

Public Information Act Requests

I. Procedures

This document sets out procedures for filing requests with the Howard County Public School System and the Board of Education of Howard County for the inspection and copying of records under the Public Information Act, State Government Article Section 10-611 through 628, Annotated Code of Maryland. This regulation is issued to inform the public and school system employees about the Public Information Act. It also establishes procedures for processing requests to inspect or copy records. This regulation does not supersede the Public Information Act and any inconsistency, ambiguity, conflict, or omission between this regulation and the Act will be resolved in accordance with the Act.

II. Definitions

- A. **Act** – The Public Information Act, State Government Article Section 10-611 through 628, Annotated Code of Maryland.
- B. **Applicant** – A person requesting inspection or disclosure of public records.
- C. **School System** – The Howard County Public School System and the Board of Education of Howard County.
- D. **Custodian** – An authorized person employed by the school system having physical custody and control of public records of the school system.
- E. **Official Custodian** – The person who is responsible for maintaining and keeping the public records of the school system. Unless otherwise provided by law, the Superintendent or his/her designee is the official custodian of the school system's records.
- F. **Public Records** – The original or any copy of any documentary material that is made by or received by the school system in connection with the transaction of public business including:
 - 1. A card
 - 2. An electronic record
 - 3. Correspondence
 - 4. A drawing
 - 5. Film or microfilm
 - 6. A photograph or photostat
 - 7. A recording
 - 8. A tape

This does not apply to those documents/records identified as privileged or confidential by the Act.

- G. **Superintendent** – The local superintendent of schools of Howard County.
 - H. **Working day** – A day during which the school system is open in accordance with the approved calendar.
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III. Who May Request

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

IV. Right of Access to Records

- A. Except as otherwise provided by law, a custodian shall permit a person or government unit to inspect any public record at any reasonable time.
- B. There is no obligation to create records to satisfy a public information request. As applied to electronic records
 - 1. "Create" means:
 - (a) The processing of data from multiple databases;
 - (b) Any processing of data that requires writing computer code, including but not limited to writing formulas and macros; or
 - (c) Post-processing of data, unless it can be done with third-party software owned by or licensed for use to the Howard County Public School System.
 - 2. "Create" does not include retrieving data from a single data base involving four or fewer individual tables.

V. Necessity for Written Request

- A. Request for Inspection
 - 1. Except as otherwise provided in this regulation, the custodian shall generally make public records 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 the Act or any other law may prevent the disclosure of the record to the applicant or that a written request will materially assist the school system in responding to the request.
- B. Request for Copies
 - 1. If the applicant is requesting a copy of any public record, the custodian may require a written request by the applicant.
 - 2. If the custodian requires a written request by the applicant that request shall be addressed to the custodian of the record. If the custodian is unknown to the applicant, the request may be addressed to the superintendent.
 - 3. Any written request shall include:
 - (a) The date of the request
 - (b) The applicant's name and address
 - (c) The applicant's signature
 - (d) A brief description of the record sought.

VI. Response to Written Request

- A. If the custodian approves a written request for inspection, he shall produce the record for inspection immediately or within the reasonable period that is needed to retrieve the public record, but not to exceed thirty (30) calendar days after the receipt of the application.

- B. If the custodian denies the written request, he shall within ten (10) working days give the applicant a written statement that gives the reasons for the denial, the legal authority for the denial, and notice of the applicant's appeal rights under Section XIII of this regulation. However, he shall permit inspection of any part of the record that is subject to inspection and is reasonably severable.
- C. If a requested public record is not in the custody or control of the person to whom written application is made, that person shall, within ten (10) working days of the receipt of the request, so notify the applicant and provide, if known, the name of the custodian of the record or the location or possible location of the record.
- D. With the consent of the applicant, any time limit imposed in sections VI.A. through VI.C. may be extended for an additional period not to exceed thirty (30) calendar days.

VII. Records Destroyed or Lost

If a requested record has been destroyed or lost, the custodian to whom the application is made shall, within ten (10) working days of the request, notify the applicant of this fact and explain why the record cannot be produced.

VIII. Required Denials – In General

- A. A custodian shall deny inspection of a public record or any part of a public record if:
 - 1. By law, the public record is privileged or confidential; or
 - 2. The inspection would be contrary to:
 - (a) A State statute
 - (b) A federal statute or a regulation that is issued under the statute and has the force of the law;
 - (c) The rules adopted by the Court of Appeals; or
 - (d) An order of a court of record.
- B. Examples of records, which shall not be disclosed under this section, are student records, attorney work products, and pre-decisional material. Questions concerning the interpretation or applicability of this section should be referred to the school system's Legal Counsel.

VX. Required Denials – Specific Records

- A. Unless otherwise provided by law, a custodian shall deny inspection of a public record, as provided in section 10-616 of the Act. This section represents a partial listing of the denials, which are required by section 10-616 of the Act.
- B. Letters of reference – A custodian shall deny inspection of a letter of reference.
- C. Retirement records
 - 1. A custodian shall deny inspection of a retirement record for an individual except in those cases cited in paragraphs 2. through 5. of this subsection.

2. A custodian shall permit inspection:
 - (a) By the person in interest;
 - (b) By the appointing authority of the individual;
 - (c) After the death of the individual, by a beneficiary, personal representative, or other person who satisfies that administrators of the retirement and pension systems that the person has a valid claim to the benefits of the individual.
3. A custodian shall permit inspection by the employees of a county unit that, by county law, is required to audit the retirement records for current or former employees of the county. However, the information obtained during the inspection is confidential, and the county unit and its employees may not disclose any information that would identify a person in interest.
4. On request, a custodian shall state whether the individual receives a retirement or pension allowance.
5. A custodian shall permit release of information as provided in Article 73B, section 162A of the Annotated Code of Maryland.

D. Personnel records

1. A custodian shall deny inspection of a personnel record of an individual, including an application, performance rating, or scholastic achievement information; except in those cases cited in paragraph 2 of this subsection.
2. A custodian shall permit inspection by:
 - (a) The person in interest; or
 - (b) An elected or appointed official who supervises the work of the individual.

E. Student records

1. A custodian shall deny inspection of a school district record about the biography, family, physiology, religion, academic achievement, or physical or mental ability of a student; except in the case cited in paragraph 2 of this subsection.
2. A custodian shall permit inspection by:
 - (a) The person in interest; or
 - (b) An elected or appointed official who supervises the student.
3. Requests for student records must be answered in accordance with the federal Family Educational Rights and Privacy Act (Buckley Amendment) and similar state laws. These laws and their prohibitions on disclosure are incorporated into the Act as detailed in section XIII.A. of this regulation.

X. Required Denials – Specific Information

- A. Unless otherwise provided by law, a custodian shall deny inspection of a part of a public record, as provided in section 10-617 of the Act. This section reprints a partial listing of the denials that are required by section 10-617 of the Act.

B. Medical and Psychological Information

1. A custodian shall deny inspection of the part of a public record that contains medical or psychological information about an individual, other than an autopsy report of a medical examiner; except in cases cited in paragraph 2 of this subsection.
2. A custodian shall permit the person in interest to inspect the public record to the extent permitted under section 4-302(b) of the Health-General Article.

C. Sociological Information

If the official custodian has adopted rules or regulations that define sociological information for purposes of this subsection, a custodian shall deny inspection of the part of a public record that contains sociological information, in accordance with the rules or regulations.

D. Commercial Information

A custodian shall deny inspection of the part of a public record that contains any of the following information provided by or obtained from any person or governmental unit:

1. A trade secret;
2. Confidential commercial information;
3. Confidential financial information; or
4. Confidential geological or geophysical information

E. Public Employees

Subject to Article 73, section 162A of the Annotated Code of Maryland, a custodian shall deny inspection of the part of a public record that contains the home address or telephone number of an employee of a unit or instrumentality of the State or of a political subdivision unless:

1. The employee gives permission for the inspection; or
2. The unit or instrumentality that employs the individual determines that inspection is needed to protect the public interest.

F. Financial Information

1. This subsection does not apply to the salary of a public employee.
2. A custodian shall deny inspection of the part of a public record that contains information about the finances of an individual, including assets, income, liabilities, net worth, bank balances, financial history or activities, or credit worthiness; except in cases cited in paragraph 3 of this subsection.
3. A custodian shall permit inspection by the person in interest.

G. Information Systems

A custodian shall deny inspection of the part of a public record that contains information about the security of an information system.

XI. Permissible Denials

- A. Unless otherwise provided by law, if a custodian believes that inspection of a part of a public record by the applicant would be contrary to the public interest, the custodian may deny inspection by the applicant of that part, as provided in section 10-618 of the Act. This section reprints a listing of denials, which are permissible under section 10-618 of the Act.
- B. A custodian may deny inspection of any part of an interagency or intra-agency letter or memorandum that would not be available by law to a private party in litigation with the unit.
- C. Examinations
 - 1. Subject to paragraph b. of this subsection, a custodian may deny inspection of test questions, scoring keys, and other examination information that relates to the administration of licenses, employment, or academic matters.
 - 2. After a written promotional examination has been given and graded, a custodian shall permit a person in interest to inspect the examination and the results of the examination, but may not permit the person in interest to copy or otherwise reproduce the examination.
- D. Research Projects
 - 1. Subject to paragraph b. of this subsection, a custodian may deny inspection of a public record that contains the specific details of a research project that an institution of the State or of a political subdivision is conducting.
 - 2. A custodian may not deny inspection of the part of a public record that gives only the name, title, expenditures, and date when the final project summary will be available.
- E. Real Property
 - 1. Until the State or a political subdivision acquires title to property, a custodian may deny inspection of a public record that contains a real estate appraisal of the property; except in cases cited in paragraph 2 of this subsection or other law.
 - 2. A custodian may not deny inspection to the owner of the property.
- E. Investigations
 - 1. Subject to paragraph 2. of this subsection, a custodian may deny inspection of:
 - (a) Records of investigations conducted by the Attorney General, a State's Attorney, a city or county attorney, a police department, or a sheriff;
 - (b) An investigatory file compiled for any other law enforcement, judicial, correctional, or prosecution purpose; or
 - (c) Records that contain intelligence information or security procedures of the Attorney General, a State's Attorney, a city or county attorney, a police department, a local correctional facility, or a sheriff.
- F. A custodian may deny inspection by a person in interest only to the extent that the inspection would:

- (a) Interfere with a valid and proper law enforcement proceeding;
- (b) Deprive another person of a right to a fair trial or an impartial adjudication;
- (c) Constitute an unwarranted invasion of personal privacy;
- (d) Disclose an investigative technique or procedure;
- (e) Disclose the identity of a confidential source;
- (f) Prejudice an investigation; or
- (g) Endanger the life or physical safety of an individual.

F. Site-specific Location of Certain Plants, Animals or Property

- 1. A custodian may deny inspection of a public record that contains information concerning the site-specific location of an endangered or threatened species of plant or animal, a species of plant or animal in need of conservation, a cave, or a historic property as defined in Article 83B, section 5-601 (k) of the Annotated Code of Maryland.
- 2. A custodian may not deny inspection of a public record described in paragraph 1. of this subsection if requested by:
 - (a) The owner of the land upon which the resource is located; or
 - (b) Any entity that could take the land through the right of eminent domain.

XII. Disclosure Against Public Interest

If, in the opinion of the superintendent, disclosure of any public record that is otherwise required to be disclosed under the Act would cause substantial injury to the public interest, the superintendent may temporarily deny the request in writing and apply within ten (10) working days of the denial to the appropriate circuit court for any order permitting continued denial or restriction of access. Notice of the application filed with the circuit court shall be served on the applicant as provided for in the Maryland Rules of Procedure.

XIII. Review of the Denial

- A. If a written request is denied by the custodian, the applicant may, within thirty (30) calendar days after the receipt of the notice of the denial, request a hearing with the superintendent.
- B. If the hearing with the superintendent results in a total or partial denial of the written request, the applicant may file an appropriate action in the circuit court under Section 10-623 of the Act.
- C. If the applicant chooses not to request a hearing under subsection A. of this section, the applicant may file an action for judicial enforcement under Section 10-623 of the Act without exhausting that administrative remedy.

XIV. Fees

- A. The custodian may charge an applicant a reasonable fee for the search for, preparation of, and reproduction of a public record.
- B. The official custodian may not charge any search or preparation fee for the first two (2) hours of official or employee time that is needed to respond to a request for information.

- C. Except as provided for in subsection b. of this section, the official custodian may charge reasonable fees for time expended by an official or employee in searching for requested records or for any time expended preparing records for inspection and copying. This fee may be based on the actual cost of the employee's time. The official custodian may also charge a reasonable fee for supervising the making of a copy, printout, or photograph of a public record.
- D. The fee schedule for copying and certifying copies of records is as follows:
 - 1. Copies – The fee for each copy is twenty (20) cents per page, if the copy is made on a photocopying machine within the school system. If records are not susceptible to photocopying (for example, punch cards, magnetic tapes, blueprints, and microfilm), the fee for copies will be based on the actual cost of reproduction.
 - 2. Certification of Copies – If a person requests that a copy of a record be certified as a true copy, an additional fee of \$1.00 per page or, if appropriate, per item shall be charged.
 - 3. Minimum Fee Charged – A charge will not be made if the total amount of the fee would be \$1.00 or less.
- E. Notwithstanding subsection D. of this section, if the fees for copies, printouts, photographs, or certified copies of any record are specifically prescribed by a law other than the Act or this regulation, the prescribed fee shall be charged.
- F. If the custodian is unable to copy a record within the school system, the custodian shall make arrangements for the prompt reproduction of the record at public or private facilities outside the school system. The custodian shall either collect from the applicant a fee to cover the actual cost of reproduction or direct the applicant to pay the cost of reproduction directly to the facility making the copy.
- G. Before searching for and reproducing a record, the custodian may estimate the cost of the search and reproduction and either obtain the agreement of the applicant to pay the cost or demand prepayment of the estimated fee or a portion of it.
- H. Upon request, the official custodian may waive or reduce any fee charged pursuant to this regulation if the official custodian determines that the waiver or reduction is in the public interest. The official custodian shall consider, among other relevant factors, the ability of the applicant to pay the cost or fee.
- I. If the applicant requests that copies be mailed or delivered in some other manner to the applicant, the custodian may charge the applicant for the cost of postage or delivery to the applicant.

XV. Time of Inspection

With reasonable advance notice, an applicant may inspect any public record that he is entitled to inspect during the normal working hours of the school system. The inspection shall take place in the presence of the custodian or the custodian's designee.

XVI. Time and Place of Copying

The custodian may set a reasonable time schedule for the making of copies, printouts, and photographs. The copy, printout, or photograph shall be made while the public record is in the custody of the custodian and, whenever feasible, where the public record is kept.

Approved: Superintendent

Date: September 2, 2003

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