

8 (3) THE OMBUDSMAN MAY TRANSFER BASIC INFORMATION ABOUT A
 9 DISPUTE, INCLUDING THE IDENTITY OF THE APPLICANT AND CUSTODIAN AND THE
 10 NATURE OF THE DISPUTE, TO THE BOARD IF APPROPRIATE STEPS HAVE BEEN
 11 TAKEN TO PROTECT THE CONFIDENTIALITY OF COMMUNICATIONS MADE OR
 12 RECEIVED IN THE COURSE OF ATTEMPTING TO RESOLVE THE DISPUTE.

13 ~~(E) (1) ON OR BEFORE OCTOBER 1 EACH YEAR, IN CONJUNCTION WITH~~
 14 ~~THE REPORT OF THE BOARD REQUIRED UNDER § 4-1A-04 OF THIS TITLE, THE~~
 15 ~~OMBUDSMAN SHALL SUBMIT A REPORT TO THE GOVERNOR AND, SUBJECT TO §~~
 16 ~~2-1257 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY.~~

17 ~~(2) THE REPORT SHALL:~~

18 ~~(I) DESCRIBE THE ACTIVITIES OF THE OMBUDSMAN;~~

19 ~~(II) STATE THE NUMBER AND NATURE OF REQUESTS FOR~~
 20 ~~DISPUTE RESOLUTION MADE TO THE OMBUDSMAN;~~

21 ~~(III) DESCRIBE THE AGGREGATE OUTCOMES OF DISPUTE~~
 22 ~~RESOLUTIONS CONDUCTED BY THE OMBUDSMAN;~~

23 ~~(IV) HIGHLIGHT ANY AREAS OF CONCERN AND RECOMMEND~~
 24 ~~BEST PRACTICES FOR GOVERNMENTAL UNITS IN RESPONDING TO REQUESTS FOR~~
 25 ~~PUBLIC RECORDS UNDER THIS TITLE; AND~~

26 ~~(V) RECOMMEND ANY IMPROVEMENTS TO THIS TITLE.~~

27 4-203.

28 (a) (1) Except as provided in paragraph (2) of this subsection, the custodian
 29 shall grant or deny the application promptly, but not more than 30 days after receiving the
 30 application.

31 (2) The custodian shall grant or deny an application that is the subject of §
 32 4-356 of this title not more than 50 days after receiving the application.

1 (d) Any time limit imposed under this section:

2 (1) with the consent of the applicant, may be extended for not more than
3 30 days; and

4 (2) if the applicant **OR CUSTODIAN** seeks resolution of a dispute under [§
5 4-1B-04] **SUBTITLE 1A OR 1B** of this title, shall be extended pending resolution of that
6 dispute.

7 4-362.

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

12 (2) [Subject] **EXCEPT AS OTHERWISE PROVIDED IN SUBTITLE 1A OF**
13 **THIS TITLE AND SUBJECT** to paragraph (3) of this subsection, a complainant or custodian
14 may appeal to the circuit court a decision issued by the State Public Information Act
15 Compliance Board as provided under § 4-1A-10 of this title.

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

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

19 (ii) the public record is located.

20 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before July 1, 2022, the
21 Office of the Attorney General shall allocate any additional staff members required to be
22 assigned under § 4-1A-03(d)(2) of the General Provisions Article, as enacted by Section 1
23 of this Act.

24 SECTION 3. AND BE IT FURTHER ENACTED, That this Act may not be applied
25 or interpreted to have any effect on or application to any exceptions to disclosure
26 requirements in Title 4 of the General Provisions Article.

27 SECTION ~~3~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 ~~October 1, 2021~~ July 1, 2022.