

HOUSE BILL 867

P3

5lr1711

By: **Delegates Carter, Oaks, and B. Robinson**

Introduced and read first time: February 13, 2015

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Public Information Act – State Public Information Act Compliance Board and**
3 **State Policy**

4 FOR the purpose of establishing the policy of the State regarding public records;
5 establishing the State Public Information Act Compliance Board; providing for the
6 composition, chair, terms, and meetings of the Board; prohibiting a member of the
7 Board from receiving certain compensation, but authorizing the reimbursement of
8 certain expenses; requiring the Office of the Attorney General to provide staff for the
9 Board; providing for the powers and duties of the Board; authorizing any person to
10 file a certain complaint with the Board; requiring that the complaint contain certain
11 information and be signed by the complainant; requiring the Board to take certain
12 action regarding a complaint; requiring a custodian who receives a complaint from
13 the Board to file a certain response within a certain time period; requiring the Board
14 to maintain the confidentiality of a certain public record; authorizing the Board,
15 under certain circumstances, to hold a certain conference; providing that a certain
16 conference held by the Board is not a contested case; providing that compliance by a
17 custodian with an order of the Board is not a certain admission and may not be used
18 as evidence in a certain proceeding; repealing certain provisions of law related to the
19 administrative review of a decision to deny inspection of a public record; specifying
20 the terms of the initial members of the Board; defining a certain term; and generally
21 relating to the Public Information Act.

22 BY repealing and reenacting, with amendments,

23 Article – General Provisions

24 Section 4–101; and the amended part designation “Part VI. Judicial Review”
25 immediately preceding Section 4–361

26 Annotated Code of Maryland
27 (2014 Volume)

28 BY adding to

29 Article – General Provisions

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 4–104; and 4–1A–01 through 4–1A–09 to be under the new subtitle “Subtitle
2 1A. State Public Information Act Compliance Board”
3 Annotated Code of Maryland
4 (2014 Volume)

5 BY repealing

6 Article – General Provisions
7 Section 4–361
8 Annotated Code of Maryland
9 (2014 Volume)

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

12 **Article – General Provisions**

13 4–101.

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

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

17 (c) **“BOARD” MEANS THE STATE PUBLIC INFORMATION ACT COMPLIANCE**
18 **BOARD.**

19 [(c)] (D) “Custodian” means:

20 (1) the official custodian; or

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

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

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

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

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

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

4 **[(f)] (G)** (1) “Personal information” means information that identifies an
5 individual.

6 (2) Except as provided in § 4–355 of this title, “personal information”
7 includes an individual’s:

8 (i) name;

9 (ii) address;

10 (iii) driver’s license number or any other identification number;

11 (iv) medical or disability information;

12 (v) photograph or computer-generated image;

13 (vi) Social Security number; and

14 (vii) telephone number.

15 (3) “Personal information” does not include an individual’s:

16 (i) driver’s status;

17 (ii) driving offenses;

18 (iii) five-digit zip code; or

19 (iv) information on vehicular accidents.

20 **[(g)] (H)** “Political subdivision” means:

21 (1) a county;

22 (2) a municipal corporation;

23 (3) an unincorporated town;

24 (4) a school district; or

25 (5) a special district.

1 **[(h)] (I)** (1) “Public record” means the original or any copy of any
2 documentary material that:

3 (i) is made by a unit or an instrumentality of the State or of a
4 political subdivision or received by the unit or instrumentality in connection with the
5 transaction of public business; and

6 (ii) is in any form, including:

- 7 1. a card;
- 8 2. a computerized record;
- 9 3. correspondence;
- 10 4. a drawing;
- 11 5. film or microfilm;
- 12 6. a form;
- 13 7. a map;
- 14 8. a photograph or photostat;
- 15 9. a recording; or
- 16 10. a tape.

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

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

22 **4-104.**

23 **IT IS THE POLICY OF THE STATE THAT:**

24 **(1) PUBLIC RECORDS BE EASILY ACCESSIBLE TO MEMBERS OF THE**
25 **GENERAL PUBLIC; AND**

26 **(2) TO THE EXTENT PRACTICABLE, EACH UNIT AND**
27 **INSTRUMENTALITY OF THE STATE OR OF A POLITICAL SUBDIVISION SHALL:**

1 **(I) PROACTIVELY RELEASE PUBLIC RECORDS ONLINE IN**
2 **FORMATS THAT ARE USABLE AND EASILY ACCESSIBLE BY MEMBERS OF THE**
3 **GENERAL PUBLIC;**

4 **(II) CREATE A PUBLIC, COMPREHENSIVE LIST OF ALL PUBLIC**
5 **RECORDS HELD BY THE UNIT OR INSTRUMENTALITY;**

6 **(III) DIGITIZE AND POST ONLINE ARCHIVED MATERIALS; AND**

7 **(IV) RELEASE A PUBLIC RECORD AS SOON AS IT IS CREATED.**

8 **SUBTITLE 1A. STATE PUBLIC INFORMATION ACT COMPLIANCE BOARD.**

9 **4-1A-01.**

10 **THERE IS A STATE PUBLIC INFORMATION ACT COMPLIANCE BOARD.**

11 **4-1A-02.**

12 **(A) (1) THE BOARD CONSISTS OF THREE MEMBERS.**

13 **(2) AT LEAST ONE OF THE MEMBERS OF THE BOARD SHALL BE AN**
14 **ATTORNEY ADMITTED TO THE MARYLAND BAR.**

15 **(3) THE GOVERNOR SHALL APPOINT THE MEMBERS WITH THE**
16 **ADVICE AND CONSENT OF THE SENATE.**

17 **(B) FROM AMONG THE MEMBERS OF THE BOARD, THE GOVERNOR SHALL**
18 **APPOINT A CHAIR.**

19 **(C) (1) THE TERM OF A MEMBER IS 3 YEARS.**

20 **(2) THE TERMS OF MEMBERS ARE STAGGERED AS REQUIRED BY THE**
21 **TERMS PROVIDED FOR MEMBERS OF THE BOARD ON OCTOBER 1, 2015.**

22 **(3) AT THE END OF A TERM, A MEMBER CONTINUES TO SERVE UNTIL**
23 **A SUCCESSOR IS APPOINTED.**

24 **(4) A MEMBER WHO IS APPOINTED AFTER A TERM HAS BEGUN SERVES**
25 **ONLY FOR THE REST OF THE TERM AND UNTIL A SUCCESSOR IS APPOINTED.**

26 **(5) A MEMBER MAY NOT SERVE FOR MORE THAN TWO CONSECUTIVE**
27 **3-YEAR TERMS.**

1 4-1A-03.

2 (A) A MAJORITY OF THE FULL AUTHORIZED MEMBERSHIP OF THE BOARD IS
3 A QUORUM.

4 (B) THE BOARD SHALL DETERMINE THE TIMES AND PLACES OF ITS
5 MEETINGS.

6 (C) A MEMBER OF THE BOARD:

7 (1) MAY NOT RECEIVE COMPENSATION AS A MEMBER OF THE BOARD;
8 BUT

9 (2) IS ENTITLED TO REIMBURSEMENT FOR EXPENSES UNDER THE
10 STANDARD STATE TRAVEL REGULATIONS, AS PROVIDED IN THE STATE BUDGET.

11 (D) THE OFFICE OF THE ATTORNEY GENERAL SHALL PROVIDE STAFF FOR
12 THE BOARD.

13 4-1A-04.

14 (A) THE BOARD SHALL:

15 (1) RECEIVE, REVIEW, AND, SUBJECT TO § 4-1A-07 OF THIS
16 SUBTITLE, RESOLVE COMPLAINTS FROM ANY PERSON ALLEGING THAT A
17 CUSTODIAN:

18 (I) DENIED INSPECTION OF A PUBLIC RECORD IN VIOLATION OF
19 THIS TITLE; OR

20 (II) CHARGED AN UNREASONABLE FEE OF MORE THAN \$500
21 UNDER § 4-206 OF THIS TITLE;

22 (2) ISSUE A WRITTEN OPINION AS TO WHETHER A VIOLATION HAS
23 OCCURRED; AND

24 (3) ORDER THE CUSTODIAN TO:

25 (I) IF THE BOARD FINDS THAT THE CUSTODIAN DENIED
26 INSPECTION OF A PUBLIC RECORD IN VIOLATION OF THIS TITLE, PRODUCE THE
27 PUBLIC RECORD FOR INSPECTION; OR

1 **(II) IF THE BOARD FINDS THAT THE CUSTODIAN CHARGED AN**
2 **UNREASONABLE FEE OF MORE THAN \$500 UNDER § 4-206 OF THIS TITLE, REDUCE**
3 **THE FEE TO AN AMOUNT DETERMINED BY THE BOARD TO BE REASONABLE AND**
4 **REFUND THE DIFFERENCE.**

5 **(B) THE BOARD SHALL:**

6 **(1) ADOPT REGULATIONS TO CARRY OUT THIS TITLE;**

7 **(2) STUDY ONGOING COMPLIANCE WITH THIS TITLE BY CUSTODIANS;**

8 **AND**

9 **(3) MAKE RECOMMENDATIONS TO THE GENERAL ASSEMBLY FOR**
10 **IMPROVEMENTS TO THIS TITLE.**

11 **(C) (1) ON OR BEFORE OCTOBER 1 OF EACH YEAR, THE BOARD SHALL**
12 **SUBMIT A REPORT TO THE GOVERNOR AND, SUBJECT TO § 2-1246 OF THE STATE**
13 **GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY.**

14 **(2) THE REPORT SHALL:**

15 **(I) DESCRIBE THE ACTIVITIES OF THE BOARD;**

16 **(II) DESCRIBE THE OPINIONS OF THE BOARD;**

17 **(III) STATE THE NUMBER AND NATURE OF COMPLAINTS FILED**
18 **WITH THE BOARD AND DISCUSS COMPLAINTS THAT THE INSPECTION OF PUBLIC**
19 **RECORDS WAS DENIED; AND**

20 **(IV) RECOMMEND ANY IMPROVEMENTS TO THIS TITLE.**

21 **4-1A-05.**

22 **(A) ANY PERSON MAY FILE A WRITTEN COMPLAINT WITH THE BOARD**
23 **SEEKING A WRITTEN OPINION AND ORDER FROM THE BOARD ALLEGING THAT A**
24 **CUSTODIAN:**

25 **(1) DENIED INSPECTION OF A PUBLIC RECORD IN VIOLATION OF THIS**
26 **TITLE; OR**

27 **(2) CHARGED AN UNREASONABLE FEE OF MORE THAN \$500 UNDER §**
28 **4-206 OF THIS TITLE.**

1 **(B) THE COMPLAINT SHALL:**

2 **(1) IDENTIFY THE CUSTODIAN THAT IS THE SUBJECT OF THE**
3 **COMPLAINT;**

4 **(2) DESCRIBE THE ACTION OF THE CUSTODIAN, THE DATE OF THE**
5 **ACTION, AND THE CIRCUMSTANCES OF THE ACTION; AND**

6 **(3) BE SIGNED BY THE COMPLAINANT.**

7 **4-1A-06.**

8 **(A) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, ON**
9 **RECEIPT OF THE WRITTEN COMPLAINT, THE BOARD PROMPTLY SHALL:**

10 **(1) SEND THE COMPLAINT TO THE CUSTODIAN IDENTIFIED IN THE**
11 **COMPLAINT; AND**

12 **(2) REQUEST THAT A RESPONSE TO THE COMPLAINT BE SENT TO THE**
13 **BOARD.**

14 **(B) (1) THE CUSTODIAN SHALL FILE A WRITTEN RESPONSE TO THE**
15 **COMPLAINT WITHIN 30 DAYS AFTER THE CUSTODIAN RECEIVES THE COMPLAINT.**

16 **(2) ON REQUEST OF THE BOARD, THE CUSTODIAN SHALL INCLUDE**
17 **WITH ITS WRITTEN RESPONSE TO THE COMPLAINT:**

18 **(I) IF THE COMPLAINT ALLEGES THAT THE CUSTODIAN DENIED**
19 **INSPECTION OF A PUBLIC RECORD IN VIOLATION OF THIS TITLE:**

20 **1. A COPY OF THE PUBLIC RECORD; AND**

21 **2. THE PROVISION OF LAW THAT THE CUSTODIAN**
22 **ALLEGES ALLOWS THE CUSTODIAN TO DENY INSPECTION OF THE PUBLIC RECORD;**
23 **OR**

24 **(II) IF THE COMPLAINT ALLEGES THAT THE CUSTODIAN**
25 **CHARGED AN UNREASONABLE FEE OF MORE THAN \$500 UNDER § 4-206 OF THIS**
26 **TITLE, THE BASIS FOR THE FEE THAT WAS CHARGED.**

27 **(3) THE BOARD SHALL MAINTAIN THE CONFIDENTIALITY OF A**
28 **PUBLIC RECORD SUBMITTED BY A CUSTODIAN UNDER PARAGRAPH (2) OF THIS**
29 **SUBSECTION.**

1 (C) IF A WRITTEN RESPONSE IS NOT RECEIVED WITHIN 45 DAYS AFTER THE
2 NOTICE IS SENT, THE BOARD SHALL DECIDE THE CASE ON THE FACTS BEFORE THE
3 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
7 SUFFICIENT FOR MAKING A DETERMINATION, WITHIN 30 DAYS AFTER RECEIVING
8 THE RESPONSE, THE BOARD SHALL ISSUE A WRITTEN OPINION AS TO WHETHER A
9 VIOLATION OF THIS TITLE HAS OCCURRED OR WILL OCCUR.

10 (B) (1) IF THE BOARD IS UNABLE TO REACH A DETERMINATION BASED ON
11 THE WRITTEN SUBMISSIONS BEFORE IT, THE BOARD MAY SCHEDULE AN INFORMAL
12 CONFERENCE TO HEAR FROM THE COMPLAINANT, THE CUSTODIAN, OR ANY OTHER
13 PERSON WITH RELEVANT INFORMATION ABOUT THE SUBJECT OF THE COMPLAINT.

14 (2) AN INFORMAL CONFERENCE SCHEDULED BY THE BOARD IS NOT A
15 CONTESTED CASE WITHIN THE MEANING OF § 10-202(D) OF THE STATE
16 GOVERNMENT ARTICLE.

17 (3) THE BOARD SHALL ISSUE A WRITTEN OPINION WITHIN 30 DAYS
18 AFTER THE INFORMAL CONFERENCE.

19 (C) (1) IF THE BOARD IS UNABLE TO RENDER AN OPINION ON A
20 COMPLAINT WITHIN THE TIME PERIODS SPECIFIED IN SUBSECTIONS (A) AND (B) OF
21 THIS SECTION, THE BOARD SHALL:

22 (I) STATE IN WRITING THE REASON FOR ITS INABILITY TO
23 RENDER AN OPINION; AND

24 (II) ISSUE AN OPINION AS SOON AS POSSIBLE BUT NOT LATER
25 THAN 90 DAYS AFTER THE FILING OF THE COMPLAINT.

26 (2) AN OPINION OF THE BOARD MAY STATE THAT THE BOARD IS
27 UNABLE TO RESOLVE THE COMPLAINT.

28 (D) THE BOARD SHALL SEND A COPY OF THE WRITTEN OPINION TO THE
29 COMPLAINANT AND THE AFFECTED CUSTODIAN.

30 4-1A-08.

1 (A) THE BOARD MAY SEND TO ANY CUSTODIAN IN THE STATE ANY WRITTEN
2 OPINION THAT WILL PROVIDE THE CUSTODIAN WITH GUIDANCE ON COMPLIANCE
3 WITH THIS TITLE.

4 (B) ON REQUEST, THE BOARD SHALL PROVIDE A COPY OF A WRITTEN
5 OPINION TO ANY PERSON.

6 4-1A-09.

7 COMPLIANCE BY A CUSTODIAN WITH AN ORDER OF THE BOARD:

8 (1) IS NOT AN ADMISSION TO A VIOLATION OF THIS TITLE BY THE
9 CUSTODIAN; AND

10 (2) MAY NOT BE USED AS EVIDENCE IN A PROCEEDING CONDUCTED IN
11 ACCORDANCE WITH § 4-362 OF THIS TITLE.

12 Part VI. [Administrative and] Judicial Review.

13 [4-361.

14 (a) This section does not apply when the official custodian denies inspection
15 temporarily under § 4-358 of this subtitle.

16 (b) If a unit is subject to Title 10, Subtitle 2 of the State Government Article, a
17 person or governmental unit may seek administrative review in accordance with that
18 subtitle of a decision of the unit, under this subtitle, to deny inspection of any part of a
19 public record.

20 (c) A person or governmental unit need not exhaust the remedy under this section
21 before filing suit.]

22 SECTION 2. AND BE IT FURTHER ENACTED, That the terms of the initial
23 members of the State Public Information Act Compliance Board shall expire as follows:

24 (1) one member on June 30, 2017;

25 (2) one member on June 30, 2018; and

26 (3) one member on June 30, 2019.

27 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 2015.