

HOUSE BILL 1301

P3

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By: Delegates Carr, Pena-Melnyk, Ali, Beidle, Hucker, Lafferty, Manno, Mizeur, and Niemann

Introduced and read first time: February 18, 2010

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 30, 2010

CHAPTER _____

1 AN ACT concerning

2 **State Government – Access to Public Records – Electronic Documents**

3 FOR the purpose of requiring a custodian of a public record to provide certain
4 applicants with a copy of the public record in an a certain electronic format
5 under certain circumstances; ~~requiring the custodian to make a public record~~
6 ~~available in any electronic format in which the public record is kept; requiring a~~
7 ~~custodian of a public record to provide the public record in the electronic format~~
8 ~~requested under certain circumstances; requiring an official custodian to comply~~
9 ~~with certain provisions of this Act even if the public record is in the physical~~
10 ~~custody or control of another person; authorizing a custodian to remove certain~~
11 metadata from certain documents; providing for the construction of certain
12 provisions of this Act; clarifying that a certain act does not constitute creating,
13 compiling, or programming a new public record; authorizing a custodian to
14 charge an applicant a certain fee for producing a copy of a public record in an
15 electronic format under certain circumstances; defining a certain term; and
16 generally relating to access to public records.

17 BY repealing and reenacting, with amendments,
18 Article – State Government
19 Section ~~10-620~~ 10-611, 10-620, and 10-621
20 Annotated Code of Maryland
21 (2009 Replacement Volume)

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

3 **Article – State Government**

4 10–611.

5 (a) In this Part III of this subtitle the following words have the meanings
6 indicated.

7 (b) “Applicant” means a person or governmental unit that asks to inspect a
8 public record.

9 (c) “Custodian” means:

10 (1) the official custodian; or

11 (2) any other authorized individual who has physical custody and
12 control of a public record.

13 **(D) (1) “METADATA” MEANS INFORMATION, GENERALLY NOT VISIBLE**
14 **WHEN AN ELECTRONIC DOCUMENT IS PRINTED, DESCRIBING THE HISTORY,**
15 **TRACKING OR MANAGEMENT OF THE ELECTRONIC DOCUMENT, INCLUDING**
16 **INFORMATION ABOUT DATA IN THE ELECTRONIC DOCUMENT WHICH DESCRIBES**
17 **HOW, WHEN, AND BY WHOM THE DATA IS COLLECTED, CREATED, ACCESSED, OR**
18 **MODIFIED AND HOW IT IS FORMATTED.**

19 **(2) “METADATA” DOES NOT INCLUDE:**

20 **(I) A SPREADSHEET FORMULA;**

21 **(II) A DATABASE FIELD;**

22 **(III) AN EXTERNALLY OR INTERNALLY LINKED FILE; OR**

23 **(IV) A REFERENCE TO AN EXTERNAL FILE OR HYPERLINK.**

24 **[d] (E) “Official custodian” means an officer or employee of the State or of**
25 **a political subdivision who, whether or not the officer or employee has physical custody**
26 **and control of a public record, is responsible for keeping the public record.**

27 **[e] (F) “Person in interest” means:**

28 (1) a person or governmental unit that is the subject of a public record
29 or a designee of the person or governmental unit;

1 (2) if the person has a legal disability, the parent or legal
2 representative of the person; or

3 (3) as to requests for correction of certificates of death under §
4 5–310(d)(2) of the Health – General Article, the spouse, adult child, parent, adult
5 sibling, grandparent, or guardian of the person of the deceased at the time of the
6 deceased’s death.

7 [(f)] (G) (1) Except as otherwise provided in this Part III, “personal
8 information” means information that identifies an individual including an individual’s
9 address, driver’s license number or any other identification number, medical or
10 disability information, name, photograph or computer generated image, Social
11 Security number, or telephone number.

12 (2) “Personal information” does not include an individual’s driver’s
13 status, driving offenses, 5–digit zip code, or information on vehicular accidents.

14 [(g)] (H) (1) “Public record” means the original or any copy of any
15 documentary material that:

16 (i) is made by a unit or instrumentality of the State
17 government or of a political subdivision or received by the unit or instrumentality in
18 connection with the transaction of public business; and

19 (ii) is in any form, including:

20 1. a card;

21 2. a computerized record;

22 3. correspondence;

23 4. a drawing;

24 5. film or microfilm;

25 6. a form;

26 7. a map;

27 8. a photograph or photostat;

28 9. a recording; or

29 10. a tape.

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

4 (3) “Public record” does not include a digital photographic image or
 5 signature of an individual, or the actual stored data thereof, recorded by the Motor
 6 Vehicle Administration.

7 **[h] (I)** (1) “Telephone solicitation” means the initiation of a telephone
 8 call to an individual or to the residence or business of an individual for the purpose of
 9 encouraging the purchase or rental of or investment in property, goods, or services.

10 (2) “Telephone solicitation” does not include a telephone call or
 11 message:

12 (i) to an individual who has given express permission to the
 13 person making the telephone call;

14 (ii) to an individual with whom the person has an established
 15 business relationship; or

16 (iii) by a tax-exempt, nonprofit organization.

17 10-620.

18 (a) (1) Except as otherwise provided in this subsection, an applicant who
 19 is authorized to inspect a public record may have:

20 (i) a copy, printout, or photograph of the public record; or

21 (ii) if the custodian does not have facilities to reproduce the
 22 public record, access to the public record to make the copy, printout, or photograph.

23 **(2) (I) THE CUSTODIAN OF A PUBLIC RECORD SHALL PROVIDE**
 24 **AN APPLICANT WITH A COPY OF THE PUBLIC RECORD IN ~~AN~~ A SEARCHABLE AND**
 25 **ANALYZABLE ELECTRONIC FORMAT IF:**

26 **1. THE PUBLIC RECORD IS IN ~~AN~~ A SEARCHABLE AND**
 27 **ANALYZABLE ELECTRONIC FORMAT;**

28 **2. THE APPLICANT REQUESTS A COPY OF THE**
 29 **PUBLIC RECORD IN ~~AN~~ A SEARCHABLE AND ANALYZABLE ELECTRONIC FORMAT;**
 30 **AND**

1 3. THE CUSTODIAN IS ABLE TO PROVIDE A COPY OF
2 THE PUBLIC RECORD, IN WHOLE OR IN PART, IN ~~AN~~ A SEARCHABLE AND
3 ANALYZABLE ELECTRONIC FORMAT THAT DOES NOT DISCLOSE;

4 A. CONFIDENTIAL OR PROTECTED INFORMATION
5 FOR WHICH THE CUSTODIAN IS REQUIRED TO DENY INSPECTION IN
6 ACCORDANCE WITH §§ 10-615 THROUGH 10-617 OF THIS SUBTITLE; OR

7 B. INFORMATION FOR WHICH A CUSTODIAN HAS
8 CHOSEN TO DENY INSPECTION IN ACCORDANCE WITH § 10-618 OF THIS
9 SUBTITLE.

10 ~~(II) THE CUSTODIAN SHALL PROVIDE A COPY OF THE~~
11 ~~PUBLIC RECORD IN:~~

12 ~~1. ANY ELECTRONIC FORMAT IN WHICH THE PUBLIC~~
13 ~~RECORD IS KEPT; AND~~

14 ~~2. THE ELECTRONIC FORMAT REQUESTED IF:~~

15 ~~A. THE FORMAT HAS BEEN USED BY THE CUSTODIAN~~
16 ~~TO CREATE COPIES FOR THE CUSTODIAN'S USE OR FOR PROVIDING THE PUBLIC~~
17 ~~RECORD TO A UNIT OF STATE OR LOCAL GOVERNMENT; OR~~

18 ~~B. THE ELECTRONIC FORMAT CAN BE READILY~~
19 ~~PRODUCED BY THE CUSTODIAN USING A COMPUTER PROGRAM OR OTHER TOOL~~
20 ~~THAT IS READILY AVAILABLE TO OR ALREADY USED BY THE CUSTODIAN.~~

21 ~~(III) THE OFFICIAL CUSTODIAN SHALL COMPLY WITH THE~~
22 ~~REQUIREMENTS OF THIS SECTION EVEN IF THE PUBLIC RECORD IS IN THE~~
23 ~~PHYSICAL CUSTODY OR CONTROL OF ANOTHER PERSON.~~

24 (II) A CUSTODIAN MAY REMOVE METADATA FROM AN
25 ELECTRONIC DOCUMENT BEFORE PROVIDING THE ELECTRONIC DOCUMENT TO
26 AN APPLICANT BY:

27 1. USING A SOFTWARE PROGRAM OR FUNCTION; OR

28 2. CONVERTING THE ELECTRONIC DOCUMENT INTO
29 A DIFFERENT SEARCHABLE AND ANALYZABLE FORMAT.

30 ~~(IV)~~ (III) THIS PARAGRAPH MAY NOT BE CONSTRUED TO:

1 1. **REQUIRE THE CUSTODIAN TO RECONSTRUCT A**
 2 **PUBLIC RECORD IN AN ELECTRONIC FORMAT IF THE CUSTODIAN NO LONGER**
 3 **HAS THE PUBLIC RECORD AVAILABLE IN ELECTRONIC FORMAT; ~~OR~~**

4 2. **ALLOW A CUSTODIAN TO MAKE A PUBLIC RECORD**
 5 **AVAILABLE ONLY IN AN ELECTRONIC FORMAT;**

6 3. **REQUIRE A CUSTODIAN TO CREATE, COMPILE, OR**
 7 **PROGRAM A NEW PUBLIC RECORD; OR**

8 4. **REQUIRE A CUSTODIAN TO RELEASE AN**
 9 **ELECTRONIC RECORD IN A FORMAT THAT WOULD JEOPARDIZE OR COMPROMISE**
 10 **THE SECURITY OR INTEGRITY OF THE ORIGINAL RECORD OR OF ANY**
 11 **PROPRIETARY SOFTWARE IN WHICH IT IS MAINTAINED.**

12 **(IV) THE ACT OF EXTRACTING OR EXPORTING DATA FROM A**
 13 **SPREADSHEET OR DATABASE OR CONVERTING DATA FROM ONE AVAILABLE**
 14 **FORMAT TO ANOTHER DOES NOT CONSTITUTE CREATING, COMPILING, OR**
 15 **PROGRAMMING A NEW PUBLIC RECORD.**

16 **[(2)] (3)** An applicant may not have a copy of a judgment until:

17 (i) the time for appeal expires; or

18 (ii) if an appeal is noted, the appeal is dismissed or adjudicated.

19 (b) (1) The copy, printout, or photograph shall be made:

20 (i) while the public record is in the custody of the custodian;

21 and

22 (ii) whenever practicable, where the public record is kept.

23 (2) The official custodian may set a reasonable time schedule to make
 24 copies, printouts, or photographs.

25 10-621.

26 (a) In this section, “reasonable fee” means a fee bearing a reasonable
 27 relationship to the recovery of actual costs incurred by a governmental unit.

28 (b) Subject to the limitations in this section, the official custodian may
 29 charge an applicant a reasonable fee for the search for, preparation of, and
 30 reproduction of a public record.

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

3 (d) (1) If another law sets a fee for a copy, ELECTRONIC COPY, printout,
4 or photograph of a public record, that law applies.

5 (2) The official custodian otherwise may charge any reasonable fee for
6 making or supervising the making of a copy, ELECTRONIC COPY, printout, or
7 photograph of a public record.

8 (3) The official custodian may charge for the cost of providing facilities
9 for the reproduction of the public record if the custodian did not have the facilities.

10 ~~(E) THE CUSTODIAN MAY CHARGE AN APPLICANT A FEE THAT IS EQUAL~~
11 ~~TO THE COST OF PRODUCING A COPY OF A PUBLIC RECORD IN AN ELECTRONIC~~
12 ~~FORMAT ONLY IF:~~

13 ~~(1) THE CUSTODIAN IS REQUIRED TO PRODUCE A COPY OF AN~~
14 ~~ELECTRONIC RECORD IN ACCORDANCE WITH § 10-620 OF THIS SUBTITLE; AND~~

15 ~~(2) (I) THE PUBLIC RECORD IS ONLY PRODUCED AT~~
16 ~~OTHERWISE REGULARLY SCHEDULED INTERVALS; OR~~

17 ~~(II) THE PRODUCTION OF THE COPY WOULD REQUIRE DATA~~
18 ~~COMPILATION, EXTRACTION, OR PROGRAMMING.~~

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

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

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

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 2010.