

Title 28
OFFICE OF ADMINISTRATIVE HEARINGS
Subtitle 01 ADMINISTRATION

Notice of Proposed Action

[16-060-P]

The Office of Administrative Hearings proposes to:

- (1) Repeal existing Regulations **.01—.15** and adopt new Regulations **.01—.16** under **COMAR 28.01.04 Public Information Requests**; and
- (2) Repeal existing Regulations **.01—.11** and adopt new Regulations **.01—.11** under **COMAR 28.01.05 Correction or Amendment of Public Records**.

Statement of Purpose

The purpose of this action is to renumber and reorganize the regulations governing Public Information Act requests and correction or amendment of personal records. Revisions are made to conform the regulations to changes in the Public Information Act, as enacted by Chs. 135 and 136, Acts of 2015.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Denise Oakes Shaffer, Deputy Director of Operations, Office of Administrative Hearings, 11101 Gilroy Road, Hunt Valley, MD 21031, or call 410-229-4174, or email to denise.shaffer@maryland.gov, or fax to 410-229-4111. Comments will be accepted through March 7, 2015. A public hearing has not been scheduled.

28.01.04 Public Information Act Requests

Authority: *General Provisions Article, §§4-101—4-601*; *State Government Article, [§]§9-1604(b)(1)(v)*], and *10-611—10-628*.];
Annotated Code of Maryland

.01 General.

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

.02 Policy.

It is the policy of the Office of Administrative Hearings to facilitate access to the public records of the Office, 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) "Chief Judge" means the Chief Judge of the Office.

(5) "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.

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

(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) "Office" means the Office of Administrative Hearings.

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

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

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

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

(14) "Working day" means a day other than Saturday, Sunday, or a State holiday.

.04 Deputy Director, Operations as Official Custodian.

Unless otherwise provided by law, the Deputy Director of Operations is the official custodian of the public records of the Office.

.05 Who May Request Public Records.

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

.06 Necessity for Written Request.

A. Inspection.

(1) Except as otherwise provided in this chapter, the custodian shall make public records of the Office 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 the public record to the applicant; or

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

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

.07 Contents of Written Request.

A written request shall:

A. Contain the applicant's name and address;

B. Be signed by the applicant; and

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

.08 Addressee.

A request to inspect or copy a public record of the Office shall be addressed to the custodian of the record. If the custodian is unknown, the request may be addressed to the Chief Judge or the custodian.

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

B. If the custodian reasonably believes that it will take more than 10 working days to produce the public record, the custodian shall so 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 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 for the denial, including, for records denied under General Provisions Article, §4-343, Annotated Code of Maryland, a brief explanation of:

(a) Why denial is necessary; and

(b) Why the harm from disclosure of the public record would be greater than the public interest in providing access to the information in the public record such that disclosure of the public record would be contrary to the public interest;

(2) The legal authority for the denial;

(3) Without disclosing the protected information, a brief description of the undisclosed records 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.

D. 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.

E. Any time limit imposed by §§A and B 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 initiated by the applicant is pending before the Public Access Ombudsman.

.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 Office 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.

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 Office 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 Review of Denial.

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

B. If the custodian charges a fee of more than \$350 under Regulation .15 of this chapter, the applicant may, within 90 days after the date the fee is imposed, file a written complaint with the Board under General Provisions Article, §4-1A-05(a), Annotated Code of Maryland.

C. The applicant and the custodian each may contact the Public Access Ombudsman to resolve, under General Provisions Article, Title 4, Subtitle 1B, Annotated Code of Maryland, a dispute relating to requests for public records.

.14 Disclosure Against Public Interest.

A. Denial Pending Court Order.

(1) If, in the opinion of the Chief Judge, disclosure of a public record of the Office otherwise subject to disclosure under the Act would do substantial injury to the public interest, the Chief Judge may temporarily deny the request to obtain a court order allowing nondisclosure.

(2) A temporary denial shall be in writing.

B. Circuit Court Review.

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

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

.15 Fees.

A. Copies.

(1) Except as provided in §§B and C of this regulation, the fee schedule for copying and certifying copies of public records of the Office is as follows:

(a) For each copy made other than by a photocopying machine within the Office, the actual cost of reproduction; and

(b) For each copy made by a photocopying machine within the Office, 25 cents per page.

(2) Certification of Copies. If a person requests that a copy of a public record be certified as a true copy, an additional fee of \$1 per page (or if appropriate, per item) shall be charged.

(3) Minimum Fee. No charge will be made if the total fee is \$10 or less.

B. Notwithstanding §A of this regulation, if the fee for copies or certified copies of any public record of the Office is specifically set by a law other than the Act or this regulation, the custodian shall charge the prescribed fee.

C. If the custodian cannot copy a public record within the Office, the custodian shall make arrangements for the prompt reproduction of the record at public or private facilities outside the Office. 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.

D. Before copying a public record of the Office, the custodian shall estimate the cost of reproduction and either:

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

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

E. Search and Preparation Fee.

(1) Except as provided in §F of this regulation, the custodian may charge a reasonable fee for time that an official or employee of the Office 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 §E(1) of this regulation 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.

F. The custodian may not charge a fee under §E of this regulation for the first 2 hours spent searching for and preparing a public records for inspection.

G. Waiver or Reduction of Fee.

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

(a) The applicant requests a waiver; and

(b) Either:

(i) The custodian determines that 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 is in the public interest, the custodian shall consider, among other relevant factors, the ability of the applicant to pay the fee.

H. 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 Office that the applicant is entitled to inspect during the normal working hours of the Office.

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.

28.01.05 Correction or Amendment of [Personal] Public Records

Authority: *General Provisions Article, §4-502; State Government Article, [§§9-1604(b)(1)(v) [and 10-611—10-628.]; 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 Office of Administrative Hearings.

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

(3) "Chief Judge" means the Chief Judge of the Office.

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

(5) "Office" means the Office of Administrative Hearings.

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

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

.03 Who May Request.

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

A. The Office 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.

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 of the Office shall be addressed to the custodian of the record. If the custodian is unknown, the request may be addressed to the Chief Judge or the custodian.

.06 Return of Nonconforming Request.

A. The Office 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 Office 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 Office 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 Office 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 Refusal of Request.

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

- A. The requested correction or amendment; and*
- B. The person's disagreement with the refusal of the Office 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 in size;*
- B. Use only one side of each page; and*
- C. Consist of not more than five pages.*

.10 Providing 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 Office shall provide a copy of the statement whenever the Office discloses the public record to a third party.

.11 Administrative Review.

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

- (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 Chief Judge within 30 days after the requester is advised of the Office'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 Office.

THOMAS E. DEWBERRY
Chief Administrative Law Judge