

Office of Law Guidance for Racial Equity Task Force, November 16, 2020

Maryland Public Information Act

Maryland Code, General Provisions Article, Title 4 (§§4-101 – 4-601)

Howard County Charter §906

- **General:** The policy behind the MPIA is that all persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees. The Act applies to the Task Force.
- **Applies to public records:** The MPIA requires a custodian to allow a person to inspect a public record at a reasonable time.
 - A public record is material created or received by an agency/department in connection with the transaction of public business.
 - A public record includes notes, e-mails, voicemails, text message, etc.
 - A public record can be in a private e-mail account or on a personal phone. It is the content of the record, not its location, that determines whether it is a public record.
 - Must be disclosed to a requestor unless an exception would allow the record to be withheld.
 - There is no duty to create a public record. However, if a public record exists in a searchable and analyzable electronic format, the act of a custodian providing a portion of that record is not considered creating a new public record.
 - Public records should not be destroyed after receipt of a relevant MPIA request.
- **Procedure and Timeline:**
 - A requestor must submit a written application, but a custodian can waive this requirement.
 - If not the custodian of a record, the agency must let the requestor know within 10 days and, if known, which department/agency may have the record.
 - A custodian must grant or deny the request “promptly,” but not more than 30 days after receiving the request. This deadline can be extended by 30 days with the consent of the requestor.
 - If it will take the custodian more than 10 days to grant the request, the custodian must provide the requestor, in writing, with the amount of time it will take to produce the public record, a fee estimate, and the reason for the delay.
 - If denying inspection of a public record, a custodian must provide a written statement within 10 days that provides the reasons for the denial, the legal authority for the denial, why redacting the record is insufficient, a description of the withheld record, and legal remedies available under the MPIA.
- **Fees:** A custodian can charge a reasonable fee for the search and preparation of a record in excess of 2 hours. A custodian can waive the fee if the requestor: (1) asks for a fee waiver and (2) the applicant is indigent or the custodian determines a waiver is in the public interest.
- **Exceptions to disclosure:** The MPIA includes mandatory and permissive denials. There are more exceptions than listed below, but particularly relevant to this Task Force include that:
 - A custodian must not disclose a public record that is:
 - privileged or confidential by law (ex: attorney/client privilege)
 - disclosure would be contrary to state or federal law (ex: HIPPA)
 - A custodian may withhold any part of an interagency or intra-agency letter or memorandum that would not be available by law to a private party in litigation.
 - The record must be created by the agency or outside consultants called upon by the government agency to assist in its internal decision-making.
 - The record must contain confidential opinions, deliberations, advice, or recommendations.
 - This exception generally protects pre-decisional, not post-decisional records.
- **Helpful links:**
 - Attorney General MPIA website:
<https://www.marylandattorneygeneral.gov/Pages/OpenGov/pia.aspx>