

**Title 02**  
**OFFICE OF THE ATTORNEY GENERAL**  
**Subtitle 06 GENERAL REGULATIONS**

**Notice of Proposed Action**

[21-152-P]

The Attorney General proposes to: (1) Amend Regulations **.03, .06—.09, and .13—.16**, repeal existing Regulation **.11**, and adopt new Regulations **.11** and **.17** under **COMAR 02.06.01 Public Information Act Requests**; and (2) Amend Regulations **.02** and **.11** under **COMAR 02.06.02 Correction or Amendment of Public Records**.

**Statement of Purpose**

The purpose of this action is to update COMAR 02.06.01 Public Information Act Requests to reflect current requirements under General Provisions Article, Title 4, Annotated Code of Maryland. For example, the amendments set out procedures for a custodian to communicate with an applicant if the custodian reasonably believes that it will take more than 10 working days to produce a public record; require a custodian to explain why disclosure of certain records would be contrary to the public interest; require a custodian to provide a copy of a public record in a searchable and analyzable electronic format when available; and set out procedures for calculating a search and preparation fee or waiving the fee in certain circumstances. The amendments also specify that an applicant may file an action for judicial enforcement without pursuing dispute resolution through the Public Access Ombudsman or Public Information Act Compliance Board. Lastly, this action creates a new Regulation .17 to define "sociological information" in this chapter for the first time. As to COMAR 02.06.02 Correction or Amendment of Public Records, the purpose of this action is to update that chapter to reflect current citations to the General Provisions Article, as opposed to the State Government Article where the Public Information Act was previously codified. The only other change is that requests for administrative review under this chapter are to be directed only to the Attorney General, not the Deputy Attorney General.

**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 Alan Dunklow, Assistant Attorney General, Office of the Attorney General, 200 St. Paul Place, Baltimore, MD 21202, or call 410-576-6356, or email to [adunklow@oag.state.md.us](mailto:adunklow@oag.state.md.us), or fax to 410-576-7036. Comments will be accepted through November 8, 2021. A public hearing has not been scheduled.

### 02.06.01 Public Information Act Requests

Authority: [State Government] *General Provisions* Article, [§§10-611—10-628] §§4-101—4-601, Annotated Code of Maryland

#### .03 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) “Act” means the Public Information Act, [State Government] *General Provisions* Article, [§§10-611—10-628] §§4-101—4-601, Annotated Code of Maryland.

(2) “Applicant” has the meaning stated in [State Government] *General Provisions* Article, [§10-611(b)] §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) “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.

[(3)] (5) “Custodian” has the meaning stated in [State Government] *General Provisions* Article, [§10-611(c)] §4-101(d), Annotated Code of Maryland.

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

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

[(4)] (8) “Office” means the Office of the Attorney General.

[(5)] (9) “Official custodian” has the meaning stated in [State Government] *General Provisions* Article, [§10-611(d)] §4-101(f), Annotated Code of Maryland.

(10) “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.

[(6)] (11) “Public record” has the meaning stated in [State Government] *General Provisions* Article, [§10-611(g)] §4-101(j), Annotated Code of Maryland.

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

[(7)] (13) “Working day” means a day other than a Saturday, Sunday, [or a] State holiday, or other day on which the Office is not open for official business.

#### .06 Necessity for Written Request.

A. Inspection.

(1) (text unchanged)

(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] *one or more* public [record] records to the applicant; or

(b) (text unchanged)

B. (text unchanged)

#### .07 Contents of Written Request.

A written request shall:

A. Contain the applicant’s [name and address] *contact information*; and

[B. Be signed by the applicant; and]

[C.] B. (text unchanged)

#### .08 Addressee.

A request to inspect or copy a public record shall be addressed to the custodian of the record *or to the Office’s representative for public records requests as designated under General Provisions Article, §4-503, Annotated Code of Maryland*. If the custodian is unknown, the request may *alternatively* be addressed to the Attorney General.

**.09 Response to Request.**

A. (text unchanged)

B. *If the custodian reasonably believes that it will take more than 10 working days to produce the public record, the custodian shall 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.*

[B.] C. *If the custodian decides to deny a request for inspection, the custodian shall:*

(1) [Do so within] *Deny the request promptly and not more than 30 days after the request, except as otherwise provided by law; and*

(2) (text unchanged)

[C.] D. *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 or reasons for the denial, including, for records denied under General Provisions Article, §4-343, Annotated Code of Maryland, a brief explanation of:*

(a) *Why the denial is necessary, that is, why disclosure of the public record would be contrary to the public interest; and*

(b) *An explanation of why redacting information would not address the reasons for the denial;*

(2) *The legal authority for the denial; [and]*

(3) *Without disclosing the protected information, a brief description of the undisclosed record or records that will enable the applicant to assess the applicability of the legal authority for the denial; and*

[(3)] (4) (text unchanged)

[D.] E. (text unchanged)

[E.] F. [With the consent of the applicant, any] *Any time limit imposed by §§A—C 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 is pending before the Public Access Ombudsman, as permitted by General Provisions Article, §4-203(d)(2), Annotated Code of Maryland.*

**.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;*

(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; or*

(3) *Create, compile, or program a new public record.*

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.*

**.13 Availability of Judicial and Administrative Review [of Denial].**

[A.] *If the custodian denies a request to inspect or copy a public record of the Office, the applicant [may, within 30 days after receipt of the notice of denial, request administrative review.*

B. *If the applicant requests administrative review:*

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

(2) *The Attorney General shall issue the final decision of the Office unless the Attorney General delegates final decision authority.*

C. *If the review results in a total or partial denial of the request, the applicant may file an appropriate action in the circuit court under State Government Article, §10-623, Annotated Code of Maryland.*

D. *If the applicant does not request administrative review, the applicant] may file an action for judicial enforcement under [State Government] General Provisions Article, [§10-623] §4-362(a)(1), Annotated Code of Maryland, without*

[exhausting the administrative remedy] *pursuing the remedies set forth in General Provisions Article, Title 4, Subtitles 1A and 1B, Annotated Code of Maryland.*

[E. This regulation does not apply if the Office denies inspection under State Government Article, §10-619, Annotated Code of Maryland.]

#### **.14 Disclosure Against Public Interest.**

##### A. Denial Pending Court Order.

(1) If, in the opinion of the Attorney General, disclosure of a public record of the Office otherwise subject to disclosure under the Act would do substantial injury to the public interest, the Attorney General may temporarily deny the request [to obtain] *and seek* a court order allowing *continued* nondisclosure.

(2) (text unchanged)

##### B. (text unchanged)

#### **.15 Fees.**

A. 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:

(1) For each copy made by a *standard printer or* photocopying machine within the Office, 25 cents per page;

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

(3) (text unchanged)

##### B.— D. (text unchanged)

E. [Before] *If the custodian intends to charge a fee, before copying a public record of the Office or otherwise disclosing public records to the applicant, the custodian shall estimate both the cost of reproduction and the search and preparation fee under §F of this regulation and may either:*

(1) (text unchanged)

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

##### F. *Search and Preparation Fee.*

(1) Except as provided in §G of this regulation, the custodian may charge a reasonable fee for time that an official or employee of the Office spends to:

[(1)] (a) Search for requested public records; [or]

(b) *Review requested public records for potential disclosure; and*

[(2)] (c) (text unchanged)

(2) *The custodian shall determine the fee under §F(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.*

G. The custodian may not charge a [search or preparation] fee *under §F of this regulation for the first 2 hours [that an official or employee of the Office spends to respond to a request for public records] needed to search for and prepare a public record for inspection.*

##### H. Waiver or Reduction of Fee.

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

(a) (text unchanged)

(b) The custodian determines that [the]:

(i) *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 [making a decision under this section] *determining whether a fee waiver is in the public interest, the custodian shall consider, among other relevant factors, the ability of the applicant to pay the fee.*

##### I. (text unchanged)

#### **.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, *subject to the ability of the custodian, if a record is not immediately available for inspection, to schedule a mutually agreeable date within a reasonable amount of time that comports with any applicable deadlines under the Act.*

##### B. (text unchanged)

#### **.17 Sociological Information.**

A. *For purposes of this regulation, "sociological information" means:*

(1) *Social Security number;*

(2) *Personal street address;*

(3) *Personal phone number;*

(4) *Date of birth; and*

(5) *Driver's license number.*

*B. Except for use in carrying out the custodian's governmental functions or except as further provided in §C of this regulation, a custodian may not disclose under the Act, and shall deny a request for inspection or copying of, any part of a public record that contains sociological information relating to an individual.*

*C. A custodian may disclose sociological information:*

- (1) To other public officials and employees in the performance of their public duties;*
- (2) To the person in interest or the agent or representative of the person in interest;*
- (3) With the consent of the person in interest;*
- (4) Pursuant to a duly issued subpoena;*
- (5) Pursuant to a court order;*
- (6) If disclosure is otherwise required by law, including if required to be disclosed under General Provisions Article, §4-333, Annotated Code of Maryland, as part of a licensing record; or*
- (7) If disclosure is otherwise permitted by law and the Attorney General determines that disclosure would be in the public's best interests.*

## **02.06.02 Correction or Amendment of Public Records**

Authority: [State Government] *General Provisions* Article, [§10-625] §4-502, Annotated Code of Maryland

### **.02 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1) "Act" means the Public Information Act, [State Government] *General Provisions* Article, [§§10-611—10-628] §§4-101—4-601, Annotated Code of Maryland.

(2) "Custodian" has the meaning stated in [State Government] *General Provisions* Article, [§10-611(c)] §4-101(d), Annotated Code of Maryland.

(3) (text unchanged)

(4) "Person in interest" has the meaning stated in [State Government] *General Provisions* Article, [§10-611(e)] §4-101(g), Annotated Code of Maryland.

(5) "Public record" has the meaning stated in [State Government] *General Provisions* Article, [§10-611(g)] §4-101(j), Annotated Code of Maryland.

### **.11 Administrative Review.**

A. (text unchanged)

B. A request for review shall be filed with the Attorney General [or Deputy Attorney General] within 30 days after the requester is advised of the Office's action.

C. (text unchanged)

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