

Bill No.: _____
Requested: _____
Committee: _____

Drafted by: King
Typed by: Gail
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Proofread by _____
Checked by _____

By: **Delegate W. Miller**

A BILL ENTITLED

1 AN ACT concerning

2 **Howard County Public School System – Access to Public Information**

3 **Ho. Co. X-16**

4 FOR the purpose of requiring a certain notice provided by the custodian of a public record
5 for the Howard County Public School System be made in writing under penalty of
6 perjury; requiring the custodian to provide written notice to an applicant regarding
7 the right to file a certain complaint with the State Public Information Act
8 Compliance Board; requiring the custodian, under certain circumstances, to petition
9 the Public Access Ombudsman concerning a request to inspect a public record;
10 providing that the custodian may deny inspection of an intra-agency letter or
11 memorandum only after a declaration by a court under certain circumstances; and
12 generally relating to the Howard County Public School System and access to public
13 information.

14 BY repealing and reenacting, without amendments,
15 Article – General Provisions
16 Section 4-1A-01, 4-1A-04(a), 4-1A-05(a), 4-1B-01, and 4-1B-04(a)
17 Annotated Code of Maryland
18 (2014 Volume and 2015 Supplement)

19 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



1 Article – General Provisions
2 Section 4–202, 4–206, 4–301, and 4–344
3 Annotated Code of Maryland
4 (2014 Volume and 2015 Supplement)

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

7 **Article – General Provisions**

8 4–1A–01.

9 There is a State Public Information Act Compliance Board.

10 4–1A–04.

11 (a) The Board shall:

12 (1) receive, review, and, subject to § 4–1A–07 of this subtitle, resolve
13 complaints filed under § 4–1A–05 of this subtitle from any applicant or the applicant’s
14 designated representative alleging that a custodian charged an unreasonable fee under §
15 4–206 of this title;

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

17 (3) if the Board finds that the custodian charged an unreasonable fee under
18 § 4–206 of this title, order the custodian to reduce the fee to an amount determined by the
19 Board to be reasonable and refund the difference.

20 4–1A–05.

21 (a) Any applicant or the applicant’s designated representative may file a written
22 complaint with the Board seeking a written opinion and order from the Board if:

23 (1) a custodian charged a fee under § 4–206 of this title of more than \$350;
24 and

25 (2) the complainant alleges in the complaint that the fee is unreasonable.

1 4-1B-01.

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

3 4-1B-04.

4 (a) Subject to subsection (b) of this section, the Ombudsman shall make
5 reasonable attempts to resolve disputes between applicants and custodians relating to
6 requests for public records under this title, including disputes over:

7 (1) the custodian's application of an exemption;

8 (2) redactions of information in the public record;

9 (3) the failure of the custodian to produce a public record in a timely
10 manner or to disclose all records relevant to the request;

11 (4) overly broad requests for public records;

12 (5) the amount of time a custodian needs, given available staff and
13 resources, to produce public records;

14 (6) a request for or denial of a fee waiver under § 4-206(e) of this title; and

15 (7) repetitive or redundant requests from an applicant.

16 4-202.

17 (a) Except as provided in subsection (b) of this section, a person or governmental
18 unit that wishes to inspect a public record shall submit a written application to the
19 custodian.

20 (b) A person or governmental unit need not submit a written application to the
21 custodian if:

22 (1) the person or governmental unit seeks to inspect a public record listed
23 by an official custodian in accordance with § 4-201(c)(2) of this subtitle; or

1 (2) the custodian waives the requirement for a written application.

2 (c) If the individual to whom the application is submitted is not the custodian of
3 the public record, within 10 working days after receiving the application, the individual
4 shall give the applicant:

5 (1) notice of that fact; and

6 (2) if known:

7 (i) the name of the custodian; and

8 (ii) the location or possible location of the public record.

9 (d) **(1)** When an applicant requests to inspect a public record and a custodian
10 determines that the record does not exist, the custodian shall notify the applicant of this
11 determination:

12 **[(1)] (I)** if the custodian has reached this determination on initial review
13 of the application, immediately; or

14 **[(2)] (II)** if the custodian has reached this determination after a search for
15 potentially responsive public records, promptly after the search is completed but not more
16 than 30 days after receiving the application.

17 **(2) IN HOWARD COUNTY, THE CUSTODIAN OF A PUBLIC RECORD FOR
18 THE HOWARD COUNTY PUBLIC SCHOOL SYSTEM SHALL NOTIFY AN APPLICANT OF
19 A DETERMINATION UNDER THIS SUBSECTION IN WRITING UNDER PENALTY OF
20 PERJURY.**

21 4–206.

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

23 (2) “Indigent” means an individual’s family household income is less than
24 50% of the median family income for the State as reported in the Federal Register.

1 (3) “Reasonable fee” means a fee bearing a reasonable relationship to the
2 recovery of actual costs incurred by a governmental unit.

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

5 (i) the search for, preparation of, and reproduction of a public record
6 prepared, on request of the applicant, in a customized format; and

7 (ii) the actual costs of the search for, preparation of, and
8 reproduction of a public record in standard format, including media and mechanical
9 processing costs.

10 (2) The staff and attorney review costs included in the calculation of actual
11 costs incurred under this section shall be prorated for each individual’s salary and actual
12 time attributable to the search for and preparation of a public record under this section.

13 (c) The official custodian may not charge a fee for the first 2 hours that are needed
14 to search for a public record and prepare it for inspection.

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

17 (2) The official custodian may charge for the cost of providing facilities for
18 the reproduction of the public record if the custodian did not have the facilities.

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

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

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

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

25 **(F) IN HOWARD COUNTY, IF THE CUSTODIAN OF A PUBLIC RECORD FOR THE**
26 **HOWARD COUNTY PUBLIC SCHOOL SYSTEM CHARGES AN APPLICANT A FEE UNDER**

1 **SUBSECTION (B) OF THIS SECTION, THE CUSTODIAN SHALL PROVIDE WRITTEN**
2 **NOTICE TO THE APPLICANT THAT THE APPLICANT MAY FILE A COMPLAINT WITH THE**
3 **BOARD TO CONTEST THE FEE.**

4 4–301.

5 (a) Subject to subsection (b) of this section, a custodian shall deny inspection of a
6 public record or any part of a public record if:

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

8 (2) the inspection would be contrary to:

9 (i) a State statute;

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

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

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

14 (b) If an applicant files a complaint with the Ombudsman challenging a denial or
15 the application of an exemption under this subtitle, the custodian shall demonstrate that:

16 (1) the denial or the exemption is clearly applicable to the requested public
17 record; and

18 (2) if inspection is denied under Part IV of this subtitle, the harm from
19 disclosure of the public record is greater than the public interest in access to the information
20 in the public record.

21 **(C) IN HOWARD COUNTY, THE CUSTODIAN OF A PUBLIC RECORD FOR THE**
22 **HOWARD COUNTY PUBLIC SCHOOL SYSTEM SHALL PETITION THE OMBUDSMAN TO**
23 **REVIEW A REQUEST BY AN APPLICANT TO INSPECT A PUBLIC RECORD AND ADVISE**
24 **THE CUSTODIAN ON THE MATTER IF THE CUSTODIAN DETERMINES THAT THE**
25 **REQUEST CONCERNS A MATTER OF FIRST IMPRESSION FOR WHICH NO PRIOR**
26 **DETERMINATION HAS BEEN MADE BY THE CUSTODIAN OR THE OMBUDSMAN**

1 **WHETHER THE REQUEST SHOULD BE DENIED OR THAT THE REQUEST FALLS WITHIN**
2 **AN EXEMPTION UNDER THIS SUBTITLE.**

3 4-344.

4 **(1)** A custodian may deny inspection of any part of an interagency or intra-agency
5 letter or memorandum that would not be available by law to a private party in litigation
6 with the unit.

7 **(2) IN HOWARD COUNTY, THE CUSTODIAN OF A PUBLIC RECORD FOR THE**
8 **HOWARD COUNTY PUBLIC SCHOOL SYSTEM MAY DENY INSPECTION OF ANY PART**
9 **OF AN INTRA-AGENCY LETTER OR MEMORANDUM UNDER THIS SECTION ONLY ON**
10 **THE ISSUANCE OF A DECLARATION BY A COURT OF COMPETENT JURISDICTION OF**
11 **THE PROPRIETY OF THE DENIAL.**

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 October 1, 2016.