MODEL REGULATIONS ON
PUBLIC INFORMATION ACT

TITLE ___

DEPARTMENT OF _____

SUBTITLE ____, GENERAL REGULATIONS

Chapter 01 Public Information Act Requests

Authority: [Department's authority to adopt regulations]; General Provisions Article, §§ 4-101–4-601, Annotated Code of Maryland

.01 Scope.

This chapter sets out procedures under the Public Information Act for filing and processing requests to the Department of _____ for the inspection and copying of public records of the Department.

.02 Policy.

It is the policy of the Department to facilitate access to the public records of the Department, if access is allowed by law, by minimizing costs and time delays to applicants.

.03 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Act" means the Public Information Act, General Provisions Article, §§ 4-101–4-601, Annotated Code of Maryland.

(2) "Applicant" has the meaning stated in General Provisions Article, § 4-101(b), Annotated Code of Maryland.

(3) "Board" has the meaning stated in General Provisions Article, § 4-101(c). Annotated Code of Maryland.

(4) "Copy" means any form of reproduction using a photocopying machine or other reproduction technology, including a paper copy, an electronic copy, a printout, or an image.

(5) "Custodian" has the meaning stated in General Provisions Article, § 4-101(d), Annotated Code of Maryland.

(6) "Department" means the Department of _____.

(7) "Indigent" has the meaning stated in General Provisions Article, § 4-206(a)(2), Annotated Code of Maryland.

(8) "Metadata" has the meaning stated in General Provisions Article, § 4-205(a), Annotated Code of Maryland.

(9) "Official custodian" has the meaning stated in General Provisions Article, § 4-101(f), Annotated Code of Maryland.

(10) "PIA Coordinator" means the Department employee who is responsible for accepting requests for public records.

(11) "Public Access Ombudsman" means the official appointed under General Provisions Article, Title 4, Subtitle 1B, Annotated Code of Maryland, to resolve disputes under the Act.

(12) "Public record" has the meaning stated in General Provisions Article, § 4-101(k), Annotated Code of Maryland.

(13) "Reasonable Fee" has the meaning stated in General Provisions Article, § 4-206(a)(3), Annotated Code of Maryland.

(14) "Secretary" means the Secretary of _____.

(15) "Working day" means a day other than a Saturday, Sunday, State holiday, or other day on which the Department is not open for official business.

.04 Secretary as Official Custodian.

Unless otherwise provided by law, the Secretary is the official custodian of the public records of the Department.

.05 Who May Request Public Records.

Any person may request to inspect or copy public records of the Department.

.06 Necessity for Written Request.

A. Inspection.

(1) Except as otherwise provided in this chapter, the custodian shall make public records of the Department available for inspection by an applicant without demanding a written request.

(2) The custodian shall require a written request if the custodian reasonably believes that:

(a) The Act or any other law may prohibit the disclosure of one or more public records to the applicant; or

(b) A written request will materially assist the Department in responding.

B. Copies. If the applicant requests a copy of any public record of the Department, the custodian may require a written request.

.07 Contents of Written Request.

A written request shall:

A. Contain the applicant's contact information; and

B. Reasonably identify, by brief description, the public record sought.

.08 Addressee.

A request to inspect or copy a public record of the Department shall be addressed to the custodian of the record or to the Department's PIA coordinator as designated under General Provisions Article, § 4-503, Annotated Code of Maryland. If the custodian is unknown, the request may be addressed to the Secretary or the PIA Coordinator.

.09 Response to Request.

A. If the custodian decides to grant a request for inspection, the custodian shall produce the public record for inspection:

(1) Immediately; or

(2) If additional time is needed to retrieve the public record and conduct any necessary review, within a reasonable time period, not to exceed 30 days after the date of the request.

B. 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:

(1) The amount of time that the custodian anticipates it will take to produce the public record;

(2) An estimate of the range of fees that may be charged to comply with the request for public records; and

(3) The reason why it will take more than 10 working days to produce the records.

C. If the custodian decides to deny a request for inspection, the custodian shall:

(1) Deny the request promptly and not more than 30 days after the request, except as otherwise provided by law; and

(2) Immediately notify the applicant of the denial.

D. If a request is denied, the custodian shall provide the applicant, at the time of the denial or within 10 working days, a written statement that gives:

(1) The reason(s) for the denial, including, for records denied under General Provisions Article, § 4-343, Annotated Code of Maryland, a brief explanation of:

(a) Why the denial is necessary, that is, why disclosure of the public record would be contrary to the public interest; and

(b) Why redacting information would not address the reasons for the denial;

(2) The legal authority for the denial;

(3) Without disclosing the protected information, a brief description of the undisclosed record(s) that will enable the applicant to assess the applicability of the legal authority for the denial; and

(4) Notice of the remedies available for review of the denial.

E. If a requested public record is not in the custody or control of the person to whom application is made, that person shall, within 10 working days after receipt of the request, notify the applicant:

(1) That the person does not have custody or control of the requested public record; and

(2) If the person knows:

(a) The name of the custodian of the public record; and

(b) The location or possible location of the public record.

F. Any time limit imposed by §§ A–C of this regulation may be extended:

(1) With the consent of the applicant, for an additional period of up to 30 days; and

(2) For the period of time during which a dispute is pending before the Public Access Ombudsman or Board, as permitted by General Provisions Article, § 4-203(d)(2), Annotated Code of Maryland.

.10 Notice to Person Possibly Affected by Disclosure.

A. Unless prohibited by law, the custodian may provide notice of a request for inspection or copying of any public record of the Department to any person who, in the judgment of the custodian, could be adversely affected by disclosure of the public record.

B. The custodian may consider the views of the possibly affected person before deciding whether to disclose the public record to an applicant.

.11 Electronic Records.

A. Except as provided in §§ C and D of this regulation, the custodian 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 information that is exempt from disclosure under the Act.

B. The custodian shall provide a portion of the public record in a searchable and analyzable electronic format if:

(1) Requested by the applicant; and

(2) The custodian is able to do so by using the existing functions of the database or software program that contains the searchable and analyzable data.

C. The custodian is not required to:

(1) Create or reconstruct a public record in an electronic format if the public record is not available in an electronic format; or

(2) 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; or

(3) Create, compile, or program a new public record.

D. The custodian may remove metadata from an electronic document before providing the electronic record to an applicant by:

(1) Using a software program or function; or

(2) Converting the electronic record into a different searchable and analyzable format.

.12 Public Record Destroyed or Lost.

If the person to whom application is made knows that a requested public record of the Department has been destroyed or lost, the person shall promptly:

A. Notify the applicant that the public record is not available; and

B. Explain the reasons why the public record cannot be produced.

.13 Availability of Judicial and Administrative Review.

If the custodian denies a request to inspect or copy a public record of the Department, the applicant may file an action for judicial enforcement under General Provisions Article, § 4-362(a)(1), Annotated Code of Maryland, without pursuing the remedies set forth in General Provisions Article, Title 4, Subtitles 1A and 1B, Annotated Code of Maryland.

.14 Disclosure Against Public Interest.

A. Denial Pending Court Order.

(1) If, in the opinion of the Secretary, disclosure of a public record of the Department otherwise subject to disclosure under the Act would do substantial injury to the public interest, the Secretary may temporarily deny the request and seek a court order allowing continued nondisclosure.

(2) A temporary denial shall be in writing.

B. Circuit Court Review.

(1) Within 10 working days after the denial, the Secretary shall apply to the appropriate circuit court for an order permitting continued denial or restriction of access.

(2) Notice of the Secretary's complaint shall be served on the applicant in the manner provided for service of process by the Maryland Rules.

.15 Fees.

A. Except as provided in §§ B and C of this regulation, the fee schedule for copying and certifying copies of public records of the Department is as follows:

(1) For each copy made by a standard printer or photocopying machine within the Department, 25 cents per page;

(2) For each copy made other than by a standard printer or photocopying machine within the Department, the actual cost of reproduction; and

(3) For certification as a true copy of a copy of a public record, an additional fee of $1 per page, or if appropriate, per item.

B. Minimum Fee. A charge may not be made if the total fee is $10 or less.

C. If the fee for copies or certified copies of any public record of the Department is specifically set by a law other than the Act or this regulation, the custodian shall charge the prescribed fee.

D. If the custodian cannot copy a public record within the Department, the custodian shall make arrangements for the prompt reproduction of the record at public or private facilities outside the Department. The custodian shall:

(1) Collect from the applicant a fee to cover the actual cost of reproduction; or

(2) Direct the applicant to pay the cost of reproduction directly to the facility making the copy.

E. If the custodian intends to charge a fee, before copying a public record of the Department or otherwise disclosing public records to the applicant, the custodian shall estimate both the cost of reproduction and the search and preparation fee under § F of this regulation and may either:

(1) Obtain the agreement of the applicant to pay the cost; or

(2) Require prepayment of all or a portion of the cost.

F. Search and Preparation Fee.

(1) Except as provided in § G of this regulation, the custodian may charge a reasonable fee for time that an official or employee of the Department spends to:

(a) Search for requested public records;

(b) Review requested public records for potential disclosure; and

(c) Prepare public records for inspection and copying.

(2) The custodian shall determine the fee under §F(1) of this section by multiplying the employee's salary, prorated to an hourly basis, by the actual time attributable to the search for, review of, and preparation of public records for inspection and copying.

G. The custodian may not charge a fee under § F of this regulation for the first 2 hours needed to search for and prepare a public record for inspection.

H. Waiver or Reduction of Fee.

(1) The custodian may waive or reduce any fee set under this regulation if:

(a) The applicant requests a waiver; and

(b) The custodian determines that:

(i) The waiver or reduction is in the public interest; or

(ii) The applicant is indigent and files an affidavit verifying the facts that support a claim of indigency.

(2) In determining whether a fee waiver is in the public interest, the custodian shall consider, among other relevant factors, the ability of the applicant to pay the fee.

I. If the applicant requests that copies of a public record be mailed or delivered to the applicant or to a third party, the custodian may charge the applicant for the cost of postage or delivery.

.16 Time and Place of Inspection.

A. An applicant may inspect any public record of the Department that the applicant is entitled to inspect during the normal working hours of the Department, subject to the ability of the custodian, if a record is not immediately available for inspection, to schedule a mutually agreeable date within a reasonable amount of time that comports with any applicable deadlines under the Act.

B. The inspection shall occur where the public record is located, unless the custodian, after taking into account the applicant's expressed wish, determines that another place is more suitable and convenient.

.17 Preventing Unauthorized Disclosure or Inspection of a Public Record

A. A custodian shall not make any disclosures, including affirmative disclosures absent a request or disclosures in response to oral or informal requests, that violate a mandatory prohibition in the Act.

B. A custodian shall take steps that are reasonable under the circumstances to ensure that personal information, as defined in § 4-101 of the Act, is not disclosed to a person for purposes of immigration enforcement absent a warrant issued by a court.

1. Such reasonable steps may include:

(a) Evaluating the public records sought by the applicant to determine if they contain personal information or if there is any reasonable possibility that the personal information could be used for purposes of immigration enforcement;

(b) Evaluating the identity of the applicant and/or the apparent purpose of the request to determine if there is any reasonable possibility that the personal information is sought for purposes of immigration enforcement; or

(c) Asking an applicant to confirm that the purpose of the request is not to obtain personal information for purposes of immigration enforcement.

2. Reasonable steps do not include asking every applicant to affirmatively explain the purpose of their request.

Chapter 02 Correction or Amendment of Public Records

Authority: [Department's authority to adopt regulations]; General Provisions Article § 4-502, Annotated Code of Maryland

.01 Scope.

This chapter sets out procedures under which a person in interest may request the correction or amendment of public records of the Department of _____.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Act" means the Public Information Act, General Provisions Article, §§ 4-101–4-601, Annotated Code of Maryland.

(2) "Custodian" has the meaning stated in General Provisions Article, § 4-101(d), Annotated Code of Maryland.

(3) "Department" means the Department of _____.

(4) "Person in interest" has the meaning stated in General Provisions Article, § 4-101(g), Annotated Code of Maryland.

(5) "Public record" has the meaning stated in General Provisions Article, § 4-101(k), Annotated Code of Maryland.

(6) "Secretary" means the Secretary of _____.

.03 Who May Request.

A person in interest may request that the Department correct or amend any public record that:

A. The Department keeps; and

B. The person in interest is authorized to inspect.

.04 Contents of Request.

A. A person in interest shall make a request to correct or amend a public record in writing [on a form provided by the Department].

B. The request shall:

(1) Identify the public record to be corrected or amended;

(2) State the precise correction or amendment requested;

(3) State the reason for the correction or amendment; and

(4) Include a statement that, to the best of the requester's belief, the public record is inaccurate or incomplete.

.05 Addressee.

A request to correct or amend a public record shall be addressed to the custodian of the record. If the custodian is unknown, the request may be addressed to the Secretary.

.06 Return of Nonconforming Request.

A. The Department shall accept a request to correct or amend a public record when it is received if it reasonably complies with Regulations .04 and .05 of this chapter.

B. If the request does not reasonably comply with Regulations .04 and .05 of this chapter, the Department shall return the request to the requester with:

(1) An explanation of the reason for the return; and

(2) A statement that, on receipt of a request that reasonably complies with Regulations .04 and .05 of this chapter, the request will be accepted.

.07 Response to Request.

Within 30 days after the Department receives a request for correction or amendment that reasonably complies with Regulations .04 and .05 of this chapter, the custodian shall:

A. Make the requested correction or amendment, and inform the requester in writing of the action; or

B. Inform the requester in writing that the Department will not:

(1) Make the requested correction or amendment, and the reason for the refusal; or

(2) Act on the request because:

(a) The requester is not a person in interest;

(b) The requester is not authorized to inspect the record; or

(c) Of any other reason authorized by law.

.08 Response to Refusal of Request—Statement of Disagreement.

If the Department refuses to make a requested correction or amendment, a person in interest may file with the Department a concise statement of the reasons for:

A. The requested correction or amendment; and

B. The person's disagreement with the refusal of the Department to make the correction or amendment.

.09 Requirements for Statement of Disagreement.

The statement submitted under Regulation .08 of this chapter shall:

A. Be on pages not larger than 8-1/2 x 11 inches;

B. Use only one side of each page; and

C. Consist of not more than five pages.

.10 Disclosure of Statement of Disagreement.

If a person in interest files a statement of disagreement concerning a public record under Regulations .08 and .09 of this chapter, the Department shall provide a copy of the statement whenever the Department discloses the public record to a third party.

.11 Administrative Review.

A. A person may request administrative review under this regulation if the Department:

(1) Has refused the person's request to correct or amend a public record under Regulation .07 of this chapter;

(2) Has rejected the person's statement of disagreement under Regulation .08 of this chapter; or

(3) Has not provided a statement of disagreement to a third party under Regulation .10 of this chapter.

B. A request for review shall be filed with the Secretary within 30 days after the requester is advised of the Department's action.

C. The review proceedings shall be conducted in accordance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland [and the administrative hearing regulations of the Department].