

1 Title 36 STATE LOTTERY AND GAMING CONTROL AGENCY

2
3 Subtitle 01 GENERAL PROVISIONS

4
5 Chapter 02 Administrative Procedures

6
7 Authority: State Government Article, § 9-110; General Provisions Article §§ 4-101
8 to 4-601, Annotated Code of Maryland

9 .01 Public Information Act Requests.

10 A. Scope. This regulation sets out procedures for filing and processing requests with the Agency
11 for the inspection and copying of public records under the Public Information Act.

12 B. Policy. It is the policy of the Agency to facilitate access to the public records of the Agency,
13 when access is allowed by law, by minimizing costs and time delays to applicants.

14 C. Definitions.

15 (1) In this regulation and in Regulation .02 of this chapter, the following terms have the
16 meanings indicated.

17 (2) Terms Defined.

18 (a) "Act" means the Public Information Act, General Provisions Article, §§4-
19 101—4-601, Annotated Code of Maryland.

20 (b) "Applicant" has the meaning stated in §4-101 of the Act.

21 (c) "Application" means a request for access under the Act for a public
22 record of the Agency.

23 (d) "Board" has the meaning stated in § 4-101 of the Act.

24 (e) "Copy" means any form of reproduction using a photocopying machine
25 or other reproduction technology, including a paper copy, an electronic copy,
26 a printout, or an image.

For November 19, 2015 Commission.

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(ef) "Custodian" has the meaning stated in §4-101 of the Act means:

(i) The official custodian, as defined in General Provisions Article, § 4-101, Annotated Code of Maryland;

(ii) The Director;

(iii) The PIA Coordinator; or

(iv) Any other authorized individual who has physical custody and control of a public record of the Agency.

(g) "Indigent" has the meaning stated in § 4-206 of the Act.

(h) "Metadata" has the meaning stated in § 4-205 of the Act.

(i) "PIA Coordinator" means the Agency employee who is responsible for accepting requests for public records.

(j) "Public Access Ombudsman" means the official appointed, under Title 4, Subtitle 1B of the Act, to resolve disputes under the Act.

~~(e) "Prepare" includes reviewing documents to determine whether the information contained in them may be disclosed under the Act.~~

~~(f)~~ (k) "Public Record" has the meaning stated in §4-101 of the Act.

(l) "Reasonable fee" has the meaning stated in § 4-206 of the Act.

D. Who May Request Public Record. Any person may request to inspect or copy public records of the Agency.

E. Necessity for Written ~~Request~~ Application.

~~(1) Inspection.~~ Except as otherwise provided in this regulation, an applicant that wishes to inspect a public record of the Agency shall submit a written application to the PIA Coordinator.

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1 (a) Except as otherwise provided in this regulation, the custodian shall make
2 public records available for inspection by an applicant without demanding a
3 written request.

4 (b) The custodian shall require a written request if the custodian reasonably
5 believes that:

6 (i) The Act or any other law may prevent the disclosure of the record to
7 the applicant; or

8 (ii) A written request will materially assist the Agency in responding to the
9 request.

10 (2) Copies. If the applicant requests one or more copies of any public record of the
11 Agency, the custodian may require a written request from the applicant.

12 **(2) An applicant need not submit a written application if:**

13 **(a) The applicant seeks to inspect a public record designated by the official**
14 **custodian as available to any applicant immediately on request; or**

15 **(b) The PIA coordinator waives the requirement for a written application.**

16 F. Contents of Written Request. **Application to Inspect a Public Record.** A written request
17 shall:

18 (1) ~~Contain the applicant's complete name and address;~~

19 (2) ~~Be signed by the applicant; and~~

20 (3)

21 **(1) An application shall be addressed to:**

22 **(a) The PIA Coordinator; or**

23 **(b) If the PIA Coordinator is not known, the Director.**

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1 **(2) An application shall:**

2 **(a) Reasonably identify, by brief description, the public record sought; and**

3 **(b) Provide an address or other means by which the custodian may respond**
4 **to the applicant's request.**

5 **G. Request to Addressee.**

6 ~~(1) A written request for a public record of the Agency shall be addressed to the~~
7 ~~custodian of the record.~~

8 ~~(2) If the custodian is unknown to the applicant, the request may be addressed to the~~
9 ~~Director.~~

10 **HG. Response to Written Request Application.**

11 **(1) If the individual to whom the application is submitted is not an Agency**
12 **custodian, within 10 work days after receiving the application the individual shall**
13 **give the applicant:**

14 **(a) Notice of that fact; and**

15 **(b) If known, the name of the custodian and possible location of the public**
16 **record.**

17 **(2) If the custodian decides to grant a request an application** for inspection, the custodian
18 **shall produce the record for inspection:**

19 **(a) Immediately; or**

20 **(b) Within a reasonable period, not to exceed 30 days from the date of the request**
21 **application** if that period of time is needed to retrieve the public record and
22 **conduct any necessary review.**

23 **(3) If the custodian reasonably believes that it will take more than 10 work days to**
24 **search for, retrieve, prepare, and produce the public record for inspection, the**

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1 custodian shall indicate in writing or by electronic mail within 10 work days after
2 receipt of the application:

3 (a) The amount of time that the custodian anticipates it will take to produce
4 the public record;

5 (b) An estimate of the range of fees that may be charged to comply with the
6 application for public records; and

7 (c) The reason why it will take more than 10 work days to produce the
8 public record.

9 (4) If an applicant requests to inspect a public record and a custodian determines
10 the record does not exist, the custodian shall notify the applicant of this
11 determination:

12 (a) Immediately, if the custodian determines this on initial review of the
13 application; or

14 (b) If the custodian determines this after a search for responsive records,
15 promptly after the search is completed but not more than 30 days after
16 receiving the application.

17 ~~(25) If the custodian decides to deny~~ denies a request an application for inspection:

18 (a) The custodian shall do so within 30 days after the request; and

19 (b) Immediately notify the applicant of the denial.

20 ~~(36) If a request~~ an application is denied, the custodian shall provide the applicant, at the
21 time of the denial or within 10 working days, a written statement that gives:

22 (a) The ~~reasons~~ reason for the denial including, for records denied under § 4-
23 343 of the Act, a brief explanation of;

24 (b) The legal authority for the denial;

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1 (i) Why denial is necessary; and

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

6 (b) The legal authority for the denial;

7 (c) Without disclosing the protected information, a brief description of the
8 undisclosed records that will enable the applicant to assess the applicability
9 of the legal authority for the denial; and

10 (ed) Notice of the remedies available for review of the denial; and.

11 (d) Permission to inspect any part of the record that is:

12 (i) Subject to inspection; and

13 (ii) Reasonably severable.

14 (4) If a requested public record is not in the custody or control of the person to whom
15 application is made, that person shall, within 10 working days after receipt of the request,
16 notify the applicant:

17 (a) That the person does not have custody or control of the requested public
18 record; and

19 (b) If the person knows:

20 (i) Of the name of the custodian of the public record; and

21 (ii) Of the location or possible location of the public record.

22 (§7) A time limit imposed by § G(1) through (3) of this regulation may be extended:

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1 (a) With the consent of the applicant, ~~any time limit imposed by §I(1) —(4) of this~~
2 ~~regulation may be extended~~ for an additional period of up to 30 days; and

3 (b) For the period of time during which a dispute initiated by the applicant is
4 pending before the Public Access Ombudsman.

5 H. Notice to and Consideration of Views of Person Potentially Affected by Disclosure.

6 (1) Unless prohibited by law, the custodian may ~~provide~~ notice of a request for inspection
7 or copying of any public record of the Agency to any person who, in the judgment of the
8 custodian, could be adversely affected by disclosure of that public record.

9 (2) The custodian may consider the views of the potentially affected person before
10 deciding whether to disclose the public record to the applicant.

11 I. Electronic Records.

12 (1) Except as provided in § I(3) and (4) of this regulation, the custodian shall
13 provide an applicant with a copy of the public record in a searchable and analyzable
14 electronic format if:

15 (a) The public record is in a searchable and analyzable electronic format;

16 (b) The applicant requests a copy of the public record in a searchable and
17 analyzable electronic format; and

18 (c) The custodian is able to provide a copy of the public record, in whole or in
19 part, in a searchable and analyzable electronic format that does not disclose
20 information that is exempt from disclosure under the Act.

21 (2) The custodian shall provide a portion of the public record in a searchable and
22 analyzable electronic format if:

23 (a) Requested by the applicant; and

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1 (b) The custodian is able to do so by using the existing functions of the
2 database or software program that contains the searchable and analyzable
3 data.

4 (3) The custodian is not required to:

5 (a) Create or reconstruct a public record in an electronic format if the public
6 record is not available in an electronic format; or

7 (b) Release an electronic record in a format that would jeopardize or
8 compromise the security or integrity of the original record or any
9 proprietary software in which the record is maintained.

10 (4) The custodian may remove metadata from an electronic document before
11 providing the electronic record to an applicant by:

12 (a) Using a software program or function; or

13 (b) Converting the electronic record into a different searchable and
14 analyzable format.

15 ~~J. Record Temporarily Unavailable. If a requested public record is in the custody and control of~~
16 ~~the person to whom written application is made, but is not immediately available for inspection~~
17 ~~or copying, the custodian shall promptly:~~

18 ~~(1) Notify the applicant that the public record is not immediately available; and~~

19 ~~(2) Schedule a date within a reasonable time for inspection or copying.~~

20 ~~K. Records Destroyed or Lost. If a requested record has been destroyed or lost, the custodian to~~
21 ~~whom the application is made shall promptly:~~

22 ~~(1) Notify the applicant of this fact within 10 work days of the; and~~

23 ~~(2) Explain the reasons why the public record cannot be produced.~~

24 ~~L. Review of Denial.~~

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(1) If the custodian denies a written request an application to inspect or copy a public record of the Agency, the applicant may, within 30 days after receipt of the notice of denial, request an administrative hearing file an action for judicial enforcement under § 4-362 of the Act without pursuing the remedies set forth in § J(2) and (3) of this regulation.

(2) If the applicant requests a hearing:

(a) The hearing shall be governed by State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland; and

(b) The Director shall issue the final decision of the Agency unless the Director delegates final decision authority.

(3) If the hearing results in a total or partial denial of the request, the applicant may file an appropriate action in the circuit court under § 4-362 of the Act.

(4) If the applicant does not request a hearing, the applicant may file an action for judicial enforcement under § 4-362 of the Act without exhausting that administrative remedy.

If the custodian charges a fee of more than \$350 under § L of this regulation, 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, Annotated Code of Maryland.

(3) 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.

M. Disclosure Against Public Interest.

(1) Denial pending court order.

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

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(b) The ~~A~~ temporary denial shall be in writing to the applicant.

~~(2) Circuit Court Review.~~

~~(a) Within 10 work days after the denial, the Director shall apply to the appropriate circuit court for an order permitting continued denial or restriction of access.~~

~~(b) Notice of the Director's complaint shall be served on the applicant in the same manner provided for service of process by the Maryland Rules of Civil Procedure.~~

K. Temporary Denial.

(1) If the act authorizes inspection of a public record but the custodian believes inspection would cause substantial injury to the public interest, the custodian may temporarily deny inspection.

(2) Within 10 work days after the denial, the custodian shall petition a circuit court to authorize continued denial of inspection.

(3) The petition shall be filed in:

(1) The circuit court for the county where the public record is located; or

(2) The Circuit Court for Baltimore City.

(4) The custodian's petition shall be served on the applicant as provided in the Maryland Rules.

N.L. Fees.

~~(1) Fee Schedule for Copying and Certifying Copies of Records.~~

~~(a) Copies.~~

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(i) The fee for each copy made by a photocopying machine within the Agency a photocopy of a public record of the Agency is 25 cents per page.

(ii) The fee for each copy made otherwise shall be based on the actual cost of reproduction.

(b) Certification of copies. If a person requests that a copy of a public record be

(2) The fee for a certified true copy of a public record is, ~~an~~ additional fee of \$1 per page ~~(, or if appropriate, per item), shall be charged.~~

(c) Minimum fee. No charge will be made

(3) There is no charge if the total fee for copies is ~~\$1~~**10** or less.

~~(24) Notwithstanding §L(1) of this regulation, if the fee for copies or certified copies of any public record is specifically prescribed by a law other than the Act or this regulation, the custodian shall charge the prescribed fee~~ **another law sets a fee for a copy, printout or photograph of a public record, that law applies.**

~~(35) If the custodian cannot copy a public record within the Agency, the custodian shall:~~

~~(a) Make arrangements for the prompt reproduction of the record at public or private facilities outside the Agency; and~~

~~(b) 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.~~ **The custodian may charge for the cost of providing facilities for the reproduction of a public record if the custodian does not have the facilities.**

(46) Before searching for, retrieving, reviewing, preparing, or copying a public record of the Agency, the custodian shall estimate the cost of reproduction and notify the applicant of the cost, and ~~either~~ **may**:

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

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(b) Demand prepayment of the cost from the applicant.

(57) Search and Preparation Fee.

(a) Except as provided in §N(6) **L(8)** of this regulation, the Agency may charge a reasonable fee **to:**

(a) (i) ~~To search~~ **Search** for **and retrieve** requested public records; ~~and~~

(b) —(ii) **Review requested public records for potential disclosure; and** ~~To~~

(c) (iii) ~~prepare~~ **Prepare** public records for inspection and copying.

(b) The custodian shall determine the fee by multiplying the staff's or attorney's salary, prorated to an hourly basis, by the actual time attributable to the search for, retrieval of, review of, and preparation of public records for inspection and copying.

(68) The custodian may not charge ~~any a search or preparation~~ fee for the first 2 hours that an official or employee of the Agency spends to respond to a **spent searching for, retrieving, reviewing and preparing a public record for inspection** request for public records.

(79) Waiver or reduction of fee.

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

~~(i) The~~ **the** applicant requests a waiver; ~~and;~~

~~(# i)~~ **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.

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1 (b) In determining whether a fee is in the public interest, the The official
2 custodian shall consider, among other relevant factors, the ability of the applicant
3 to pay the fee.

4 (810) If the applicant requests that copies of a public record be mailed or delivered to the
5 applicant or a third party, the custodian may charge the applicant for the cost of postage
6 or delivery.

7 (911) If the applicant fails to respond to the custodian within 30 days of the notification
8 under §N(4) of this regulation, the custodian may deem the request withdrawn without
9 further notification to the applicant.

10 (4012) An applicant's request to reopen a request deemed withdrawn under §N(9)-L(11)
11 of this regulation shall be processed as a new request.

12 **Θ M. Time and Place of Inspection.**

13 (1) An applicant may inspect any a public record of the Agency that the applicant is
14 entitled to inspect during the normal working hours a work day of the Agency.

15 (2) The place of inspection shall be the place where the public record is located unless the
16 custodian, taking into account the applicant's express wish, determines that another place
17 of inspection is more suitable and convenient.

18

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