

28.01.04.00¹

Title 28 OFFICE OF ADMINISTRATIVE HEARINGS

Subtitle 01 ADMINISTRATION

Chapter 04 Public Information Act Requests

Authority: General Provisions Article, §§4-101—4-103, 4-201—4-362, and 4-503; State Government Article, §9-1604; Annotated Code of Maryland

28.01.04.01

.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.

28.01.04.02

.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.

¹ General key:

Proposed deleted items appear in brackets ([]).

Proposed amendments/additions appear in *italics*.

28.01.04.03

.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 ALJ” means the individual appointed as head of the Office pursuant to State Government Article, §9-1603, Annotated Code of Maryland.

(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) “Filed” means that a document is postmarked or received in accordance with COMAR 28.02.01.04D.

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

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

(10) “Office” means the Office of Administrative Hearings.

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

(12) “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.

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

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

(15) “Working day” means a day on which the Office is open from 8 am until 4:30 pm.

28.01.04.04

.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.

28.01.04.05

.05 Who May Request Public Records.

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

28.01.04.06

.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.

28.01.04.07

.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.

28.01.04.08

.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] *Chief ALJ* or the custodian.

28.01.04.09

[Response to Request] .09 *Time for Response.*

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 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.

28.01.04.10

.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.

28.01.04.11

.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.

28.01.04.12

.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.

28.01.04.13

.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.]

A. Response to Written Request.

(1) The official custodian shall respond in writing to a written request for inspection or copying of a public record promptly and without delay.

(2) Except as provided in §A(3) of this regulation, the official custodian shall grant or deny a written request for inspection or copying of a public record not later than 30 calendar days after receipt of the request.

(3) With the written consent of the applicant, the time period specified in §A(2) of this regulation may be extended for not more than 30 additional calendar days.

(4) The official custodian may not ignore a request to inspect or copy a public record on the ground that the request was made for purposes of harassment.

B. Written Denial.

(1) If the official custodian denies a request for inspection or copying of a public record, in whole or in part, the denial shall be in writing.

(2) A written denial shall:

(a) State the reasons for the denial;

(b) Cite the legal authority for the denial; and

(c) Inform the applicant of the remedies available under the General Provisions Article for review of the denial.

(3) If the official custodian denies a request under General Provisions Article, Title 4, Subtitle 3, the written denial shall include:

(a) A brief explanation of why the denial is necessary; and

(b) If applicable, an explanation of why redaction of information would not address the reasons for the denial.

C. Designation of Immediately Available Records.

(1) In accordance with General Provisions Article, § 4-201(b), the Office shall designate and maintain a current list of categories of public records that are available for inspection immediately upon request.

(2) The list required under §C(1) of this regulation shall be made available to the public and maintained in a manner that is reasonably accessible.

D. Construction in Favor of Disclosure.

Pursuant to General Provisions Article, § 4-103(b), this title shall be construed in favor of permitting inspection of a public record, with the least cost and least delay to the person or governmental unit that requests the inspection, unless inspection would result in an unwarranted invasion of the personal privacy of a person in interest or would otherwise be contrary to law.

E. Review of Denial; Remedies.

(1) Judicial Review.

If the official custodian denies a request to inspect or copy a public record, the applicant may file an action for judicial review under General Provisions Article, § 4-362, without first pursuing mediation or filing a complaint with the State Public Information Act Compliance Board.

(2) Mediation by the Public Access Ombudsman.

The applicant and the official custodian may contact the Public Access Ombudsman to attempt to resolve a dispute relating to a request for public records under General Provisions Article, Title 4, Subtitle 1B.

(3) State Public Information Act Compliance Board.

(a) If mediation conducted under §E(2) of this regulation does not resolve the dispute, the applicant may file a written complaint with the State Public Information Act Compliance Board under General Provisions Article, § 4-1A-05.

(b) The Board shall issue a written decision within the time period required under General Provisions Article, § 4-1A-06.

(c) The Board may order compliance, reduction or refund of fees, or correction of response timelines, as authorized by law.

(4) Extension of Time During Dispute Resolution.

Any time limit applicable under this regulation shall be extended for the period during which a dispute is pending before the Public Access Ombudsman or the State Public Information Act Compliance Board, in accordance with General Provisions Article, § 4-203(d).

(5) Appeal.

A final decision of the State Public Information Act Compliance Board may be appealed to the circuit court as provided in General Provisions Article, § 4-1A-10 or § 4-362(a)(2).

28.01.04.14

.14 Disclosure Against Public Interest.

A. Denial Pending Court Order.

(1) If, in the opinion of the Chief ALJ, 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 ALJ may temporarily deny the request and seek 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 ALJ shall apply to the appropriate circuit court for an order permitting continued denial or restriction of access.

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

28.01.04.15

.15 Fees.

A. Copies. Except as provided in §§B and C of this regulation, the fees for reproducing public records of the Office in the form of copies, printouts, or photographs, and for certifying the reproductions, are as follows:

(1) Reproduction.

(a) For each reproduction 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. If a person requests that a reproduction 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 reproduction or certification of a 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 reproduce a public record within the Office, the custodian shall arrange for the prompt reproduction of the public record and either:

- (1) Collect from the applicant a fee equal to the actual cost of reproduction; or
- (2) Direct the applicant to pay the cost of reproduction directly to the reproduction facility.

D. Before reproducing 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 reproduction.

(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 reproduction.

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

G. Waiver or Reduction of Fees.

- (1) The official custodian may waive or reduce a 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 of Indigence or other affidavit sufficient to support a claim of indigence pursuant to COMAR 28.03.01.06B.

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

H. If the applicant requests that a reproduction 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.

28.01.04.16

.16 Time and Place of Inspection.

A. An applicant may inspect a 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 considering an applicant's express request, determines that another place is more suitable and convenient.

28.01.04.9999

Administrative History

Effective date: September 16, 1991 (18:18 Md. R. 2009)

Regulation .02B amended effective May 6, 1996 (23:9 Md. R. 672)

Regulation .11B amended as an emergency provision effective July 8, 1993 (20:15 Md. R. 1219); amended permanently effective January 7, 1994 (20:25 Md. R. 1950)

Regulation .13A amended effective January 20, 1992 (19:1 Md. R. 35); May 6, 1996 (23:9 Md. R. 672)

Regulations .01—.15 repealed and new Regulations .01—.16 adopted effective April 11, 2016 (43:7 Md. R. 452)

Regulation .03B amended effective January 10, 2020 (46:26 Md. R. 1168)

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28.01.05.00

Title 28 OFFICE OF ADMINISTRATIVE HEARINGS

Subtitle 01 ADMINISTRATION

Chapter 05 Correction or Amendment of Public Records

Authority: General Provisions Article, §4-502; State Government Article, §9-1604; Annotated Code of Maryland

28.01.05.01

.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.

28.01.05.02

.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 ALJ” means the individual appointed as head of the Office pursuant to State Government Article, §9-1603, Annotated Code of Maryland.

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

(5) “Filed” means that a document is postmarked or received in accordance with COMAR 28.02.01.04D.

(6) “Office” means the Office of Administrative Hearings.

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

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

28.01.05.03

.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.

28.01.05.04

.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.

28.01.05.05

.05 Addressee.

Unless otherwise provided by law, requests to correct or amend a public record of the Office shall be addressed to the Deputy Director of Operations, who is the official custodian of the public records of the Office.

28.01.05.06

.06 Return of Nonconforming Request.

A. The Office shall accept a request to correct or amend a public record when 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.

28.01.05.07

.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:
 - (a) Because the requester is not a person in interest;

- (b) Because the requester is not authorized to inspect the record; or
- (c) For any other reason authorized by law.

28.01.05.08

.08 Statement of Disagreement.

A. If the Office refuses to make a requested correction or amendment, a person in interest may file with the Office a concise, written statement of disagreement.

B. The statement of disagreement shall:

- (1) Be on pages not larger than 8-1/2 x 11 inches in size;
- (2) Use only one side of each page;
- (3) Consist of not more than five pages, double spaced, in 12-point font;
- (4) Explain the reason for the requested correction or amendment; and
- (5) Explain the basis for the disagreement with the stated reason for the Office's refusal to make the correction or amendment.

28.01.05.09

.09 Providing Copy of Statement of Disagreement.

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

28.01.05.10

.10 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 ALJ 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 COMAR 28.02.01.

28.01.05.9999

Administrative History

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Regulation .11C amended as an emergency provision effective July 8, 1993 (20:15 Md. R. 1219); amended permanently effective January 7, 1994 (20:25 Md. R. 1950)

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