

OPEN GOVERNMENT GUIDE

Access to Public Records
and Meetings in

MARYLAND

**REPORTERS
COMMITTEE**
FOR FREEDOM OF THE PRESS

Sixth Edition
2011

OPEN GOVERNMENT GUIDE

OPEN RECORDS AND MEETINGS LAWS IN

MARYLAND

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Previously Titled
Tapping Officials' Secrets

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Contents

Introductory Note	iv	V. PROCEDURE FOR OBTAINING RECORDS	14
User’s Guide	v	A. How to start.	14
FOREWORD	1	B. How long to wait.	15
Open Records	2	C. Administrative appeal.	15
I. STATUTE -- BASIC APPLICATION.	2	D. Court action.	16
A. Who can request records?	2	E. Appealing initial court decisions.	17
B. Whose records are and are not subject to the act?	2	F. Addressing government suits against disclosure.	17
C. What records are and are not subject to the act?	3	Open Meetings	18
D. Fee provisions or practices.	4	I. STATUTE -- BASIC APPLICATION.	18
E. Who enforces the act?	4	A. Who may attend?	18
F. Are there sanctions for noncompliance?	5	B. What governments are subject to the law?	18
II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS	5	C. What bodies are covered by the law?	18
A. Exemptions in the open records statute.	5	D. What constitutes a meeting subject to the law.	19
B. Other statutory exclusions.	9	E. Categories of meetings subject to the law.	20
C. Court-derived exclusions, common law prohibitions, recognized privileges against disclosure.	9	F. Recording/broadcast of meetings.	22
D. Are segregable portions of records containing exempt material available?	9	G. Are there sanctions for noncompliance?	22
E. Homeland Security Measures.	9	II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS	22
III. STATE LAW ON ELECTRONIC RECORDS	9	A. Exemptions in the open meetings statute.	22
A. Can the requester choose a format for receiving records?	9	B. Any other statutory requirements for closed or open meetings. 23	23
B. Can the requester obtain a customized search of computer databases to fit particular needs?	10	C. Court mandated opening, closing.	23
C. Does the existence of information in electronic format affect its openness?	10	III. MEETING CATEGORIES -- OPEN OR CLOSED.	23
D. How is e-mail treated?	10	A. Adjudications by administrative bodies.	23
E. How are text messages and instant messages treated?	10	B. Budget sessions.	23
F. How are social media postings and messages treated?	10	C. Business and industry relations.	23
G. How are online discussion board posts treated?	10	D. Federal programs.	23
H. Computer software.	10	E. Financial data of public bodies.	23
I. How are fees for electronic records assessed?	10	F. Financial data, trade secrets or proprietary data of private corporations and individuals.	24
J. Money-making schemes.	10	G. Gifts, trusts and honorary degrees.	24
K. On-line dissemination.	10	H. Grand jury testimony by public employees.	24
IV. RECORD CATEGORIES -- OPEN OR CLOSED.	10	I. Licensing examinations.	24
A. Autopsy reports.	10	J. Litigation; pending litigation or other attorney-client privileges.	24
B. Administrative enforcement records (e.g., worker safety and health inspections, or accident investigations)	10	K. Negotiations and collective bargaining of public employees.	24
C. Bank records.	10	L. Parole board meetings, or meetings involving parole board decisions.	24
D. Budgets.	10	M. Patients; discussions on individual patients.	24
E. Business records, financial data, trade secrets.	11	N. Personnel matters.	24
F. Contracts, proposals and bids.	11	O. Real estate negotiations.	24
G. Collective bargaining records.	11	P. Security, national and/or state, of buildings, personnel or other.	24
H. Coroners reports.	11	Q. Students; discussions on individual students.	24
I. Economic development records.	11	IV. PROCEDURE FOR ASSERTING RIGHT OF ACCESS	25
J. Election records.	11	A. When to challenge.	25
K. Gun permits.	11	B. How to start.	25
L. Hospital reports.	11	C. Court review of administrative decision.	26
M. Personnel records.	11	D. Appealing initial court decisions.	26
N. Police records.	12	V. ASSERTING A RIGHT TO COMMENT.	26
O. Prison, parole and probation reports.	13	Statute	27
P. Public utility records.	13		
Q. Real estate appraisals, negotiations.	13		
R. School and university records.	14		
S. Vital statistics.	14		

Introductory Note

The OPEN GOVERNMENT GUIDE is a comprehensive guide to open government law and practice in each of the 50 states and the District of Columbia. Fifty-one outlines detail the rights of reporters and other citizens to see information and attend meetings of state and local governments.

The OPEN GOVERNMENT GUIDE — previously published as *Tapping Officials' Secrets* — is the sole reference on open government laws in many states.

Written to follow a standard outline to allow easy comparisons between state laws, the compendium has enabled open government advocates in one state to use arguments successful in other states to enhance access rights at home. Press associations and lobbyists have been able to invoke other sunshine laws as they seek reforms in their own.

Volunteer attorneys, expert in open government laws in each state and in Washington, D.C., generously donated their time to prepare the initial outlines for the first incarnation of this project in 1989. In most states these same attorneys or their close associates updated and rewrote the outlines for the 1993, 1997, 2001 and 2006 editions as well this current 2011 edition.

Attorneys who are new to the compendium in this edition are also experts in open government and access issues, and we are grateful to them for their willingness to share in this ongoing project to create the first and only detailed treatise on state open government law. The rich knowledge and experience all the participating attorneys bring to this project make it a success.

While most of the initial users of this compendium were journalists, we know that lawyers and citizens have discovered it and find it to be indispensable as well.

At its core, participatory democracy decries locked files and closed doors. Good citizens study their governors, challenge the decisions they make and petition or vote for change when change is needed. But no citizen can carry out these responsibilities when government is secret.

Assurances of open government exist in the common law, in the first state laws after colonization, in territorial laws in the west and even in state constitutions. All states

have passed laws requiring openness, often in direct response to the scandals spawned by government secrecy. The U.S. Congress strengthened the federal Freedom of Information Act after Watergate, and many states followed suit.

States with traditionally strong access laws include Vermont, which provides virtually unfettered access on many levels; Florida, which was one of the first states to enact a sunshine law; and Ohio, whose courts have issued several access-friendly rulings. Other jurisdictions, such as Pennsylvania and the District of Columbia, have made significant changes to their respective open government laws since the fifth edition was published designed to foster greater public access to information. Historically, Pennsylvania had a reputation as being relatively non-transparent while the District of Columbia was known to have a very restrictive open meetings law.

Some public officials in state and local governments work hard to achieve and enforce open government laws. The movement toward state freedom of information compliance officers reflects a growing activism for access to information in the states.

But such official disposition toward openness is exceptional. Hardly a day goes by when we don't hear that a state or local government is trying to restrict access to records that have traditionally been public — usually because it is feared release of the records will violate someone's "privacy" or threaten our nation's security.

It is in this climate of tension between broad democratic mandates for openness and official preference for secrecy that reporters and good citizens need to garner their resources to ensure the passage and success of open government laws.

The Reporters Committee genuinely hopes that the OPEN GOVERNMENT GUIDE will help a vigorous press and citizenry to shape and achieve demands for openness, and that it will serve as a primer for those who battle in government offices and in the courts for access to records and meetings. When challenges to secrecy are successful, the news is better and so is the government.

User's Guide

Whether you are using a guide from one state to find a specific answer to an access issue, or the complete compendium encompassing all states to survey approaches to a particular aspect of open government law around the country, knowing a few basics on how the OPEN GOVERNMENT GUIDE is set up will help you to get the most out of it.

Following the outline. Every state section is based on the same standard outline. The outline is divided into two parts: access to records and access to meetings.

Start by reviewing the table of contents for each state. It includes the first two tiers of that state's outline. Once you are familiar with the structure of the outline, finding specific information is simple. Typically, the outline begins by describing the general structure of the state law, then provides detailed topical listings explaining access policies for specific kinds of records or meetings.

Every state outline follows the standard outline, but there will be some variations. Some contributors added items within the outline, or omitted subpoints found in the complete outline which were not relevant to that state's law. Each change was made to fit the needs of a particular state's laws and practices.

In general, outline points that appear in boldface type are part of the standard outline, while additional topics will appear in italicized type.

Whether you are using one state outline or any number of outlines, we think you will find the outline form helpful in finding specific information quickly without having to read an entire statute or search through many court cases. But when you do need to consult statutes, you will find the complete text of the relevant portions at the end of each outline.

Additional copies of individual state booklets, or of the compendium covering the 50 states and the District of Columbia, can be ordered from The Reporters Committee for Freedom of the Press, 1101 Wilson Blvd., Suite 1100, Arlington, Virginia 22209, or by calling (703) 807-2100. The compendium is available in electronic format on CD.

The state outlines also are available on our World-Wide Web site, www.rcfp.org/ogg. The Internet version of the outlines allows you to search the database and compare the law in different states.

Updates: The Reporters Committee published new editions of THE OPEN GOVERNMENT GUIDE in 1989, 1993, 1997, 2001, 2006, and now in 2011. We expect future updates to follow on approximately the same schedule. If we become aware of mistakes or material omissions in this work, we will post notices on this project's page on our World-Wide Web site, at www.rcfp.org/ogg. This does not mean that the outlines will constantly be updated on the site — it simply means known errors will be corrected there.

For our many readers who are not lawyers: This book is designed to help journalists, lawyers, and citizens understand and use state open records and meetings law. Although the guides were written by lawyers, they are designed to be useful to and readable by nonlawyers as well. However, some of the elements of legal writing may be unfamiliar to lay readers. A quick overview of some of these customs should suffice to help you over any hurdles.

Lawyers are trained to give a "legal citation" for most statements of law. The name of a court case or number of a statute may therefore be tacked on to the end of a sentence. This may look like a sentence fragment, or may leave you wondering if some information about that case was omitted. Nothing was left out; inclusion of a legal citation provides a reference to the case or statute supporting the statement and provides a shorthand method of identifying that authority, should you need to locate it.

Legal citation form also indicates where the law can be found in official reporters or other legal digests. Typically, a cite to a court case will be followed by the volume and page numbers of a legal reporter. Most state cases will be found in the state reporter, a larger regional reporter, or both. A case cite reading 123 A.2d 456 means the case could be found in the Atlantic (regional) reporter, second series, volume 123, starting at page 456.

Note that the complete citation for a case is often given only once. We have tried to eliminate as many cryptic second-reference cites as possible, but you may encounter cites like "Jackson at 321." This means that the author is referring you to page 321 of a case cited earlier that includes the name Jackson. Authors may also use the words *supra* or *infra* to refer to a discussion of a case appearing earlier or later in the outline, respectively.

Except for these legal citation forms, most "legalese" has been avoided. We hope this will make this guide more accessible to everyone.

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FOREWORD

Open Records. In explaining the purpose and objectives of Maryland's Public Information Act ("PIA"), Md. Code Ann., State Gov't §§ 10-611 to 10-628, (2004 & Cumm. Supp. 2005), Maryland's Attorney General, Joseph Curran, Jr., stated that:

The public's right to information about government activities lies at the heart of a democratic government. Maryland's Public Information Act grants the people of this State a broad right of access to public records while protecting the legitimate interests of government and the privacy rights of individual citizens.

Douglas F. Gansler, Office of the Maryland Attorney General, *Public Information Act Manual*, (11th ed. 2008) (hereinafter "*PIA Manual*"), Preface.

Prior to the enactment of the PIA, there were statutory provisions in place granting the public a right of inspection of certain public records. See, e.g., *Pressman v. Elgin*, 187 Md. 446, 50 A.2d 560 (1946) (the Maryland Motor Vehicle Act of 1943 provided that all records of the Department of Motor Vehicles, other than those declared by law to be confidential, were open to public inspection during office hours); *Belt v. Prince George's Co.*, 73 Md. 289, 20 A. 982 (1890) (statutory provision required court clerks to provide copies of public records to any person upon application and payment of fees); but see *Whittle v. Munshower*, 221 Md. 258, 155 A.2d 670 (1959) (police reports of investigations not public records based on absence of statutory provision declaring same).

Absent statutory authority, however, Maryland law was unclear as to the precise nature and origin of any common law right of inspection of public records. An early case suggested that absent statutory authority, there was no common law right to inspect public records. *Belt*, 73 Md. at 290. However, in *Pressman*, the Maryland Court of Appeals suggested that a common law right to inspect public records might exist. 187 Md. at 451.

Whether based upon common law or statutory authority, the right to inspect public records prior to the PIA was limited to those persons who could show an actual or legal interest in the public record. *Id.* at 451-53; 43 Op. Att'y Gen. 113 (1956). This "actual or legal interest" requirement was based upon the necessity of obtaining a writ of mandamus if the right of inspection was denied. *Id.* at 450-53. A writ of mandamus would only issue upon a showing that the applicant for the writ had a clear legal right to inspect the record in question and that the defendant had an imperative duty to permit inspection. *Id.* at 452. Thus, as the court in *Pressman* explained, if a petitioner's purpose in desiring to see certain public records was merely to satisfy his curiosity, the writ would not be granted. *Id.* at 452; see also 43 Op. Att'y Gen. at 114 ("a person does not have the right to inspect judicial records to satisfy any whim or fancy").

The impetus for change in Maryland was the adoption of the federal Freedom of Information Act ("FOIA") enacted in 1966 by Pub. L. No. 89-487, 80 Stat. 250, and now codified at 5 U.S.C. § 552 (2004 & Supp. 2005). See *Faulk v. State's Attorney*, 299 Md. 493, 506, 474 A.2d 880, 887 (1984). In addition to FOIA, the state statutes of Wyoming (Wyo. Stat. §§ 6-4-201 to -205) and Colorado (Colo. Rev. Stat. §§ 24-72-201 to 206) served as models for Maryland's PIA. See *PIA Manual*, at 2. Like other state public information laws, Maryland's PIA abrogates the actual or legal interest requirement under the common law and expands the range of public records available for public inspection. *Id.*

Maryland's PIA was passed in 1970. 1970 Md. Laws pp. 1970-75. As originally introduced in the Maryland House of Delegates, the PIA included a section specifically pertaining to news media. See *Faulk*, 299 Md. at 506, 474 A.2d at 887. This provision permitted a right of inspection to all news media if such right was allowed to any officer or employee of any newspaper, radio station, television station or other person or agency in the business of public dissemination of news or current events. Although the legislative history of the PIA fails to explain why, this media provision was deleted from the bill prior to passage of the PIA. Nonetheless, it seems clear that with or without the deletion, the media's right of inspection is assured. See Md. Code Ann., State Gov't. § 1-101(d) (defines "person" to include "an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, firm, association, corporation or other entity").

Maryland's PIA is substantially similar in purpose to the FOIA. Both grant a broad right of access to public records and favor disclosure. See *Faulk*, 299 Md. at 506, 474 A.2d at 887. Federal case law interpreting the provisions of the FOIA provides persuasive authority in interpreting Maryland's PIA. *Id.*

The legislative intent behind the PIA is set forth in § 10-612, which provides that "[a]ll persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees." Moreover, to carry out the right of inspection provided under the PIA, § 10-612 also provides that the provisions of the PIA are to be construed in favor of permitting inspection, unless an unwarranted invasion of privacy of a person in interest would result, and with the least cost and least delay to the person requesting inspection. See *A. S. Abell Publishing Co. v. Mezzanote*, 297 Md. 26, 464 A.2d 1068 (1983) (PIA reflects "the legislative intent that citizens of the State of Maryland be accorded wide-ranging access to public information concerning the operation of their government").

Open Meetings. Originally enacted in 1977, Maryland's Open Meetings Act (the "Act") was substantially revised by the Maryland General Assembly in 1991. Act of May 24, 1991, Ch. 655 1991 Md. Laws 306 (codified at Md. Code Ann., State Gov't §§ 10-501 to 10-512 (1995)). While retaining and strengthening many of the former Act's key provisions, the General Assembly added new provisions narrowing the exceptions that allow public bodies to close their meetings, and created a Board to consider complaints and recommend policies regarding the Act.

The General Assembly's intent in amending the Act is demonstrated by the statement of legislative policy:

It is essential to the maintenance of a democratic society that, except in special and appropriate circumstances: (1) public business be performed in an open public manner; and (2) citizens be allowed to observe: (i) the performance of public officials; and (ii) the deliberations and decisions that the making of public policy involves.

§ 10-501(a).

The expressions of policy state, first, that the ability of the media and general public to observe open meetings "ensures the accountability of [the] government . . . , increases the faith of the public in government and enhances the effectiveness of the public in fulfilling its role in a democratic society." § 10-501(b). Second, § 10-501(c) expressly provides that, "[e]xcept in special and appropriate circumstances when meetings . . . may be closed under this subtitle, it is the public policy of the State that the public be provided with adequate notice of the time and location of meetings of public bodies . . ." § 10-501(c); *CLUB v. Baltimore City Board of Elections*, 377 Md. 183, 194, 832 A.2d 804, 810 (2003).

These statements are consistent with the Maryland Court of Appeals' earlier statements concerning the purpose of the Act, in which the Court quoted the following language of the Florida Supreme Court:

One purpose of the government in the sunshine law was to prevent at nonpublic meetings the crystallization of secret decisions to a point just short of ceremonial acceptance The statute should be construed so as to frustrate all evasive devices. This can be accomplished only by embracing the collective inquiry and discussion stages

City of New Carrollton v. Rogers, 287 Md. 56, 72, 410 A.2d 1070, 1079 (1980) (quoting *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974)). The Maryland Court of Appeals recently reaffirmed the purpose of the Act by explaining, “The clear policy of the Open Meetings Act is to allow the general public to view the entire deliberative process.” *Community and Labor United for Baltimore Charter Committee (CLUB) v. Baltimore City Board of Elections*, 377 Md. 183, 194, 832 A.2d 804, 810 (2003). Indeed, the Maryland General Assembly expressly decreed that any exceptions that permit closed deliberations should “be strictly construed in favor of open meetings. . . .” § 10-508(c).

Finally, the General Assembly created a new body to hear complaints, issue advisory opinions, and recommend new policies for the implementation of the Act. Known as the State Open Meetings Law Compliance Board (the “Board”), it consists of three members (one of whom must be an attorney) appointed by the Governor with the advice and consent of the State Senate. §§ 10-502.1 to 10-502.6. Its role is to educate public bodies about their duties under the Act, to provide a non-judicial forum for resolving disputes about the Act’s application, and to offer recommendations to the General Assembly about amending the Act. Douglas F. Gansler, Office of the Attorney General, *Open Meetings Act Manual* at 5-1 (7th Ed. Oct. 2010) (hereinafter *OMA Manual*, at ___.”); *See also* § 10-502.4.

Open Records

I. STATUTE -- BASIC APPLICATION

A. Who can request records?

The Maryland Public Information Act (“PIA” or the “Act”), codified in the State Government Article of the Maryland Code Annotated (the “Code”) entitles “all persons . . . to have access to information about the affairs of government and the official acts of public officials and employees.” Md. Code Ann., State Gov’t § 10-612(a). The term “person” is defined in § 1-101(d) of the Article to mean “an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, firm, association, corporation, or other entity.” Governmental units are also specifically given the right to inspect public records. *See* §§ 10-611(b), 614(a).

In general, “there is no need for the person to show that he or she is aggrieved or a person in interest” in order to exercise the right of inspection of most records. *PIA Manual*, at 8. There are, however, restrictions on who is entitled to inspect certain types of records. For example, retirement records may only be inspected by “the person in interest,” or “the appointing authority of the individual”; after the individual’s death, the records may be inspected only “by a beneficiary, personal representative, or other person who satisfies the administrators of the retirement plan and pension systems that the person has a valid claim to the benefits of the individual”; and by law enforcement agencies for specified purposes. § 10-616(g). Similarly, personnel records and student records may only be inspected by the person in interest, or by an appointed or elected official who is that person’s supervisor. § 10-616(i), (k). *See also* § 10-617(b)(3) (person in interest entitled to inspect public record of person’s medical and psychological information); § 10-617(f)(3) (financial information may only be inspected by person in interest).

If a “person in interest” has a legal disability, then that individual’s parent or legal representative may act on the individual’s behalf as a “person in interest.” *See PIA Manual*, at 9 (citing §§ 10-611(e)(2); 10-617(b)(2)). However, a parent whose parental rights have been terminated with respect to a child may not act as “person in interest on the child’s behalf.” *PIA Manual*, at 9 (citing 90 *Opinions of the Attorney General* 45, 58-59 (2005)).

1. Status of requestor.

There are no citizenship restrictions.

2. Purpose of request.

The purpose of the request is not a factor. Unlike the common law, the PIA does not restrict an applicant’s general right of access to public records based upon the purpose for which a request is made. *See Superintendent v. Henschen*, 279 Md. 468, 473, 369 A.2d 588, 561 (1977).

3. Use of records.

A person’s subsequent use of the information provided may be restricted. *See, e.g.*, § 10-616(e)(2) (circulation records of public libraries may only be inspected if in connection with the library’s ordinary business and only for the purposes for which the record was created); § 10-616(g)(3) (permitting county auditors access to retirement records of former or current employees, but prohibiting disclosure of any information that would identify a person in interest); and § 10-616(h)(2) (disclosed criminal records and reports may not be used to solicit or market legal services).

B. Whose records are and are not subject to the act?

As a general rule, the records of all units or instrumentalities of State government or of a political subdivision of the State concerning the affairs of government and the official acts of public officials and employees are subject to the PIA. *See* §§ 10-611(g), 10-612(a), 10-601, 10-604; *see also PIA Manual*, at 2. (“The PIA covers virtually all

public agencies or officials in the State”). At the local level, § 10-601 defines “political subdivision” to include counties, cities, towns, school districts or any special district. Thus, for example, the Memorial Hospital of Cumberland is covered by the PIA as an agent of the City of Cumberland, Maryland. See *Moberly v. Herboldsheimer*, 276 Md. 211, 345 A.2d 855 (1975).

1. Executive branch.

The PIA applies. The records of all units or instrumentalities of State government or of a political subdivision of the State concerning the affairs of government and the official acts of public officials and employees are subject to the PIA. See §§ 10-611(g), 10-601, 10-604.

a. Records of the executives themselves.

Records of executives themselves are subject to disclosure under the PIA. See *Office of Governor v. Washington Post Co.*, 360 Md. 520, 534-35, 759 A.2d 249 (2000).

b. Records of certain but not all functions.

All documentary material or records created or received by a unit or instrumentality in connection with the transaction of the public business is subject to disclosure. No provision is made to exempt certain functions of the State from disclosure requirements. § 10-611(g).

2. Legislative bodies.

The PIA applies. The records of all units or instrumentalities of State government or of a political subdivision of the State concerning the affairs of government and the official acts of public officials and employees are subject to the PIA. See §§ 10-611(g), 10-612(a), 10-601, 10-604. The public record statute pertains whether the document was created or merely received by the instrumentality. § 10-611(g)(1)(i)

3. Courts.

The PIA applies. See §§ 10-611(g), 10-601, 10-604. In addition, the Maryland Court of Appeals has reaffirmed the common law right to inspect and copy judicial records and documents. *The Baltimore Sun v. Mayor & City Council of Baltimore*, 359 Md. 653, 755 A.2d 1130 (2000). This right precludes a court from sealing court records pursuant to a confidentiality agreement among the parties, absent an express statutory provision or rule promulgated by the Court of Appeals authorizing such closure. *Id.*

4. Nongovernmental bodies.

The PIA generally applies. In addition, a non-governmental body created by statute, but that receives no public funds, may be subject to the PIA if: (1) the body serves a public purpose, (2) the government exercises a certain degree of control over it; and (3) it is immune from tort liability. *A.S. Abell Publishing Co. v. Mezzanote*, 297 Md. 26, 464 A.2d 1068 (1983) (holding that the Maryland Insurance Guaranty Association, a public entity created by statute but receiving no public funds, is subject to the PIA).

a. Bodies receiving public funds or benefits.

The PIA only applies if the body receives sufficient public funds to be deemed an “agent” of the State. See, e.g. *Moberly v. Herboldsheimer*, 276 Md. 211, 345 A.2d 855 (1975).

b. Bodies whose members include governmental officials.

Whether members of a nongovernmental body are governmental officials is a factor used to determine applicability of the PIA to a particular body. See, e.g., *City of Baltimore Dev. Corp. v. Carmel Realty Assocs.*, 395 Md. 299, 910 A.2d 406 (2006).

5. Multi-state or regional bodies.

Even where an interstate agency is considered an agency of the state, absent some agreement between the states to an interstate compact, interstate bodies are not subject to the PIA. *C.T. Hellmuth v.*

Washington Metro Area Trans. Auth., 414 F. Supp. 408, 409 (D. Md. 1976). In *C.T. Hellmuth*, the Maryland federal district court addressed the issue of whether the Washington Metro Area Transit Authority (the “WMATA”) was subject to the PIA. Even though the compact creating WMATA expressly stated that WMATA was an agency or instrumentality of each state party to the compact, the court held that WMATA was not subject to the PIA because there was no agreement by the parties to the compact subjecting WMATA to its provisions. In so holding, the court rejected the plaintiff’s contentions that a tacit agreement existed between the states because of the similarity between their public information laws and that this similarity eliminated the possible imposition of one state’s interests upon another. The court rejected both contentions in light of the “not insignificant” differences in the states’ laws. The court left open the question of whether an interstate body would be subject to the laws of one state where the laws were substantially similar or identical.

6. Advisory boards and commissions, quasi-governmental entities.

The PIA generally applies. See, e.g., *Andy’s Ice Cream, Inc. v. City of Salisbury*, 125 Md. App. 125, 724 A.2d 717 (1999) (finding Salisbury Zoo Commission subject to the PIA)

7. Others.

There is no statutory or case law addressing additional entities beyond those already enumerated.

C. What records are and are not subject to the act?

1. What kind of records are covered?

Except as otherwise provided, the PIA requires a custodian to “permit a person or governmental unit to inspect any public record at any reasonable time.” § 10-613(a). *Hammen v. Baltimore County Police Department*, 373 Md. 440, 455, 818 A.2d 1125, 1134 (2003); *Police Patrol Security Systems Inc., v. Prince George’s County*, 378 Md. 702, 714 838 A.2d 1191, 1198 (2003). A public record is defined as “the original or any copy of any documentary material that is made by the unit or instrumentality of the state government or of a political subdivision or received by the unit or instrumentality in connection with the transaction of public business.” § 10-611(g)(1)(i). The Maryland Court of Appeals has recognized this definition of “public record” to be a broad one. *Caffrey v. Dep’t of Liquor Control for Montgomery County*, 370 Md. 272, 279, 805 A.2d 268, 272 (2002). A public record is defined to include “a document that lists the salary of an employee of a unit or instrumentality of the state government or of a political subdivision.” § 10-611(g)(2); *Moberly v. Herboldsheimer*, 276 Md. 211, 345 A.2d 855 (1975), *University System of Maryland, et al. v. The Baltimore Sun Company*, 381 Md. 79, 100, 847 A.2d 427, 439 (2004) (finding that an employment contract of a public employee evidencing how a publicly funded salary is earned qualified as a public record). In addition, a database set up by a private vendor for use by a public agency for risk management purposes is a “public record.” *Prince George’s County v. The Washington Post Co.*, 149 Md. App. 289, 335, 815 A.2d 859 (2003); see also *PIA Manual*, at 4.

In determining whether documents are public records, the following criteria are considered: whether the documents were generated within the agency; whether the documents are contained in agency files; whether the documents are under the agency’s control; and whether the documents are used for an agency purpose. *Bureau of Nat’l Affairs Inc. v. United States Dept. of Justice*, 742 F.2d 1484 (D.C. Cir. 1984) (agency employee’s telephone message slips and appointment calendar were not agency records under FOIA); but see *Office of the Governor v. Washington Post Co.*, 360 Md. 520, 759 A.2d 249 (2000) (noting that meaning of “agency records” under FOIA is not applicable under the PIA).

A public record is not subject to the PIA if it is: privileged or confidential by law; otherwise prohibited from disclosure by state or federal law, court rule or order; or exempted from disclosure by the PIA. § 10-615 to 619.

Federal case law interpreting the FOIA provides persuasive authority in interpreting Maryland's PIA. *Faulk v. State's Attorney*, 299 Md. 493, 506, 474 A.2d 880, 887 (1984). Thus, it should be noted that under the FOIA, the mere physical location of papers does not confer public record status. See *Kissinger v. Reporters Comm. for Freedom of the Press*, 445 U.S. 136 (1980) (Henry Kissinger's notes of telephone conversations made in the Office of the President did not constitute agency records under the FOIA simply because he brought them with him to the state Department); see also 80 Op. Att'y Gen. 311, 312 (1995) (records that are not in the possession of the agency, but that may be required to be maintained by the agency, are not public records). Nor does the PIA create an obligation for an agency to create records to satisfy a PIA request, or to reprogram its computers or aggregate computerized data files so as to effectively create new records.

2. What physical form of records are covered?

The original or any copy of a public record in any form is covered, including a card, computerized record, correspondence, drawing, film or microfilm, form, map, photograph, photostat, recording, or tape. § 10-611(g)(1)(ii); see also 81 Op. Att'y Gen. 117, 120 (1996) (printed and electronically stored versions of e-mail messages are public records if the message is related to the conduct of public business); 71 Op. Att'y Gen. 288 (1986) (tape recordings of 911 Emergency Telephone System calls are public records, except for those portions exempted from disclosure). Private documents that an agency has read and incorporated into its files are also public records. *Artesian Ind. v. Dep't of Health and Human Svcs.*, 646 F. Supp. 1004, 1007 n.6 (D.D.C. 1986) (construing the FOIA to include such records). Public records do not however, "include a digital photographic image or signature of an individual, or the actual stored data thereof, recorded by the Motor Vehicle Administration. § 10-611(g)(3).

3. Are certain records available for inspection but not copying?

An applicant who has a right to inspect a public record typically has a right to a copy of that record. § 10-620(a). Should the custodian not have facilities to reproduce the requested record, then the applicant is to be afforded access to the record to make the copy him or herself. § 10-620(a)(1)(ii). Applicants may not receive copies of judgments until after the time for appeal expires, or if an appeal has been noted, after the appeal is dismissed or adjudicated. § 10-620(2).

The PIA does not grant the right of the requester to determine the format in which the copies are made; rather that right lies with the agency. Thus, a requester may not be able to force the agency to provide the records in a computerized format when the agency offers to provide the information in a printout. *Id.* The official custodian of the public record is required to adopt reasonable rules and regulations governing the time, place, manner, and cost of production and inspection. *Model Rules on Public Information Act* (the "PIA Model Rules"), *PIA Manual*, at App. D.

D. Fee provisions or practices.

1. Levels or limitations on fees.

An official custodian is permitted to charge an applicant a reasonable fee to search for, prepare and reproduce a public record. § 10-621(a). An official custodian may not, however, charge a fee for the first two hours spent searching for a public record and preparing it for inspection. § 10-621(c). A reproduction fee may not be set by the custodian if the fee is provided for by another law. § 10-621(d). The custodian may charge for the cost of providing facilities for reproduction if the custodian does not have such facilities. § 10-621(2)(3). Absent a specific statute establishing the fee, a custodian may charge reasonable fees for search, preparation and copying. *PIA Manual*, at 12.

2. Particular fee specifications or provisions.

a. Search.

The *PIA Manual* defines "search fees" as the "costs to an agency for

locating requested documents." *PIA Manual*, at 12. "Preparation fees are the costs to an agency to prepare a record for inspection or copying, including the time needed to assess whether any provision of law permits or requires material to be withheld." *Id.* at 12-13. An official custodian may not charge a fee for the first two hours spent searching for a public record and preparing it for inspection. § 10-621(c). In addition, various state and local agencies have adopted standard fee schedules. See *PIA Manual*, at 12.

b. Duplication.

A reproduction fee may not be set by the custodian if the fee is provided for by another law. § 10-621(d)(1). The custodian may charge for the cost of providing facilities for reproduction if the custodian does not have such facilities. § 10-621 (3). In addition, various state and local agencies have adopted standard fee schedules. See *PIA Manual*, at 12.

3. Provisions for fee waivers.

Section 10-621(e) permits the official custodian to waive fees or costs upon request, if the applicant requests a waiver and after considering the ability of the applicant to pay the fee and other relevant factors, the official custodian determines that a waiver is in the public interest. The Maryland Court of Special Appeals has delineated the following factors to be considered by an official custodian regarding a request for a fee waiver: (1) the public benefit in making available certain information (for example, the public would benefit if information concerning one of the city's major financial undertakings or information concerning potential health risks were made available); and (2) the chilling effect of the fee requirement on the requester's First Amendment rights. *Mayor of Baltimore v. Burke*, 67 Md. App. 147, 506 A.2d 683 (1985), cert. denied, 300 Md. 118, 507 A.2d 631 (1986). See also 81 Op. Att'y Gen. 25, 27-28 (1996) (fee waiver dependent upon number of factors and not exclusively upon the poverty of the requester or cost to the agency).

4. Requirements or prohibitions regarding advance payment.

The PIA does not address the agency's ability to demand or require prepayment of fees. However, several agency regulations do so. See *PIA Manual*, at 13 (citing the Code of Maryland Regulations ("COMAR") 08.01.06.11D(2) (Department of Natural Resources); and COMAR 09.01.04.14D (Department of Licensing and Regulation)).

5. Have agencies imposed prohibitive fees to discourage requesters?

There is no indication that Maryland agencies impose prohibitive fees.

E. Who enforces the act?

Section 10-623(a) authorizes any person or governmental unit that has been denied inspection of a public record to file a complaint in the circuit court for the county where the complainant resides or has a principal place of business, or where the public record is located. The circuit court may enjoin the unit subject to the act from withholding the public record, pass an order for the production of the record, and award actual damages including attorneys fees to the complainant if the Court finds by clear and convincing evidence that the complainant substantially prevailed in the suit seeking enforcement of the Act. § 10-623(c), (f).

1. Attorney General's role.

The Attorney General frequently opines as to the applicability of the PIA, and issues guidelines to Maryland's state agencies. See generally *PIA Manual*.

2. Availability of an ombudsman.

Maryland does not have an ombudsman.

3. Commission or agency enforcement.

Maryland does not have a commission or agency to enforce the Act.

F. Are there sanctions for noncompliance?

Yes. The circuit court may enjoin the unit subject to the act from withholding the public record, pass an order for the production of the record, and award actual damages including attorneys' fees to the complainant if the Court finds by clear and convincing evidence that the complainant substantially prevailed in the suit seeking enforcement of the Act. § 10-623(c), (f). In addition, a Defendant governmental unit may be assessed damages if the court finds by clear and convincing evidence that it willfully violated the PIA or an order compelling production. § 10-623(d).

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

A. Exemptions in the open records statute.

1. Character of exemptions.

There are four categories of exemptions to disclosure under the PIA. The first exempts a public record or any part of a public record that is privileged or confidential under law or if inspection of the public record or any part of the public record would be contrary to a state or federal statute or contrary to a regulation issued pursuant to the statute, a rule adopted by the Maryland Court of Appeals, or an order issued by a court of record. § 10-615. *Police Patrol Security Systems Inc. v. Prince George's County*, 378 Md. 702, 714, 838 A.2d 1191, 1198 (2003). The second category provides for mandatory exemption of specific records or specific information contained in a public record. § 10-616 (specific records), § 10-617 (specific information). The third involves discretionary exemptions for certain records based upon the public interest. § 10-618. *University System of Maryland, et al. v. The Baltimore Sun Company*, 381 Md. 79, 94, 847 A.2d 427, 436 (2004). The fourth authorizes a limited discretionary exemption for records otherwise subject to disclosure if temporary nondisclosure is in the public interest. § 10-619.

The exemptions provided in § 10-616 and § 10-617 do not control if disclosure of the record would be either contrary to or compelled by another statute. Conversely, even if the PIA permits access, disclosure may still be denied based on other law. § 10-616(a), § 10-617(a); *See, e.g., PIA Manual*, at 21 (and statutes cited therein).

a. General or specific?

Sections 10-616 and 10-617 identify specific records and information exempt from disclosure.

b. Mandatory or discretionary?

The proscriptions against disclosure of records and information identified in §§ 10-616 and 10-617 are mandatory. The proscriptions contained in §§ 10-618 and 10-619 are discretionary. The Maryland Court of Appeals has addressed the interplay between the PIA's mandatory and discretionary provisions. *Attorney Gen'l v. Gallagher*, 359 Md. 341, 753 A.2d 1036 (2000). In *Gallagher*, the court rejected Gallagher's argument that his status as the party in interest allowed him to compel disclosure of records under § 10-618 that were otherwise subject to the mandatory nondisclosure provisions of §§ 10-615 to 10-617. 359 Md. at 355, 753 A.2d at 1044. Instead, the court held, if any exemption under §§ 10-615, 10-616, or 10-617 is applicable to a particular record, then it must be withheld. *Id.*

c. Patterned after federal Freedom of Information Act?

While the impetus for change from the traditional uncertainty of common law rules governing disclosure to the adoption of the PIA was the adoption of the federal Freedom of Information Act, the PIA is patterned after the state statutes of Wyoming and Colorado. *See PIA Manual*, at 2.

2. Discussion of each exemption.

(1). Mandatory exemption of specific records — § 10-616

Adoption records — Public records that relate to the adoption of an individual are exempt from disclosure. § 10-616(b). *PIA Manual*, at 21-22 (citing 89 *Opinions of the Attorney General* 31, 43 & n.7 (2004)).

Welfare records — Public records that relate to welfare for an individual are exempt from disclosure. § 10-616(c); *see also* 71 *Opp. Att'y Gen.* 368 (1986) (under certain circumstances, information regarding child abuse cases handled by the Department of Social Services may be disclosed). *PIA Manual*, at 21-22 (citing 89 *Opinions of the Attorney General* 31, 43 & n.7 (2004)).

Letters of reference — All solicited or unsolicited letters concerning a person's fitness for public office or employment are exempt from disclosure. § 10-616(d); 68 *Op. Att'y Gen.* 335 (1983).

Circulation records — A custodian shall prohibit inspection, use, or disclosure of a circulation record of a public library or other item, collection, or grouping of information about an individual that is maintained by a library and that contains an individual's name or the identifying number, symbol, or other identifying particular assigned to the individual, and identifies the use a patron makes of that library's materials, services or facilities. § 10-616(e).

Gifts — Records concerning material given to a library, archive or museum are exempt, if the person making the gift limits disclosure as a condition of the gift. § 10-616(f).

Retirement records — Individual retirement records are generally exempt from disclosure. § 10-616(g)(1). This exemption does not apply if the records are requested by: (a) the person in interest; (b) the appointing authority of the individual; (c) a beneficiary, personal representative, or other person who has a valid claim to the individual's benefits after the individual has died; or (d) any law enforcement agency for the purpose of obtaining the home address of a retired employee, provided the contact is documented as necessary for official agency business. *See* § 10-616(g)(2). The exemption also does not apply to county employees obtaining such records for audit purposes. § 10-616(g)(3). However, those employees are prohibited from disclosing information that would reveal the identity of a person in interest. *Id.* On request, a custodian of records shall state whether an individual receives a retirement or pension allowance. § 10-616(g)(4).

Hospital records — A hospital record that relates to medical administration, staff, medical care, or other medical information and contains information about one or more individuals is exempt from disclosure. § 10-616(j). *See also* § 4-302. The Legislative Auditor may have access to the records of the Department of Health and Mental Hygiene for the performance of his/her duties. 63 *Op. Att'y Gen.* 453 (1978).

Risk Based Capital Reports or Plans — Subject to Section 4-310 of Maryland Code Ann., Insurance Article, all RBC reports, RBC plans, and all records that relate to those reports or plans are exempt from disclosure. § 10-616(l).

Maryland Transportation Authority ("MTA") records — Photographs, videotapes or electronically recorded images of vehicles, vehicle movement records, personal financial information, credit reports or other personal or financial data created, recorded, obtained by or submitted to the MTA in connection with any electronic toll collection system are exempt from disclosure. § 10-616(m). However, the individual named in the record, the individual's attorney of record, and MTA employees who are investigating or proceeding against an individual for failure to pay a toll may obtain the records. § 10-616(m)(2).

Higher education investment contracts — Records disclosing the name of an account holder or qualified beneficiary of a higher education contract under Title 18, Subtitle 19 of the Maryland Education Article are generally exempt from disclosure. § 10-616(n)(1). Records sought by persons in interest or by eligible institutions in accordance with Maryland Higher Education Investment Program Board regulations are not exempt. § 10-616(n)(2).

Recorded images from traffic control signal monitoring systems — Images are exempt from disclosure, except as required in § 21-202.1 of the Transportation Article of the Maryland Code Annotated, and to any person issued a citation or any employee of a law enforcement agency acting pursuant to Section 21-202.1 of the Transportation Article. § 10-616(o).

MVA records containing personal information — Records may not be knowingly disclosed, except with the person's written consent, or for use by a federal, state, or local government, or for specifically delineated uses. § 10-616(p)(i) through (ii). Licensed private detective agencies may obtain information pursuant to § 10-616(p)(iii). The custodian is required to disclose personal information for use in connection with a civil, administrative or criminal proceeding; in connection with the execution or enforcement of judgment or orders; for use by an insurer in connection with rating, underwriting, investigating and antifraud activities; for use in the normal course of business by a legitimate business entity to verify accuracy of personal information submitted by the person to the entity; and if the information submitted is inaccurate to obtain correct information. § 10-616(p)(5).

The Attorney General has opined that “a driver whose fitness to drive is under review because of the driver's health condition is generally entitled to inspect the MVA's records pertaining to that review” under § 10-618(f). 82 Op. Att'y Gen. 49, 51, (1997). Because the driver is a person in interest and entitled to a hearing on the issue, the driver may also inspect the MVA Medical Advisory Board's files about that individual. *Id.*; *contra* Md. Code Ann., Transp. § 16-118(d)(1)(i) (declaring Medical Advisory Board records confidential without exception). The driver may not inspect the letter that initiated the MVA's review if the letter would reveal the identity of a confidential source. 82 Op. Att'y Gen. 49, 51 (1997).

Maryland Transit Administration records — Records of persons created, generated, obtained by, or submitted to the Maryland Transit Administration, its agents, or employees in connection with the use or purchase of electronic fare media provided by the Maryland Transit Administration, its agents, employees or contractors, shall not be disclosed. However, these records may be disclosed to an individual named in the record or the attorney of record of an individual named in the record. § 10-616(r).

Department of Natural Resources' records containing personal information — Public records of the Department of Natural Resources containing personal information may not be disclosed. However, the personal information may be disclosed for use in the normal course of business activity by a financial institution as defined in § 1-101(i) of the Financial Institutions Article, but only to verify the accuracy of personal information submitted by the individual to that financial institution, and to correct inaccurate information for the purpose of preventing fraud by the individual, pursuing legal remedies against the individual, or recovering a debt or security interest against the individual. § 10-616(s).

Applications for Renewal Energy Credit Certification or a Claim for Renewable Energy Credits - An application for renewable energy credit certification or a claim for renewable energy credits under Title 10, Subtitle 15 of the Agricultural Article shall not be disclosed. § 10-616(t).

(2) Mandatory exemption of specific information — § 10-617

Medical and psychological information — The custodian shall deny inspection of the part of the public record that contains medical or psychological information about an individual. § 10-617(b). For example, medical information such as the symptoms of an ill or injured individual recorded during a 911 call may not be released. *PLA Manual*, at 28 (citing to 90 *Opinions of the Attorney General* 45 (2005)). This exemption applies only to the part of a public record that contains information about an identified individual. § 10-617(b). This exemption does not apply to autopsy reports of a medical examiner. *Id.*; 63 Op. Att'y Gen. 659 (1978).

The person in interest may have access to such records to the extent permitted by Md. Code Ann., Health-Gen. § 4-102(b). A request by a person in interest may not be denied, however, by an agency merely because the person seeks the identity of the source of infection, or because the information sought was gathered in the course of an agency's investigation of an outbreak or an infectious disease. *See Haigley v. Department of Health and Mental Hygiene*, 128 Md. App. 194, 228, 736 A.2d 1185, 1202-03 (1999). *See also* 71 Op. Att'y Gen. 297 (1986) (tape recording of involuntary admission hearing may be disclosed to patient or authorized representative). With the consent of the individual or person in interest, non-profit health service plans and insurance companies may release personal medical record information to employers who sponsor and maintain group health plans. 63 Op. Att'y Gen. 432 (1978). With respect to non-profit health services plans, consent would not be necessary if the information was released without identifying the subscriber. *Id.*

A State's Attorney may obtain medical records for purposes of a criminal case if he first establishes written confidentiality procedures, determines whether compulsory process is required, identifies whether the records are covered by general or specific confidentiality categories; ascertains applicable restrictions; and decides on the appropriate type of compulsory process, depending on whether the prosecutor is conducting investigations or prosecuting cases that have been charged. 94 Op. Att'y Gen. 44 (2009).

Commercial information — This exemption applies to trade secrets and confidential commercial, financial, geological or geophysical information obtained from or provided by a person or governmental unit. § 10-617(d). This exemption does not cover commercial or financial information generated by the agency itself; however, such information may be covered by other law. *See Stromberg Metal Works Inc., v. University of Maryland*, 382 Md. 151, 167-70, 854 A.2d 1220 (2004), *Federal Open Market Comm. v. Merrill*, 443 U.S. 340 (1979) (interpreting Exemption 5 of FOIA to include a qualified privilege permitting the non-disclosure of confidential commercial information generated by the government in the process leading up to the award of a contract). Federal cases and the legislative history of the comparable FOIA exemptions regarding commercial information provide persuasive authority in interpreting § 10-617(d). 63 Op. Att'y Gen. 355 (1978).

The Attorney General has adopted an objective test requiring an inquiry into whether such data is customarily considered confidential in the business and whether withholding access would serve a governmental or private purpose sufficiently compelling to overcome the state's liberal disclosure policy. 63 Op. Att'y Gen. 355, 362 (1978). In a later opinion, the Attorney General more clearly delineated the test for determining the confidential nature of commercial or financial information. *See* 69 Op. Att'y Gen. 231, 234 (1984). The test requires a showing that disclosure of the requested information would: (1) impair the government's future access to such information; or (2) cause substantial harm to the competitive position of the person submitting the information. *Id.* at 234-35.

In addition, the *PLA Manual* points out that commercial or financial information voluntarily provided to the government should be considered confidential “if it is of the kind that the provider would not customarily release to the public.” *PLA Manual*, at 31. The Attorney General's Office recommends that under such circumstances, the submitter should be consulted before the material is disclosed. *Id.*

Coverage and premium calculations of the Maryland Automobile Insurance Fund's insureds have been held to be confidential commercial and financial data. *Progressive Casualty v. MAIF*, No. 83/E1074, Baltimore County Cir. Ct. (Feb. 15, 1986).

The Maryland Attorney General has defined a trade secret as:

[a]n unpatented secret formula or process known only to certain individuals using it in compounding some article of trade having commercial value. Secrecy is the essential element. Thus, [a]

trade secret is something known to only one or a few, kept from the general public, and not susceptible of general knowledge. If the principles incorporated in a device are known to the industry, there is no trade secret which can be disclosed.

63 Op. Att’y Gen., at 359 (footnotes and citations omitted).

Public employees — Addresses and telephone numbers of public employees are exempt from disclosure, unless the employee permits the disclosure or the public employer determines that disclosure is necessary to protect the public interest. § 10-617(e). However, public employee organizations may have access to such information under certain conditions. See Md. Code Ann., State Pers. § 21-504. Members of the General Assembly may obtain home addresses of public employees who are licensees pursuant to § 10-612(c). Public employee’s salaries, however, are not exempt from disclosure § 10-611(f)(2). The Maryland Attorney General has construed the term “salary” to include records reflecting individual bonuses or performance awards paid to merit system employees and appointed officials. 83 Op. Atty. Gen. 163, 164 (1998).

Financial information — This exemption applies to information about an individual, including assets, income, liabilities, net worth, bank balances, financial history or activities, or creditworthiness. § 10-617(f)(2). *University System of Maryland, et al. v. The Baltimore Sun Company*, 381 Md. 79, 105 847 A.2d 427, 442 (2004). This exemption does not apply to the person in interest; nor does it apply to the salary of a public employee. §§ 10-617(f)(3) and (1).

A hodgepodge of opinions authored by the Maryland Court of Appeals and the Attorney General shed light upon information subject to this exemption. In *Kirwan v. The Diamondback*, 352 Md. 74, 721 A.2d 196 (1998), the Maryland Court of Appeals rejected the University of Maryland’s argument that records of traffic citations received by its head basketball coach were financial records under the Act. 352 Md. at 85, 721 A.2d at 201. In so doing, the court noted that a parking ticket is a citation charging a misdemeanor; it is not a record of indebtedness or liability. Accordingly, because the documents did not fall within the categories of documents identified as financial records within the statute, it was not exempt under the PIA. *Id.* The Attorney General has construed the term “salary” to include records reflecting individual bonuses or performance awards paid to merit system employees and appointed officials. 83 Op. Atty. Gen. 163, 1644 (1998). Contrarily, disclosure statements filed with county ethics commissions are filed pursuant to the financial disclosure sections of county ordinances and, thus, must be maintained as public records available for inspection and copying in their entirety. 71 Op. Att’y Gen. 282 (1986).

The Attorney General has opined that any record that shows how much money or what type of property people have left unclaimed reveals information about the “assets” of those people. 77 Op. Att’y Gen. 233, 234 (1992). Therefore, any part of a public record that discloses the monetary value or description of property reported to the Unclaimed Property Section as abandoned property must be withheld from public disclosure. *Id.*

Information systems — Information concerning the security of an information system is exempt from disclosure. § 10-617(g). On October 24, 1983, the Governor issued Executive Order 01.01.1983.18, establishing a State Data Security Committee regarding security measures for the protection of state agencies maintaining computerized record systems. Md. Admin. Code tit. 1, § 01.01.1983.18 (1983).

Licensing records — Although a person’s occupational or professional licensing records are generally exempt, the exemption does not apply to that part of a public record that gives the licensee’s name, business address (or home address in the absence of a business address), business telephone number, educational and occupational background, professional qualifications, any orders and findings resulting from formal disciplinary actions, and any evidence that has been provided to the custodian to meet the requirements of a statute as to financial responsibility. § 10-617(h)(2).

Other information may be disclosed about a licensee if the custodian finds a compelling public purpose and the rules and regulations of the official custodian permit disclosure. § 10-617(h)(3). The Department of Labor, Licensing and Regulation has concluded that a compelling public interest is served by the disclosure of additional information to an individual who is contemplating a contract with the licensee. Such additional information includes the number, nature, and status of complaints against a licensee. COMAR 09.01.04.13B(2).

The person in interest may review information relating to him or herself. § 10-617(h)(4). In addition, a custodian who sells lists of licensees must omit from the list the name of any licensee on written request of the licensee. § 10-617(h)(5).

Suspected collusive or anticompetitive activity — Disclosure of any part of a public record that contains procurement information generated by the federal government or another state resulting from an investigation into suspected collusive or anticompetitive activity on the part of a transportation contract is exempt from disclosure. § 10-617(i). The purpose of this section is to provide assurances of confidentiality to investigatory sources of the Maryland Department of Transportation during the course of investigations into bid-rigging. See Bill Analysis, House Bill 228 (1994) (quoted in *PIA Manual*, at 36).

Notary publics — A custodian shall deny inspection of the part of a public record that contains information about the application and commission of a notary public. § 10-617(j)(1). However, the notary public’s name, home address, home and business telephone numbers, commission issue and expiration dates, date of taking the oath of office, and signature are not exempt from disclosure. § 10-617(j)(2). Other information may be disclosed if the custodian finds a compelling public purpose. § 10-617(j)(3). Inspection of the record by a notary public or any other person in interest may be denied only to the extent that the inspection could: (1) interfere with a valid and proper law enforcement proceeding; (2) deprive another person of a right to a fair trial or an impartial adjudication; (3) constitute an unwarranted invasion of personal privacy; (4) disclose the identity of a confidential source; (5) disclose an investigative technique or procedure; (6) prejudice an investigation; or (7) endanger the life or physical safety of an individual. § 10-617(j)(4).

In addition, on written request from the notary public, a custodian who sells lists of notaries public shall omit that person’s name from the lists. § 10-617(j)(5).

License application containing Social Security number — A custodian shall deny inspection of the part of an application for a marriage license or a recreational license that contains a Social Security number, except to a person in interest or upon the request of the State Child Support Enforcement Administration. § 10-617(k).

Public record containing personal information — A custodian shall deny inspection of the part of a public record that identifies or contains personal information about a person, including a commercial entity, that maintains an alarm or security system. § 10-617(l)(1). Inspection shall, however, be permitted by the person in interest, law personnel and emergency services personnel. § 10-617(l)(2). Personal information is defined in § 10-611(f)(1) as information identifying an individual’s address, driver’s license number or other identification number, medical or disability information, name, photograph or computer-generated image, Social Security number, or telephone number. Personal information does not include an individual’s driver’s status, driving offenses, five-digit zip code or information on vehicle accidents. § 10-611(f)(2).

(3) Discretionary exemption of specific records: With respect to exemptions within this category, a custodian may deny access to a part of a public record if he or she believes such disclosure to be contrary to the public interest. § 10-618(a). The determination of whether disclosure would be contrary to the public interest rests in the sound discretion of the official custodian. 58 Op. Att’y Gen. 563, 566. (1973).

Interagency and intra-agency documents — This exemption applies to any part of an interagency or intra-agency letter or memorandum that would not be available by law to a private party in litigation with the unit. § 10-618(b); see also *Maryland Comm. Against Gun Ban v. Mayor and City Council of Baltimore*, 91 Md. App. 251, 603 A.2d 1364 (1992), *rev'd on other grounds*, 329 Md. 78, 617 A.2d 1040 (1993), *Caffrey v. Dep't of Liquor Control for Montgomery County*, 370 Md. 272, 297 805 A.2d 268, 282 (2002), *Prince George's County v. Washington Post Co.*, 149 Md. App. 289, 320, 815 A.2d 859, 877 (2003). The exemption applies only to information that may be regarded as deliberative or consultative in nature, and it does not apply to information that is largely factual. See *Stromberg Metal Works Inc., v. University of Maryland, et al.*, 382 Md. 151, 163-67, 854 A.2d 1220, 1227-1230 (2004) (holding that the University could not assert the privilege allowed in § 10-618(b) for numbers it redacted from a construction project budget report since those numbers were largely factual in nature. The Court noted that the number does not, therefore, constitute a memorandum that would not be available to a private party in litigation). The Maryland Court of Appeals has also made clear that § 10-618 (b) includes information covered under the attorney work product doctrine. *Caffrey*, 370 Md. at 307, 805 A.2d at 289, see also *PIA Manual*, at 40.

This exemption is substantially similar to its comparable FOIA counterpart and, thus, federal case law provides persuasive authority in interpreting its scope. *Stromberg Metal Works Inc. v. University of Maryland*, 382 Md. 151, 163, 854 A.2d 1220 (2004), 58 Op. Att'y Gen. 53 (1973). The FOIA exemption is “intended to preserve the process of agency decision-making from the natural muting of free and frank discussion which would occur if each voice of opinion and recommendation could be heard and questioned by the world outside the agency.” *PIA Manual*, at 38-39 (quoting from O'Reilly, *Federal Information Disclosure: Procedure; Procedures; Forms and the Law*, § 15.01(3d ed. 2000)). It has also been observed that the basis of the exemption is the executive privilege doctrine. The privilege arose from the common law, the rules of evidence, and the discovery rules for civil proceedings. *Stromberg Metal Works Inc. v. University of Maryland*, 382 Md. 151, 163, 854, A.2d 1220 (2004); see also *PIA Manual*, at 38. The Maryland Court of Appeals examined the nature of the privilege in Maryland in *Hamilton v. Verdow*, 287 Md. 544, 414 A.2d 914 (1980); see also 66 Op. Att'y Gen. 98 (1981).

The exception covers only deliberative aspects of agency memoranda or letters, and not records that are purely factual, objective, or that contain scientific data. *PIA Manual*, at 40. The Attorney General's office recommends that in determining into which category a given record falls, “a presumption of disclosure should prevail, unless the responsible agency official can demonstrate specific reasons why agency decision making may be compromised if the questioned records are released.” *PIA Manual*, at 40. In addition, the agency must articulate specific reasons for withholding documents. *Cranford v. Montgomery County*, 300 Md. 759, 481 A.2d 221 (1984).

Examinations — Test questions, scoring keys, and other examination information that relates to the administration of licenses, employment, or academic matters may be withheld from disclosure. § 10-618(c). *Mayer v. Montgomery County*, 143 Md. App. 261, 291, 794 A.2d 704, 724 (2002). A person in interest shall have access to a written promotional examination and to the result of the person's examination after the examination has been given and graded, but that person shall not be permitted to copy or otherwise reproduce the examination. § 10-618(c)(2).

Research projects — A public record that sets forth the specific details of a research project that a state institution or a political subdivision is conducting may be exempt. § 10-618(d). A custodian may not deny access to the part of a public record that gives only the name, title, expenditures, and date when the final project summary will be available. § 10-618(d)(2); see also 58 Op. Att'y Gen. 53, 59 (1973) (applying this exemption to a consultant's report).

For a thorough discussion of what types of activities constitute

research projects within the scope of § 10-618(d), see *Haigley v. Department of Health & Mental Hygiene*, 128 Md. App. 194, 736 A.2d 1185 (1999). In that decision, the Maryland Court of Special Appeals addressed the interplay between the Maryland Code Health General article's provisions concerning confidentiality of medical records and § 10-618(d)'s permissive exemption of records relating to a study. The court rejected the Department's interpretation that anytime the Department gathered information concerning an outbreak of an infectious disease, it was conducting a study falling within the exemption. 128 Md. App. at 216, 736 A.2d at 1196. Rather, the court held that a study had to be academic in nature. To hold otherwise, the court noted, would allow the Department — or any other agency — to declare virtually all of its records nondiscloseable “studies,” an action that would violate both the spirit and the letter of the PIA. 128 Md. App. at 214, 736 A.2d at 1195.

Site-specific location of certain plants, animals or property — With the exception of the owner of the land upon which the resource is located or any entity that could take the land through the right of eminent domain, a custodian may deny inspection of a public record that contains information concerning: (a) the site-specific location of an endangered or threatened species of plant or animal; (b) a species of plant or animal in need of conservation; (c) a cave; or (d) historic property as defined in § 5A-301(k) of the State Finance and Procurement Article in the Maryland Code. § 10-618(g)(1).

Inventions owned by state public institutions of higher education — A custodian may deny disclosure of information disclosing or relating to an invention owned in whole or in part by a state public institution of higher education for four years to permit the institution to evaluate whether to patent or market the invention. § 10-618(h)(1). If the information has already been disclosed by the inventors, the custodian may not deny inspection. § 10-618(h)(2)(i).

Maryland Technology Development Corporation - A custodian may deny inspection of that part of a public record that contains information disclosing or relating to a trade secret, commercial information, or confidential financial information owned in whole or in part by the Maryland Technology Development Corporation. § 10-618(i)(1).

Homeland security — The custodian may deny inspection of response procedures or plans prepared to prevent or respond to emergency situations, the disclosure of which would reveal vulnerability assessments, specific tactics, emergency or security procedures. § 10-618(j). Disclosure may be denied pursuant to § 10-618(j) only to the extent that the inspection would jeopardize the security of any building, structure or facility, facilitate the planning of a terrorist attack, or endanger the life or physical safety of an individual. § 10-618(j)(2). *Police Patrol Security Systems Inc. v. Prince George's County*, 378 Md. 702, 719 838 A.2d 1191, 1201 (2003).

Maryland Port Administration — A custodian may deny inspection of the part of the public record containing information concerning stevedoring or terminal services or facility use rates or proposed rates. § 10-618(k).

University of Maryland University College — A custodian may deny inspection of any part of a public record that relates to the University of Maryland University College's (“UMUC”) competitive position with respect to other providers of education services that contains proposals, prices or fees related to a business transaction, research or analysis related to UMUC's competitive position with respect to other institutions, information relating to fees, tuitions and charges except fees, tuition and charges published in catalogues and ordinarily charged to students, proposal by UMUC for education services except proposals with its students, any research, analysis or plans relating to UMUC operations or proposed operations. § 10-618(l).

However, a custodian may not deny inspection if the record relates to a procurement by UMUC, if UMUC is required to develop or maintain the record by law or at the direction of the Board of Regents, if the record relates to a matter that is the subject of collective bar-

gaining negotiations, if the exclusive representative has entered into a nondisclosure agreement with UMUC to ensure the confidentiality of the information provided. § 10-618(l).

(4) Substantial injury to the public interest — Section 10-619(a) permits a temporary denial of inspection whenever the custodian believes that inspection of a public record otherwise subject to disclosure would cause substantial injury to the public interest. This exemption permits only a temporary denial of access and requires the official custodian to petition the court for an order permitting the continued denial of access within ten working days after the initial denial is made. § 10-619(b). The denial may continue if the court finds after a hearing that disclosure of the public record would cause substantial injury to the public interest. § 10-619(d). In addition, an official custodian who fails to petition the court for an order to continue a denial of access under § 10-619, is liable for actual damages that the court deems appropriate. § 10-623(d)(2).

The initial determination of whether disclosure is contrary to the public interest, however, is within the discretion of the custodian. 64 Op. Att’y Gen. 236 (1979). A technical disadvantage that a governmental entity might suffer in resolving a pending claim because of a disclosure is insufficient to establish a “substantial injury to the public interest” in order to qualify for the exemption. *Mayor of Baltimore v. Burke*, 67 Md. App. 147, 506 A.2d 683 (1985), *cert. denied*, 306 Md. 110, 507 A.2d 631 (1986).

B. Other statutory exclusions.

There are no specific standards that must be met for another statute to override the open records provisions of the PIA. The PIA specifically provides that “except as otherwise provided by law, a custodian shall permit a person or governmental unit to inspect any public record at any reasonable time.” § 10-613(a). This section clearly permits another statute to override the PIA. *Office of the State Prosecutor v. Judicial Watch Inc.*, 356 Md. 118, 133, 737 A.2d 592, 600 (1999). See, e.g., Md. Code Ann., Health-Occ. § 14-510.1 (records of the Commission on Medical Discipline of Maryland are generally prohibited from disclosure). Therefore, although § 10-612(b) provides for a liberal construction in favor of permitting access to public records, other state and federal statutes may require or permit non-disclosure. *Hammen v. Baltimore County Police Department*, 373 Md. 440, 456, 818 A.2d 1125, 1135 (2003); *University System of Maryland, et al. v. The Baltimore Sun Company*, 381 Md. 79, 95, 847 A.2d 427, 437 (2004); see also *PIA Manual*, at 16.

C. Court-derived exclusions, common law prohibitions, recognized privileges against disclosure.

Section 10-615, prohibiting the disclosure of a public record that is privileged or confidential by law, is essentially a restatement of the common law attorney-client privilege, attorney work product doctrine and the grand jury secrecy doctrine. See *Moberly v. Herboldsheimer*, 276 Md. 211, 345 A.2d 855 (1975); 82 Op. Att’y Gen. 185 (1997) (construing the scope of the attorney-client privilege applicable to a county attorney and finding the privilege applicable to communications between the attorney and the county commissioners and their agents and employees); 62 Op. Att’y Gen. 579 (1977) (fee arrangement between Maryland Automobile Insurance Fund and defense attorney is subject to public disclosure because it is not privileged or confidential by law). Although records subject to the attorney-client privilege must be protected under § 10-615, the privilege may be waived by the party entitled to assert it. *Caffrey v. Dep’t of Liquor Control for Montgomery County*, 370 Md. 272, 304, 805 A.2d 168 (2002) (where Montgomery County Charter provision effectuated limited waiver of attorney-client privilege); see also *PIA Manual*, at 18-19.

Section 10-615 also relates to the executive privilege for confidential executive communications of an advisory or deliberative nature. See *Hamilton v. Verdow*, 287 Md. 544, 414 A.2d 914 (1980); 66 Op. Att’y Gen. 98 (1981), *Prince George’s County v. Washington Post Co.*, 149

Md. App. 289, 318, 815 A.2d 859, 875 (2003); *Stromberg Metal Works Inc., v. University of Maryland*, 382 Md. 151, 161-63, 854 A.2d 1220 (2004); see also *PIA Manual*, at 19. Also, court-derived exclusions, such as the confidentiality of juvenile records, Md. Rule 11-121, and a court order to seal records in divorce or custody cases override the PIA. Moreover, although Md. Rule 16-708 permits disclosure of information to complainants concerning the disposition of their complaints against attorneys, such information is not subject to general disclosure. *Attorney Grievance Comm’n of Md. v. A.S. Abell Co.*, 294 Md. 680, 452 A.2d 656 (1982).

The PIA does not override other specific statutes and rules addressing production of records, such as the rules concerning grand jury secrecy. *Office of the State Prosecutor v. Judicial Watch Inc.*, 356 Md. 118, 133, 737 A.2d 592, 600 (1999). It is doubtful that a state agency regulation or county ordinance could override the PIA disclosure requirements. See § 10-615 (state regulations are not among the listed categories as preempting the PIA). In fact, the Maryland Court of Appeals has established that an ordinance enacted by a local government does not constitute other “law” for purposes of § 10-615(1) and cannot by itself supply a basis for withholding a public record otherwise available under the PIA. *Police Patrol Security Systems v. Prince George’s County*, 378 Md. 702, 710, 713-15, 838 A.2d 1191 (2003); see also *PIA Manual*, at 17. See also 86 *Opinions of the Attorney General* [Opinion No. 01-13 (April 30, 2001)], slip op. at 12. Conversely, local law may not authorize release of a public record if disclosure is expressly prohibited by the PIA. *Police Patrol Security Systems*, 378 Md. at 712; *Caffrey v. Dep’t of Liquor Control for Management County*, 370 Md. 272, 303, 805 A.2d 268 (2002); see also *PIA Manual*, at 20.

D. Are segregable portions of records containing exempt material available?

The fact that some portions of a particular record may be exempt from disclosure does not mean that the entire record may be withheld. *Blythe v. State*, 161 Md. App. 492, 519, 870 A.2d 1246, *cert. granted*, 388 Md. 97, 879 A.2d 42 (2005); see also *PIA Manual*, at 52.

Section 10-614 provides for segregation of the part of a public record containing information exempt from disclosure if the non-exempt portion is “reasonably severable.” § 10-614(b)(3)(iii). *Prince George’s County v. Washington Post Co.*, 149 Md. App. 289, 320, 815 A.2d 859, 877 (2003). In instances in which the exempt information is so inextricably intertwined with nonexempt portions, so that its excision would impose significant costs on the agency and the final product would contain very little information, then the agency may deny inspection. See *PIA Manual*, at 52. In such a case, “the agency has the burden of showing in a non-conclusory affidavit that the information is not reasonably segregable.” *Id.*

E. Homeland Security Measures.

The custodian may deny inspection of response procedures or plans prepared to prevent or respond to emergency situations, the disclosure of which would reveal vulnerability assessments, specific tactics, emergency or security procedures. § 10-618(j). Disclosure may be denied pursuant to § 10-618(j) only to the extent that the inspection would jeopardize the security of any building, structure or facility, facilitate the planning of a terrorist attack, or endanger the life or physical safety of an individual. § 10-618(j)(2).

III. STATE LAW ON ELECTRONIC RECORDS

A. Can the requester choose a format for receiving records?

The PIA does not grant the requester the right to determine the format in which the copies are made; rather that right lies with the agency. *PIA Manual*, at 12. Thus, a requester may not be able to force the agency to provide the records in a computerized format when the agency offers to provide the information in a printout. *Id.* However, the Attorney General’s office urges agencies to voluntarily accede to the requester’s choice of format if doing so imposes no significant cost

or other burden on the agency. *Id.*

B. Can the requester obtain a customized search of computer databases to fit particular needs?

The PIA does not create an obligation for an agency to create records to satisfy a PIA request, or to “reprogram its computers or aggregate computerized data files so as to effectively create new records.” *PIA Manual*, at 9. However, many agency Web sites contain useful search engines that permit referral, customized, or semi-customized of the agency’s records. *See*, for example, Maryland Department of Assessments and Taxation’s website (search of business filings status and real property records).

C. Does the existence of information in electronic format affect its openness?

Not as a legal matter, but as a practicable matter, the electronic imaging of many documents by state agencies and the requirement by agencies that such documents be electronically formatted has enhanced significantly the ease with which public records are accessed. Images of many records are now available over the Internet by accessing the agency’s Web site. As a matter of law, however, the original or any copy of a public record in any form is covered by the PIA, including a computerized record. § 10-611(g)(1)(2); *see also* 81 Op. Att’y Gen. 140 (1996) (printed and electronically stored versions of e-mail messages are public records). However, information concerning the security of an information system is exempt from disclosure. § 10-617(g). On October 24, 1983, the Governor issued Executive Order 01.01.1983.18 establishing a State Data Security Committee regarding security measures for the protection of state agencies maintaining computerized record systems. *Md. Admin. Code tit. 1, 01.01.1983.18* (1983).

D. How is e-mail treated?

Agency e-mail is a public record. 81 Op. Att’y Gen. 140 (1996) (Agency printed and electronically stored versions of e-mail messages are public records).

1. Does e-mail constitute a record?

Yes, agency e-mail is a public record.

2. Public matter on government e-mail or government hardware

An e-mail discussing public matters via public hardware is a public record. 81 Op. Att’y Gen. 140 (1996).

3. Private matter on government e-mail or government hardware

An e-mail discussing private matters via public hardware is not a public records. 81 Op. Att’y Gen. 140 (1996).

4. Public matter on private e-mail

An e-mail discussing public matters via private e-mail is a public record. 81 Op. Att’y Gen. 140 (1996).

5. Private matter on private e-mail

An e-mail discussing private matters via private e-mail is not a public record. 81 Op. Att’y Gen. 140 (1996).

E. How are text messages and instant messages treated?

There is no statutory or case law addressing this issue.

1. Do text messages and/or instant messages constitute a record?

There is no statutory or case law addressing this issue.

2. Public matter message on government hardware.

There is no statutory or case law addressing this issue.

3. Private matter message on government hardware.

There is no statutory or case law addressing this issue.

4. Public matter message on private hardware.

There is no statutory or case law addressing this issue.

5. Private matter message on private hardware.

There is no statutory or case law addressing this issue.

F. How are social media postings and messages treated?

There is no statutory or case law addressing this issue.

G. How are online discussion board posts treated?

There is no statutory or case law addressing this issue.

H. Computer software

There is no statutory or case law addressing this issue.

1. Is software public?

There is no statutory or case law addressing this issue.

2. Is software and/or file metadata public?

There is no statutory or case law addressing this issue.

I. How are fees for electronic records assessed?

There is no statutory or case law addressing this issue.

J. Money-making schemes.

There is no statutory or case law addressing this issue.

1. Revenues.

There is no statutory or case law addressing this issue.

2. Geographic Information Systems.

There is no statutory or case law addressing this issue.

K. On-line dissemination.

There is no statutory or case law addressing this issue; some agencies do provide access to certain records via the applicable agency’s public website.

IV. RECORD CATEGORIES -- OPEN OR CLOSED

A. Autopsy reports.

These records are open pursuant to § 10-617(b). *See also* 63 Op. Att’y Gen. 659 (1978).

B. Administrative enforcement records (e.g., worker safety and health inspections, or accident investigations)

There is no statutory or case law addressing this issue.

1. Rules for active investigations.

There is no statutory or case law addressing this issue.

2. Rules for closed investigations.

There is no statutory or case law addressing this issue.

C. Bank records.

These records are closed pursuant to § 10-617(f). This exemption does not apply to the person in interest, nor does it apply to the salary of a public employee. For a more complete discussion, *see also* II.A.2.(2)(c) and (e).

D. Budgets.

There is no statutory or case law addressing this issue.

E. Business records, financial data, trade secrets.

These records are closed pursuant to § 10-617(d). This exemption does not cover commercial or financial information generated by the agency itself; however, such information may be covered by other law. For a more complete discussion, see also II.A.2.

F. Contracts, proposals and bids.

This information ordinarily falls under the confidential commercial or financial information exemption of the PIA, which is substantially similar to the federal exemption under the FOIA. As such, the records are generally closed pursuant to § 10-617(d). Also, inspections shall be denied where the records sought contain information generated by the bid analysis management system and concerns an investigation based on a transportation contractor's suspected collusive or anticompetitive activity. § 10-617(i). See also II.A.2(2)(c). Additionally, disclosure of any part of the public record containing procurement information generated by the federal government or another state resulting from an investigation into suspected collusive or anticompetitive activity on the part of a transportation contract is exempt from disclosure. § 10-617(i).

G. Collective bargaining records.

The PIA does not specifically address these types of records; however, under § 10-508(1) of the Open Meeting Act, a public body is permitted to hold a closed session regarding collective bargaining issues.

H. Coroners reports.

Autopsy reports of a medical examiner are open for inspection pursuant to § 10-617(b).

I. Economic development records.

There is no statutory or case law addressing this issue.

J. Election records.

There is no statutory or case law addressing this issue.

1. Voter registration records.

There is no statutory or case law addressing this issue.

2. Voting results.

There is no statutory or case law addressing this issue.

K. Gun permits.

There is no statutory or case law addressing this issue.

L. Hospital reports.

A record that relates to medical administration, staff, medical care, or other medical information and containing information about specific individuals is generally closed pursuant to § 10-616(j); see also Md Code Ann., Health Gen'l § 4-302.

M. Personnel records.

A custodian shall deny inspection of a personnel record of an individual, including an application, performance rating, or scholastic achievement information to anyone other than the person in interest or an elected or appointed official who supervises the work of the individual. § 10-616(i). Information relating to the performance evaluation of judges and information about a claim filed against an employee is not subject to disclosure. See 79 Op. Att'y Gen. 179, 181(1994); 78 Op. Att'y Gen. 297, 299-300 (1993). The purpose of treating personnel records as confidential is "to preserve the privacy of personal information about a public employee accumulated during his or her employment." *Baltimore City Police Dep't v. State*, 158 Md. App. 274, 282, 857 A.2d 148, 153 (2004) (citing 78 Op. Att'y Gen. 291, 293 (1993)).

The purpose of this exemption is to preserve the privacy of the public employee. 65 Op. Att'y Gen. 365 (1980). There must be a concrete

nexus between the official and the employee before the official is allowed access to the employee's personnel record. *Id.*

However, the Maryland Court of Appeals has established that employment contracts themselves do not come within this exception and are therefore subject to disclosure because they are not in the nature of a performance evaluation. *University System of Maryland, et al., v. The Baltimore Sun Company*, 381 Md. 79, 102, 847 A.2d 427, 441 (2004) (rejecting the University's argument that employment contracts it had with athletic coaches came within the exemption for personnel records found in § 10-616(i)). See also *PIA Manual*, at 22-23. The Court further stated that any side letter or documents reflecting the total compensation and sums of monies paid directly by the University to its coaches must be disclosed. *University System of Maryland*, 381 Md. at 103.

It has also been established that directory-type information concerning agency employees is not a "personnel record" under § 10-616(i). *Prince George's County v. Washington Post Co.*, 149 Md. App. 289, 324, 815 A.2d 859 (2003) (finding that roster listing names, ranks, badge numbers, date of hire and job assignments of county police officers was not exempt for disclosure as a "personnel record"). Generally, a record generated by an agency that lacks supervisory authority over an employee does not qualify as a "personnel record." *Prince George's County*, 149 Md. App. at 331.

The Legislative Auditor may have access to personnel records in the performance of his/her duties. 60 Op. Att'y Gen. 554 (1975). State Accident Fund investigators also may have access to personnel records concerning a workers' compensation fund claimant, or otherwise pertinent to the claim. 60 Op. Att'y Gen. 559 (1975). However, files of investigations of employee conduct generally do not constitute personnel records of an individual and are instead classified as investigatory files. *Maryland Dept. of State Police v. Maryland State Conference of NAACP Branches*, 190 Md. App. 359, 378, 988 A.2d 1075, 1086 (2010), cert. granted, 997 A.2d 789 (2010).

1. Salary.

A "public record" includes a document that lists the salary of an employee of a unit or instrumentality of the state government or of a political subdivision. § 10-611(g)(2); *Moberly v. Herboldsheimer*, 276 Md. 211, 345 A.2d 855 (1975), *University System of Maryland, et al. v. The Baltimore Sun Company*, 381 Md. 79, 100, 847 A.2d 427, 439 (2004) (finding that an employment contract of a public employee evidencing how a publicly funded salary is earned qualified as a public record).

2. Disciplinary records.

The Maryland Court of Appeals has construed the phrase "personnel records" as "those documents that directly pertain to employment and an employee's ability to perform a job." *Kirwan v. The Diamond-back*, 352 Md. 74, 83, 721 A.2d 196, 200 (1998). Such records would include those directly relating to the employee's hiring, discipline, promotion, dismissal, or any matter involving his status as an employee. 352 Md. at 82, 721 A.2d. at 200. Accordingly, a university record of its employee's on-campus parking violation is subject to disclosure under the PIA because such a violation has no bearing on the employment status. 352 Md. at 84, 721 A.2d at 201.

3. Applications.

Applications for employment can only be disclosed to the person in interest or to elected or appointed official who supervises the person in interest. § 10-616(i).

4. Personally identifying information.

Personal identification information (e.g., income, address, phone number, Social Security number, etc.) is considered sociological data. COMAR 12.11.02.02.M. If the agency has adopted rules or regulations that define sociological information, then the custodian shall deny inspection of the part of the public record containing sociological information. § 10-617(c). The PIA does not delineate the type of information subject to this exemption. Rather, the agency must define

what constitutes sociological information by regulation before access to such information may be denied. § 10-617(c). In addition, information that identifies an individual by an identifying factor is protected from disclosure by § 10-625 to 10-626. Identifying factors include: address, description, finger or voice print, number, or picture. § 10-626(a)(2). However, access may be permitted for research purposes. § 10-624(e).

5. Expense reports.

There is no statutory or case law addressing this issue.

6. Other.

There is no statutory or case law addressing additional records beyond those already discussed.

N. Police records.

1. Accident reports.

Although not generally exempt, a custodian shall deny inspection of police reports of traffic accidents, criminal charging documents prior to service on the defendant named in the documents, and traffic citations filed in the Maryland Automated Traffic System to either an attorney or a person employed by, retained by, associated with or acting on behalf of an attorney who seeks to use the records for the purpose of soliciting or marketing legal services. § 10-616(h). This exemption does not apply to an attorney of record of the person who is named in the record. *Id.* The constitutionality of this restriction has been called into doubt. *See Ficker v. Curran*, 950 F. Supp. 123 (D. Md. 1996).

2. Police blotter.

Arrest logs are not exempt from disclosure because they are not considered records of investigations or investigatory files. 63 Op. Att’y Gen. 543 (1978). They are also specifically not included from the exemption for “Criminal history record information.” Md. Code, Criminal Procedure, §10-201(d)(3)(iii).

3. 911 tapes.

Tape recordings of 911 Emergency Telephone System calls are public records, except for those portions exempted from disclosure. 71 Op. Att’y Gen. 288. For example, medical information such as the symptoms of an ill or injured individual recorded during a 911 call may not be released. *PIA Manual*, at 28 (citing to 90 *Opinions of the Attorney General* 45 (2005)).

4. Investigatory records.

Records of investigations conducted by the Attorney General, a State’s Attorney, a city or county attorney, a police department, or a sheriff; an investigatory file compiled for any other law enforcement, judicial, correctional, or prosecution purpose; or records that contain intelligence information or security procedures of the Attorney General, a State’s Attorney, city or county attorney, a police department, a local correctional facility, or a sheriff are exempted from disclosure. § 10-618(f)(1). *Blythe v. State*, 161 Md. App. 492, 525, 870 A.2d 1246, 1264, *cert. granted*, 388 Md. 97, 879 A.2d 42 (2005), *Prince George’s County v. Washington Post Co.*, 149 Md. App. 289, 324, 815 A.2d 859, 880 (2003); *see also PIA Manual*, at 42.

The documents of an investigation by a police department, sheriff’s office or any of the other law enforcement agencies specifically listed in § 10-618(f) are presumptively compiled for law enforcement or prosecution purposes. *Office of the State Prosecutor v. Judicial Watch Inc.*, 356 Md. 118, 737 A.2d 592 (1999); *Superintendent, Maryland State Police v. Henschen*, 279 Md. 468, 475, 369 A.2d 558 (1977); *Blythe v. State*, 161 Md. App. 492, 525-26, n.6, 870 A.2d 1246, *cert. granted*, 388 Md. 97, 879 A.2d 42 (2005). For example, the State’s Attorney is neither required nor authorized to disclose a police investigative report or any part of it that was used for grand jury proceedings. 64 Op. Att’y Gen. 236 (1979).

Moreover, where the agency’s files are prepared in anticipation of government litigation and adjudicative proceedings are pending or

contemplated, such files are compiled for law enforcement purposes. *Equitable Trust Co. v. Maryland Comm’n on Human Relations*, 42 Md. App. 53, 75, 399 A.2d 908 (1979), *rev’d on other grounds*, 287 Md. 80, 411 A.2d 86 (1980); *see also* 82 Op. Att’y Gen. 49, 50-51 (1997) (finding MVA records compiled during course of investigation into driver’s fitness to be “investigatory files,” but also finding such files are generally subject to disclosure to the driver).

If the agency is not a law enforcement agency specifically listed in the PIA, then it must show that its records were compiled for law enforcement or prosecution purposes in order for the exemption to apply. *Office of the State Prosecutor*, 356 Md. at 140, 737 A.2d at 604 (distinguishing *Fioretti*, 351 Md. at 78-79, 716 A.2d at 264-65 (Board of Dental Examiners was not among specifically enumerated entities and was required, therefore, to prove both that it was conducting an investigation and that production of individual records sought would prejudice that investigation)); *see also Equitable Trust Co.*, 42 Md. App. 53, 75. Thus, for example, because the Human Relations Commission is not a named law enforcement agency, it is required to make such a showing. *Id.*

An agency might have records obtained from investigatory files of another agency. In these circumstances, the agency must withhold investigatory material if the agency that provided the information would itself deny access under the investigatory records exemption. *PIA Manual*, at 43 (citing 89 *Opinions of the Attorney General* 31, 44 (2004)).

A person whose complaint of police misconduct gives rise to an internal police investigation of the incident, is not the subject of the internal investigation and is not, therefore, a person in interest. *Mayor and City Council of Baltimore, v. Maryland Comm. Against the Gun Ban*, 329 Md. 78, 617 A.2d 1040 (1993); *see also Briscoe v. Mayor of Baltimore*, 100 Md. App. 124, 640 A.2d 226 (1994) (complaining witness was not a person in interest, so denial of inspection of Internal Investigation Division file was justified on public interest grounds). Thus, if the custodian believes that disclosure of records pertaining to the investigation is not in the public interest, the PIA does not require disclosure to the complaining party. *Id.*

a. Rules for active investigations.

A custodian may deny access to a person in interest only to the extent that disclosure would interfere with a valid and proper law enforcement proceeding, deprive another person of a right to a fair trial or impartial adjudication, constitute an unwarranted invasion of privacy, disclose the identity of a confidential source, disclose an investigative technique, prejudice an investigation, or endanger the life or physical safety of an individual. § 10-618(f)(2). Because of a person in interest’s favored status, a custodian must point out precisely which of the seven grounds enumerated in § 10-618(f)(2) justify withholding of an investigatory record and explain precisely why it would do so. *Blythe v. State*, 161 Md. App. 492, 531, 870 A.2d 1246, *cert. granted*, 388 Md. 97, 879 A.2d 42 (2005); *see also PIA Manual*, at 45.

Although this section appears to place a heavy burden upon a custodian seeking to justify nondisclosure to a person in interest, Maryland case law indicates to the contrary. *See Attorney General v. Gallagher*, 359 Md. 341, 355, 753 A.2d 1036, 1044 (2000) (person in interest was not entitled to obtain disclosure of records falling within mandatory exemptions of the Act); *Office of the State Prosecutor*, 356 Md. at 140, 737 A.2d at 604. *Faulk v. States Attorney*, 299 Md. 493, 474 A.2d 880 (1984). For example, the State is not required to make a particularized showing that the disclosure of investigatory police records compiled for law enforcement purposes to a defendant in a pending criminal proceeding would interfere with that proceeding; a generic determination of interference can be made whenever a defendant in a pending criminal proceeding seeks access to investigatory police reports relating to that proceeding. *Id.* However, a convicted defendant may obtain access to the prosecutorial file concerning the defendant absent the presence of one or more of the factors stated in subparagraph 2. *See* 81 Op. Att’y Gen. 251 (1996).

b. Rules for closed investigations.

Once an investigation is closed, investigatory files are subject to disclosure, based upon an amendment to the comparable FOIA exemption. See *Fioretti v. Maryland State Board of Dental Examiners*, 351 Md. 66, 716 A.2d 258 (1998); *Bowen v. Davison*, 135 Md. App. 152, 761 A.2d 1013 (2000). Once an investigation has been closed, disclosure is considered less likely to be “contrary to the public interest.” *City of Frederick v. Randall Family, LLC*, 154 Md. App. 543, 562-567, 841 A.2d 10 (2004), *Prince George’s County v. Washington Post Co.*, 149 Md. App. 289, 33, 815 A.2d 859 (2003). Where the internal police investigation concludes with a determination that the allegations are not sustained, fairness to the investigated officers and the avoidance of needless publicity to the cooperating witnesses, with possible inhibiting effects on future investigations, justify on public interest grounds, the custodian’s denial of inspection to one other than a person in interest. *Mayor and City Council of Baltimore, v. Maryland Comm. Against the Gun Ban*, 329 Md. 78, 617 A.2d 1040 (1993).

5. Arrest records.

Records pertaining to an arrest warrant and the charging document upon which the arrest warrant was issued may not be open for inspection absent court order or until the arrest warrant has been served or 90 days have elapsed since the warrant was issued. § 10-616(q). The proscriptions do not apply to State’s Attorneys or peace officers and other court personnel, bail bondsmen, attorneys, and other delineated persons acting with respect to specific individuals subject to the warrant. § 10-616(q)(5). Additionally, information relating to unserved or expired arrest warrants are generally exempt from disclosure, though one could get access to statistical information about unserved warrants in general. § 10-616(q)(5).

6. Compilations of criminal histories.

Criminal history record information is exempt from disclosure. Md. Code, Criminal Procedure § 10-202(4). One intent of the law is “to prohibit the improper dissemination” of the information. *Id.* CHRI is data “developed or collected by a criminal justice unit about a person and that pertain to a reportable event.” § 10-201(d)(1). Criminal history record information does not include police blotters, wanted posters, court opinions, records of judicial proceedings, information about motor vehicle or local ordinance violations, or presentence or probation reports used in judicial proceedings. §10-201(d)(3). The disclosure of the CHRIs is treated in a similar vein as the release of expunged records. § 10-204; § 10-109.

7. Victims.

There is no statutory or case law addressing this issue.

8. Confessions.

There is no statutory or case law addressing this issue.

9. Confidential informants.

There is no statutory or case law addressing this issue.

10. Police techniques.

A custodian may deny access of investigatory records to a person in interest if, among other things, the disclosure would disclose an investigative technique. § 10-618(f)(2). Inspection of records by a notary public or any other person in interest may be denied if, among other things, the inspection could disclose an investigative technique or procedure. § 10-617(j)(4).

11. Mug shots.

In 2007, a Maryland attorney general opinion concluded that mug shots are presumptively open under the public information act. In the opinion, the attorney general addresses the question of whether mug shots fall under the definition of Maryland Criminal History Record Information – and therefore not subject to release. See 92 OAG 26

(2007). Mug shots are not mentioned in the CHRI statute as being inherently included or excluded from the CHRI definition. Md. Code, Criminal Procedure § 10-201.

The AG reasoned that the mug shot is more analogous to an investigatory record than a criminal history record because it is used during an investigation and kept for possible future investigations. 92 OAG 26 (2007). As such, mug shots fall under the purview of SG § 10-618(f). *Id.* Therefore, mug shots are open to inspection “unless the custodian can articulate a reason why it would be ‘contrary to the public interest’ to allow inspection of the photograph.” *Id.*; SG § 10-618(a). The opinion states that “[i]n many, if not most instances, there will be no public interest justifying a refusal to disclose a photograph,” but that there may be times where the public interest may demand the withholding of a mug shot. 92 OAG 26 (2007). Factors that will be considered include whether the mug shot would reveal a person’s “past encounter with law enforcement” or instances where charges were ultimately dropped or if the photograph depicts particularly embarrassing circumstances or if it may imping on the right of a fair trial or if it may affect an ongoing investigation or put an undercover investigation at risk.

12. Sex offender records.

There is no statutory or case law addressing this issue.

13. Emergency medical services records.

There is no statutory or case law addressing this issue.

O. Prison, parole and probation reports.

The Department of Parole and Probation of the Department of Public Safety and Correctional Services has promulgated regulations that define “sociological data” in the Code of Maryland Regulations (“COMAR”) 12.11.02.02.M. Pursuant to those regulations, generally “sociological data” includes: personal identification information (e.g., income, address, phone number, Social Security number, etc.); family information (e.g., marital status, identity of dependents or relatives, etc.); personal financial information; medical information; personal beliefs and religious preference information; and other types of personal history information. *Id.* If the agency has adopted rules or regulations that define sociological information, then the custodian shall deny inspection of the part of the public record containing sociological information. § 10-617(c). The PIA does not delineate the type of information subject to this exemption. Rather, the agency must define what constitutes sociological information by regulation before access to such information may be denied. § 10-617(c). In addition, information that identifies an individual by an identifying factor is protected from disclosure by § 10-625 to 10-626. Identifying factors include: address, description, finger or voice print, number, or picture. § 10-626(a)(2). However, access may be permitted for research purposes. § 10-624(e).

P. Public utility records.

Records of buildings, structures, or facilities that would reveal a particular “building’s, structure’s, or facility’s life, safety, and support systems, surveillance techniques, alarm or security systems or technologies, operational and evacuation plans or protocols, or personnel deployments” and would likely encompass public utilities may be permissibly withheld. § 10-618(j).

Q. Real estate appraisals, negotiations.

1. Appraisals.

With the exception of the owner of the property, a custodian may deny access to a public record that contains a real estate appraisal of the property until the State or political subdivision acquires title to the property. § 10-618(e).

2. Negotiations.

There is no statutory or case law addressing this issue.

3. Transactions.

Real estate transaction information is generally available through Maryland's State Department of Assessments and Taxation website.

4. Deeds, liens, foreclosures, title history.

Generally, title information, previous ownership, assessed values and other information pertaining to real property is also available through Maryland's State Department of Assessments and Taxation website. Specific deed and encumbrance information is available through the county land records division in which the property is located.

5. Zoning records.

There is no statutory or case law addressing this issue.

R. School and university records.

1. Athletic records.

There is no statutory or case law addressing this issue.

2. Trustee records.

There is no statutory or case law addressing this issue.

3. Student records.

Records containing the home address, home phone number, biography, family, physiology, religion, academic achievement, or physical or mental ability of a student are exempt from disclosure, except to the person in interest or an elected or appointed official who supervises the student. § 10-616(k). A custodian may permit inspection of the home address or home phone number of a student of a public school to an organization of parents, teachers, students or former students of the school; the military; a school board or commission employee confirming the address; a community college representative; or the Maryland Higher Education Commission. § 10-616(k)(3)(i). Disclosures obtained pursuant to § 10-616(3)(i) may not be used for commercial purposes or redisclosed to others who are not authorized to receive the disclosure. § 10-616(k)(3)(ii).

The Maryland Court of Appeals has construed the phrase "educational records" as applied in the PIA and the federal Family Rights and Privacy Act (20 U.S.C. § 1232g). *See Kirwan v. The Diamondback*, 352 Md. 74, 90-91, 721 A.2d. 196, 204-205 (1998). Educational records are those that relate to the student's academic matters or status as a student, *e.g.*, IQ scores, grades, anecdotal comments made by teachers, rating profiles. 352 Md. at 91, 721 A.2d at 204. They do not include all institutional records containing the student's name. *Id.* Accordingly, institutional records disclosing the names of those students who received traffic citations, for example, are subject to disclosure under both the PIA and the federal Family Rights and Privacy Act. *Id.*

A representative of the State Department of Education may also examine student records as a certifying agent of the State on matters relating to institutional eligibility to participate in federal Veteran's Administration educational programs. 61 Op. Att'y Gen. 340 (1976). Although the name and address of a student constitutes directory information subject to limited disclosure under the PIA, 59 Op. Att'y Gen. 586 (1974), the Family Education and Privacy Act of 1974, 20 U.S.C. § 1232(g), supersedes the PIA and permits a student or parent to refuse to allow a student's name and address to be released. Further, the dissemination of degree and credit information on teachers in specific school systems is not authorized. 60 Op. Att'y Gen. 600 (1975).

4. Other.

There is no statutory or case law addressing additional records beyond those already discussed.

S. Vital statistics.

There is no statutory or case law addressing this issue.

1. Birth certificates.

There is no statutory or case law addressing this issue.

2. Marriage & divorce.

A custodian shall deny inspection of the part of an application for a marriage license that contains a Social Security number, except to a person in interest or upon the request of the State Child Support Enforcement Administration. § 10-617(k). Additionally, a court order to seal records in divorce or custody cases would generally override the PIA.

3. Death certificates.

The spouse, adult child, parent, adult sibling, grandparent, or guardian of the person of the deceased at the time of the deceased's death may request corrections to a death certificate. § 10-611(e)(3).

4. Infectious disease and health epidemics.

Any report on human immunodeficiency virus or acquired immunodeficiency syndrome submitted in accordance with Title 18 of the Health-General Article 10-617(b)(2)(iii) is exempt from disclosure. A request by a person in interest may not be denied, however, by an agency merely because the person seeks the identity of the source of infection, or because the information sought was gathered in the course of an agency's investigation of an outbreak or an infectious disease. *See Haigley v. Department of Health and Mental Hygiene*, 128 Md. App. 194, 228, 736 A.2d 1185, 1202-03 (1999).

V. PROCEDURE FOR OBTAINING RECORDS

A. How to start.

1. Who receives a request?

An applicant must make a written application to the "custodian." § 10-614. "Custodian" is defined in § 10-611(c) to mean the official custodian or any other authorized individual who has physical custody and control of a public record. "Official custodian" is defined in § 10-611(d) to mean "an officer or employee of the State or of a political subdivision who, whether or not the officer or employee has physical custody and control of a public record, is responsible for keeping the record." Thus, responsibilities under the PIA are distributed to each custodian of every unit or instrumentality of the state government or of a political subdivision who has responsibility for keeping public records.

Concluding that there could be no doubt that the procedures of the PIA are in most respects altogether incompatible with the efficient conduct of an audit, the Attorney General has stated that the procedural requirements of the PIA do not apply to the Legislative Auditor's conduct of an audit. *See* 76 Op. Att'y Gen. 287 (1991).

2. Does the law cover oral requests?

The Act requires an applicant to submit a written application. § 10-614(a). However, if a request is made for a type of record that has been designated by the official custodian to be made immediately available on request, there is no need for a formal written request. § 10-614(a)(2)(i); *see also PIA Manual*, at 10. As a practical matter, some records may be obtained by oral request, and many agencies permit oral requests. *See, e.g.*, COMAR 28.01.04.04 (Office of Administrative Hearings); COMAR 26.01.04.04 (Department of Environment); and COMAR 29.01.02.04 (Maryland State Police). The Attorney General's Office suggests that agency personnel should not demand a written request when there is no question that the public has a right to inspect the particular record. *PIA Manual*, at 55. The "written application" requirement does not apply to the Legislative Auditor's conduct of an audit. *See* 76 Op. Att'y Gen. 287 (1991).

a. Arrangements to inspect & copy.

There is no statutory or case law addressing this issue.

b. If an oral request is denied:

There is no statutory or case law addressing this issue.

(1). How does the requester memorialize the refusal?

See previous section.

(2). Do subsequent steps need to be in writing?

See previous section.

3. Contents of a written request.

The Maryland Attorney General's Office has provided a "Sample Request Letter" in Appendix A to the *PIA Manual*. The format of the request letter should include the following: (1) it should advise the custodian that the applicant is seeking inspection and/or copies of public records pursuant to the PIA, providing citation to the relevant provisions of the PIA; (2) it should provide, to the extent possible, a particularized and detailed description of the records sought, including relevant dates; (3) it should request a written statement from the agency as to the reason for any denial of the right to inspect or copy records (or any portion thereof), citation to the law or regulation supporting the agency's decision, and the available remedies for review of a denial; (4) it should request that the applicant be provided with any reasonably segregable portion of the record if parts of the record are exempt from disclosure; (5) it should request fee information or fee schedules regarding the search for, preparation of and reproduction of the records, or if a waiver of fees is requested, the reasons for waiver and citation to the PIA provision permitting waiver of fees should be given; (6) it should request a copy of all regulations adopted by the authority from which records are sought; *e.g.*, COMAR 28.01.04.05 (Office of Administrative Hearings); COMAR 29.01.02.05 (Department of State Police).

a. Description of the records.

A particularized and detailed description of the records sought should be included in any request. See *PIA Manual*, at App. A.

b. Need to address fee issues.

A request for fee information or fee schedules regarding the search for, preparation of and reproduction of the requested records, or if a waiver of fees is requested, the reasons for waiver and citation to the PIA provision permitting waiver of fees should be included in any request. See *PIA Manual*, at App. A.

c. Plea for quick response.

A reference to the applicant's right to a timely response pursuant to the PIA should be included in any request. See *PIA Manual*, at App. A.

d. Can the request be for future records?

The PIA does not require an agency to create records to satisfy a PIA request. See *PIA Manual*, at 9.

e. Other.

There is no statutory or case law addressing components of a written request beyond those already discussed.

B. How long to wait.

1. Statutory, regulatory or court-set time limits for agency response.

The statute provides a mandatory time frame in which the custodian must act upon the application. § 10-614(b). Within thirty days

after receiving an application, the custodian must grant or deny the application. § 10-614(b)(1). *Stromberg Metal Works Inc. v. University of Maryland, et al.*, 382 Md. 151, 155, 854 A.2d 1220, 1223 (2004). Notwithstanding the thirty-day time period, where the right to access is clear, the custodian must act immediately. See *PIA Manual*, at 56. If the application is approved, then the custodian must produce the public record immediately or within a reasonable period that is needed to retrieve the public record, but that period cannot exceed the thirty day time period after receipt of the application. § 10-614(b)(2). *Prince George's County v. Washington Post Co.*, 149 Md. App. 289, 308, 815 A.2d 859, 870 (2003). If the application is denied, then the custodian must immediately notify the applicant within ten working days, give the applicant a written statement that sets forth the reasons for the denial, the legal authority for the denial, and notice of the remedies provided by the PIA for review of the denial. § 10-614(b)(3). *City of Frederick v. Randall Family*, 154 Md. App. 543, 559, 841 A.2d 10, 20 (2004). *Prince George's County*, 149 Md. App. at 308, 815 A.2d at 870. This 10-day period is in addition to the maximum 30-day or (with an agreed extension) 60-day periods for granting or denying a request. *Stromberg Metal Works Inc. v. University of Maryland*, 382 Md. 151, 158-59, 854 A.2d 1220 (2004); see also *PIA Manual*, at 56. The custodian must permit inspection of any part of the record that is subject to access and is reasonably severable. § 10-614(b)(3). *Blythe v. State*, 161 Md. App. 492, 519, 870 A.2d 1246, 1261, *cert. granted*, 388 Md. 97, 879 A.2d 42 (2005).

If an application is submitted to an individual who is not the custodian, then that individual must, within ten working days after receiving the application, give the applicant notice of that fact and, if known, the name of the custodian and the location or possible location of the public record. § 10-614(a)(2). The time limits imposed by § 10-614 may not be extended without the consent of the applicant and in any event may not be extended for more than thirty days. § 10-614(b)(4).

2. Informal telephone inquiry as to status.

Informal telephone inquiry as to status may be advisable in some situations and as a practical matter.

3. Is delay recognized as a denial for appeal purposes?

Because the time limits imposed by the PIA are mandatory, a failure to disclose within the prescribed time period will constitute a denial for purposes of administrative or judicial review. If delay beyond the time requirements set forth in the PIA is unavoidable for practical reasons, the applicant should be advised. Courts interpreting the federal FOIA have granted extensions in extraordinary cases. See *Open American v. Watergate Special Prosecution Force*, 547 F.2d 605 (D.C. Cir. 1976).

4. Any other recourse to encourage a response.

Where the delay is beyond the time limits imposed by the PIA, resort to administrative or judicial review may be had. §§ 10-622, 10-623.

C. Administrative appeal.

A person or governmental unit may seek administrative review if the agency denying access is included within the provisions of the Maryland Administrative Procedure Act ("APA"), Md. Code Ann., State Gov't §§ 10-201 to 10-300. § 10-622. The review will be conducted in accordance with the provisions of the APA. A person or governmental unit, however, need not exhaust the administrative remedy provided by § 10-622 before filing a court action. § 10-622(c); *Massey v. Gallely*, 392 Md. 634, 898 A.2d 951 (2006). Administrative review is not available when the official custodian temporarily denies inspection of a public document pursuant to § 10-619 of the PIA on the ground that disclosure would cause substantial injury to the public interest. *Id.* Moreover, administrative review under the APA for contested cases is largely for factual disputes. See *PIA Manual*, at 59. Consequently, because a PIA dispute will usually involve a question of law as to the

scope of a statutory exemption to disclosure, the administrative route may not be advisable. *Id.*

1. Time limit.

Although the PIA itself contains no time limit, 30 days following denial is the standard set by regulation.

2. To whom is an appeal directed?

Individuals aggrieved by a state agency's decision to deny access to records should file a request for hearing in accordance with that particular agency's regulations. Such requests are typically filed with the agency's hearing office or directed to its Secretary. *See, e.g.*, COMAR 28.01.04.11.A.

a. Individual agencies.

Requests for hearings are typically filed with the agency's hearing office or directed to its Secretary. *See, e.g.*, COMAR 28.01.04.11.A. (Office of Administrative Hearings); COMAR 15.01.04.12.A (Department of Agriculture); COMAR 26.01.04.11.A. (Department of Environment).

b. A state commission or ombudsman.

There is no state-level commission or ombudsman overseeing the PIA. *See PIA Manual.*

c. State attorney general.

The Office of the Attorney General periodically issues advisory opinions. *See PIA Manual.*

3. Fee issues.

There is no statutory or case law addressing this issue.

4. Contents of appeal letter.

Applicants are urged to follow the format required by regulation for the agency involved, most of which have their own standard form.

a. Description of records or portions of records denied.

See general statement above.

b. Refuting the reasons for denial.

See general statement above.

5. Waiting for a response.

There is no statutory or case law addressing this issue.

6. Subsequent remedies.

Aggrieved applicants may sue to compel production as discussed in Section D below.

D. Court action.

1. Who may sue?

The person or governmental unit denied access to a public record may file a complaint with the circuit court for the county where the complainant resides or has a principal place of business or where the public record is located. § 10-623(a); *Attorney Grievance Comm'n v. Abell*, 294 Md. 680, 452 A.2d 656 (1982). *Blythe v. State*, 161 Md. App. 492, 505, 870 A.2d 1246, 1253, *cert. granted*, 388 Md. 97, 879 A.2d 42 (2005).

2. Priority.

Except for cases that the court considers of greater importance, the court will give records questions precedent on the docket, hear records questions at the earliest practicable date, and expedite any decision concerning records questions in every way. § 10-623(c). This expedited process also applies to an appeal of a court decision. *Id.*

3. Pro se.

Because the defendant in such an action has the burden of justifying

a decision to deny inspection of a public record, § 10-623(b)(2), the possibility of an applicant proceeding *pro se* is heightened. However, in light of the somewhat technical exemptions set forth in the PIA, proceeding on a *pro se* basis may not be advisable.

4. Issues the court will address:

a. Denial.

The court may address all issues relating to denial of access to the public record. *See* § 10-623. *Prince George's County v. Washington Post Co.*, 149 Md. App. 289, 314, 815 A.2d 859, 873 (2003).

b. Fees for records.

The court may address fee issues. *See Mayor of Baltimore v. Burke*, 67 Md. App. 147, 506 A.2d 683 (1986).

c. Delays.

Because a delay beyond the statutory time limits may constitute a denial, the court may address issues related to delay as well.

d. Patterns for future access (declaratory judgment).

If an agency has frustrated judicial review by presenting testimony or affidavit in conclusory form, the trial court may, depending upon all of the circumstances, appropriately exercise its discretion by ordering more detailed affidavits or by conducting an in-camera inspection, or simply by ordering disclosure because of the agency's failure to meet its burden of satisfying the court that an exemption applies. § 10-623(b)(2). *See Epps v. Simms*, 89 Md. App. 271, 598 A.2d 756 (1991); *see also Cranford v. Montgomery County*, 300 Md. 759, 481 A.2d 221 (1984).

The ultimate standard for determining whether an in-camera inspection is to be made is whether the trial judge believes that it is needed in order to make a responsible determination on claims of exemptions. *Epps*, 89 Md. App. 271, 598 A.2d 756. Factors that may be involved in determining whether an in-camera inspection is necessary include: (1) judicial economy; (2) conclusory nature of the agency affidavits; (3) bad faith on the part of the agency; (4) disputes concerning the contents of the document; (5) whether the agency has proposed in-camera inspection; and (6) the strength of public interest in disclosure. *Id.* The court has the power to issue injunctions or institute disciplinary actions. *See* § 10-623(c)(2) and (e); *Equitable Trust Co. v. State, Comm'n on Human Relations*, 42 Md. App. 53, 399 A.2d 908 (1979), *rev'd on other grounds* 287 Md. 80, 411 A.2d 86 (1980).

5. Pleading format.

The complainant files a complaint with the circuit court and the defendant files an answer or otherwise pleads to the complaint within thirty days after service of the complaint. § 10-623(a) and (b). The defendant may submit a memorandum in support of its decision to deny access. § 10-623(b)(2)(ii).

6. Time limit for filing suit.

Any action for judicial review may be brought within two (2) years of the denial pursuant to Md. Code Ann., Cts. & Jud. Proc. § 5-110. *See Kline v. Fuller*, 56 Md. App. 294, 467 A.2d 786 (1983).

7. What court.

The person or governmental unit denied access to a public record may file a complaint with the circuit court for the county where the complainant resides or has a principal place of business or where the public record is located. § 10-623(a); *Attorney Grievance Comm'n v. Abell*, 294 Md. 680, 452 A.2d 656 (1982).

8. Judicial remedies available.

The court may enjoin the state, political subdivisions, or their employees from withholding the public record, may order production of the record that was withheld, and may punish the responsible employee for contempt for noncompliance with the order. § 10-623(c)(3). *See also Office of the State Prosecutor v. Judicial Watch Inc.*, 356 Md. 118, 127,

737 A.2d 592, 597 (1999) (holding that a trial court's order requiring the Office of the State Prosecutor to produce a Vaughn index was an injunction under the PIA). The court may also award actual damages against the governmental unit if it knew its denial was without basis. § 10-623(d)(1). An official custodian is also liable for actual damages for failure to petition a court for an order to continue a temporary denial. § 10-623(d)(2).

9. Litigation expenses.

If the court determines that the complainant has substantially prevailed, the court may assess reasonable counsel fees and other litigation costs reasonably incurred against a defendant governmental unit. § 10-623(f); *See Attorney Grievance Comm'n v. Abell*, 294 Md. 680, 452 A.2d 656 (1982), *Caffrey v. Dep't of Liquor Control for Montgomery County*, 370 Md. 272, 281, 805 A.2d 268, 273 (2002). If the statute creating the agency specifically grants immunity from liability, that specific enactment will prevail over § 10-623(f). *Abell Publishing Co. v. Mezzanote*, 297 Md. 26, 464 A.2d 1061 (1983); *See also Steuart Petroleum Co. v. Epstein*, No. A6091 A-61073, (Baltimore City Cir. Ct., Sept. 28, 1981) (good faith of agency taken into consideration in determining whether to award fees and costs); *Murty v. Office of Personnel Management*, 707 F.2d 815 (4th Cir. 1983).

a. Attorney fees.

The awarding of attorney fees lies with the discretion of the trial court. *Caffrey*, 370 Md. at 299. When the condition that the plaintiff "substantially prevail" is met, the court must exercise its discretion in determining whether an award of fees is appropriate. *Kirwan v. The Diamondback*, 352 Md. 74, 95, 721 A.2d 196, 206 (1998). The PIA offers no guidance for the exercise of that discretion. However, the Maryland Court of Appeals has held that the trial court must consider the following non-exclusive factors: (1) the public benefit derived from the suit; (2) the nature of the complainant's interest in the released information; (3) whether the agency had a reasonable legal basis for withholding the information. 352 Md. at 96, 721 A.2d at 207, citing with approval, *Kline v. Fuller*, 64 Md. App. 375, 386, 496 A.2d 325, 331 (1985).

b. Court and litigation costs.

Reasonable court costs actually incurred are also recoverable. § 10-623(f).

10. Fines.

A willful and knowing violation of the PIA constitutes a misdemeanor and a fine up to \$1,000 may be imposed. § 10-627(b).

11. Other penalties.

The PIA also provides for disciplinary action. § 10-623(e). The court must send a certified copy of its finding to the appointing au-

thority of the custodian, upon a finding that the custodian acted arbitrarily and capriciously in withholding the public record. *Id.* Upon receipt of such a statement and after appropriate investigation, the appointing authority is required to take disciplinary action warranted under the circumstances. *Id.*

12. Settlement, pros and cons.

Settlement may expedite receipt of the records. Otherwise, the applicant may not gain access to the records until resolution of the lawsuit. On the other hand, if the applicant's entitlement to certain records is unclear, a court ruling may be desirable for future course of action.

E. Appealing initial court decisions.

1. Appeal routes.

A party may take an expedited appeal of an initial court decision. § 10-623(c). An appeal must first be taken to the Maryland Court of Special Appeals, which must accept the appeal. Further appeal is available then to the Court of Appeals, which has the discretion to accept or reject review. *See* Md. Rule § 8-301; *see also Baltimore Sun Co. v. Mayor and City Council of Baltimore*, 359 Md. 653, 755 A.2d 1130 (2000).

A trial court's intermediate order requiring the state to list more specifically the documents it refused to produce (*i.e.* through a Vaughn index or otherwise), does not fall within the § 10-623(i) rubric because it is not a final order. *See Office of the State Prosecutor v. Judicial Watch Inc.*, 356 Md. 118, 126-27, 737 A.2d 592, 596-97 (1999). However, the Maryland Court of Appeals has clarified that such orders are nonetheless immediately appealable as an appeal of an order granting injunctive relief. 356 Md. at 128, 737 A.2d at 597.

2. Time limits for filing appeals.

The time limit for filing an appeal is thirty days after the entry of a final judgment. Md. Rule 8-202.

3. Contact of interested amici.

Any parties interested in submitting *amicus curiae* briefs may contact the law firm of Saul, Ewing, LLP, 500 East Pratt Street, Baltimore, Maryland 21202.

The Reporters Committee for Freedom of the Press frequently files friend-of-the-court briefs in open records cases being considered at the highest appeal level in the state.

F. Addressing government suits against disclosure.

There is no statutory or case law addressing this issue.

Open Meetings

I. STATUTE -- BASIC APPLICATION.

A. Who may attend?

The general public is entitled to attend an open session meeting of a public body. § 10-507(a).

The public body, however, may adopt “reasonable” rules concerning the conduct of those attending the meeting. § 10-507(b). Such rules may address the videotaping, televising, photographing, broadcasting, or recording of its meetings. *Id.*

B. What governments are subject to the law?

As “public bodies”, state, county or municipal governments of Maryland are subject to the Act. § 10-502(h).

1. State.

Entities consisting of at least two persons and created by the Maryland Constitution, a state statute, ordinance, rule, resolution, or an executive order of the governor are public bodies subject to the Act. § 10-502(h)(1). In addition, public bodies include all multimember boards, commissions or committees appointed by the governor or chief executive authority of a political division of the state or appointed by an official who is subject to the policy direction of the governor or chief executive authority, if the entity consists of two or more persons not employed by the state. § 10-502(h)(2)(i). Judicial nominating commissions, grand juries, the Appalachian States Low Level Radioactive Waste Commission, the governor’s cabinet, executive counsel or any committee of the executive counsel are specifically exempt from the Act. § 10-502(h)(3).

2. County.

Entities consisting of at least two individuals and created by a county charter, ordinance, rule, resolution or by-law, or by an executive order of the chief executive authority of a political subdivision of the state are “public bodies” subject to the provisions of the Act. § 10-502(h)(1). In addition multimember boards, commissions or committees appointed by the executive chief authority of a political subdivision of the state and having at least two individuals not employed by the subdivision are also public bodies. § 10-502(h)(2). However, a local government’s counterpart to the governors cabinet, executive counsel or any committee of the counterpart of the executive committee are specifically exempt. § 10-502(h)(3).

3. Local or municipal.

See above.

C. What bodies are covered by the law?

As a general rule, all “public bodies” are subject to the Act. § 10-505. A public body is defined as an entity that consists of two or more individuals and is created by the Maryland Constitution, state statute, county charter, ordinance, rule, resolution or bylaw, executive order of the governor, or executive order of the chief executive of a political subdivision of the state. § 10-502(h)(1). A public body also includes any multimember board, commission, or committee appointed by the governor or the chief executive authority of a political subdivision of the state, if the entity includes in its membership at least two individuals who are not employed by either the state or political subdivision of the state. § 10-502(h)(2). However, the Act’s scope is narrowed to exclude those public bodies that are carrying out executive, judicial, or quasi-judicial functions, unless the meeting concerns granting permits or licenses or the consideration of zoning matters. § 10-503. Chance meetings, social gatherings, “or other occasion[s] . . . not intended to circumvent [the Act]” are also expressly excluded from its coverage. § 10-503(a)(2). A group of employees, not chosen by a public official nor created by constitution, statute or ordinance, rule or executive order,

is not a “public body”; therefore, the group is not required to meet in open session. *OMA Manual*, at 2-2 (citing 80 *Opinions of the Attorney General* 90 (1995)). *See also* 4 *OMCB Opinions* 43 (2004).

Once it is determined whether or not an entity is a public body for the purposes of the Act, it matters little where among the branches of government an entity resides. Rather, the Act’s applicability depends on the function that the entity is performing when holding a meeting. *See Board of County Comm’rs v. Landmark Community Newspapers*, 293 Md. 595, 602-05, 446 A.2d 63 (1982). Prior to the 1991 amendment, the Act required open meetings for public bodies engaged in legislative, quasi-legislative or advisory functions. Md. Code Ann., State Gov’t § 10-505 (1984) (repealed 1992). The new language simply states that “[e]xcept as otherwise expressly provided . . . a public body shall meet in open session.” § 10-505. However, the current version, like the repealed version, makes the Act inapplicable to public bodies that are carrying out executive, judicial, or quasi-judicial functions. § 10-503(a)(1).

1. Executive branch agencies.

Certain executive bodies are expressly excluded from the Act’s definition of public bodies. *See* § 10-502(h)(3). Among the more important exclusions are single member entities, the governor’s Cabinet and Executive Council or a local jurisdiction’s counterpart. *Id.* *See* § 10-502(h)(3) for the complete listing of excluded bodies.

a. What officials are covered?

To the extent that governmental officials are members of a public body not exempt under the Act, they are subject to its provisions; however, the Act only covers entities comprised of two or more individuals. § 10-502(h). All members of such a public body are covered regardless of whether they are governmental employees. § 10-502.

b. Are certain executive functions covered?

The Act generally does not apply to a public body when it exercises an executive function. § 10-503(a)(1)(i). The term “executive function” means the administration of a state, county, or local law, or a rule, regulation, or bylaw of a public body. § 10-502(d)(1). Executive function does not include an advisory, judicial, quasi-judicial, legislative, quasi-judicial or quasi-legislative function. § 10-502(d)(2). However, if the body is considering granting permits or licenses or is considering zoning matters, the function is within the scope of the Act. § 10-503(b). The former Act did not expressly include these specific functions. *See also* Compliance Board Opinion 01-07, 28:11 Md. Reg. 1015 (May 8, 2001) (the mere existence of a law does not mean that every action pursuant to that law is an “executive function.” Rather, the action must be administrative in character as opposed to policy-making to qualify).

c. Are only certain agencies subject to the act?

With respect to executive agencies, the Act specifically excludes the governor’s Cabinet, Executive Council, or a committee of the Executive Council. § 10-502(h)(3). It also excludes the local counterparts to these state bodies. *Id.* The Act also excludes judicial nominating commissions. *Id.* Moreover, to the extent that executive agencies exercise only executive, judicial or quasi-judicial functions, they are excluded from the Act. § 10-503(a).

2. Legislative bodies.

Legislative bodies are subject to the Act unless they are performing executive, judicial, or quasi-judicial functions. §§ 10-502(h), 10-503(a).

3. Courts.

Most court functions fall outside the scope of the Act, including the exercise of those powers provided by Article IV, § I of the Maryland Constitution and the functions of grand juries, petit juries, the Commission on Judicial Disabilities, and judicial nominating commissions. §§ 10-502(e)(2), 10-503(a). However, the Act does apply to the courts

when they are exercising their power to adopt court rules (considered a quasi-legislative function). §§ 10-502(e)(3), 10-502(j)(1). The Maryland Court of Appeals recently affirmed, however, the longstanding common law principle of openness regarding public access to court proceedings. *The Baltimore Sun Co. v. Mayor & City Council of Baltimore*, 359 Md. 653, 755 A.2d 1130 (2000). Trials and court proceedings are presumptively open and a trial court's decision to close the courtroom for the purpose of allowing the parties to put the terms of their confidential settlement agreement on the record was clearly erroneous. *Id.* The courtroom would only be closed pursuant to an express provision of a statute or a rule promulgated by the Court of Appeals. The parties' mutual desire for confidentiality was insufficient. *Id.*

4. Nongovernmental bodies receiving public funds or benefits.

If the entity is a public body as defined by the Act, it is subject to the provisions of the Act, unless it is exercising an executive, judicial or quasi-judicial function. § 10-503(a). The Act expressly applies to public bodies that are considering zoning matters or the granting of licenses or permits. § 10-503(b). The Act applies to any multimember board, commission, or committee, appointed by the governor or the chief executive authority of a political subdivision of the state, if the entity includes in its membership at least two individuals not employed by the state or political subdivision of the state. § 10-502(h)(2).

5. Nongovernmental groups whose members include governmental officials.

If the group is not a public body as defined by the Act, it is not subject to the Act. § 10-502(h). *See also* Compliance Board Opinion 00-9 27:22 Md. Reg. 2048 (Oct. 10, 2000) (ad hoc assemblage of state and local officials who discuss proposed development not subject to the Act absent legal enactment authorizing such a committee).

6. Multi-state or regional bodies.

Under the Act's definition of a public body, it appears to only be applicable to state or local public bodies. *See* § 10-502(h); *cf.*, *C.T. Helmutz and Assocs. v. Washington Metro Area Trans. Auth.*, 414 F. Supp. 408, 409 (D. Md. 1976) (holding that interstate transit authority is not subject to the Act absent some agreement between the states to an interstate compact). The Appalachian States Low Level Radioactive Waste Commission has been expressly exempt from the Act. § 10-502(h)(3)(v).

7. Advisory boards and commissions, quasi-governmental entities.

The Act is applicable to all public bodies, unless they are performing executive, judicial or quasi-judicial functions. § 10-503(a). Thus, if the entity is a public body as defined by the Act, its meetings would fall within the scope of its coverage. The Attorney General has determined that advisory opinions issued by the State Ethics Commission constitute executive functions rather than advisory functions. *See* 64 Op. Att'y Gen. 162, 167 n.3 (1979); *see also OMA Manual*, at 2-14. Thus, a label, by itself, is not necessarily dispositive.

8. Other bodies to which governmental or public functions are delegated.

Although the entity may have a public purpose (*i.e.*, carrying out an advisory or quasi-legislative function), it is not subject to the Act unless it is a public body as defined by the state. § 10-502(h). Thus, for example, a University of Maryland task force that was not created by a rule, resolution, or bylaw of the Board of Regents of the University, but was created as an investigatory body wholly under the province of the Chancellor was not a public body subject to the Act. *A. S. Abell Publishing Co. v. Board of Regents*, 68 Md. App. 500, 514 A.2d 25 (1986). Section 10-502(h)(2) expands the definition of public bodies to include any multimember board, commission, or committee appointed by the governor or comparable local chief executive that includes at least two individuals not employed by the state or a local jurisdiction. § 10-502(h)(2).

9. Appointed as well as elected bodies.

As long as the appointed or elected body comes within the definition of public body, it is subject to the Act. Although the entity may have a public purpose (*i.e.*, carrying out an advisory or quasi-legislative function) it is not subject to the Act unless it is a public body as defined by the state. § 10-502(h). Thus, for example, a University of Maryland task force that was not created by a rule, resolution, or bylaw of the Board of Regents of the University but created as an investigatory body wholly under the province of the Chancellor was not a public body subject to the Act. *A. S. Abell Publishing Co. v. Board of Regents*, 68 Md. App. 500, 514 A.2d 25 (1986). However, a nonprofit zoo commission, whose members were appointed by the Mayor and City Council is a public body subject to the Act. *Andy's Ice Cream v. Salisbury*, 125 Md. App. 125, 146, 724 A.2d 717, 727 (1999).

Section 10-502(h)(2) expands the definition of public bodies to include any multimember boards, commissions, or committees appointed by the governor or comparable local chief executive that include at least two individuals not employed by the state or a local jurisdiction.

D. What constitutes a meeting subject to the law.

1. Number that must be present.

To "meet" under the Act means to convene a quorum of the members of a public body for the consideration or transaction of public business. § 10-502(g). A "quorum" means a majority of the members of a public body or any different number required by law. § 10-502(k). A meeting consisting of less than a quorum may be subject to the Act if an intent to circumvent the Act can be proved. § 10-503(a)(2).

a. Must a minimum number be present to constitute a "meeting"?

A quorum must be present to constitute a meeting. § 10-502(g).

b. What effect does absence of a quorum have?

A meeting consisting of less than a quorum may be subject to the Act if an intent to circumvent the Act can be proved. § 10-503(a)(2).

2. Nature of business subject to the law.

a. "Information gathering" and "fact-finding" sessions.

In 1991, emphasis was shifted away from what functions are covered by the Act to what functions *are not* within its scope. All public bodies are required to meet in open session unless they are performing executive, judicial or quasi-judicial functions. § 10-503(a). This, in effect, leaves the legislative, quasi-legislative or advisory functions of public bodies subject to the Act. *See* §§ 10-502, 10-503, 10-505.

Legislative function is defined by the Act to include the process of: (1) approving, disapproving, enacting, amending, or repealing a law or other measure to set public policy; (2) approving or disapproving an appointment; (3) proposing or ratifying a constitution, constitutional amendment, charter or charter amendment. § 10-502(f). Quasi-legislative function is defined as the same process or act of legislative functioning with respect to a rule (including court rules), regulation or bylaw that has the force of law, and with respect to approving, disapproving or amending a budget or contract. § 10-502(6). Advisory function is "the study of a matter of public concern or the making of recommendations on the matter, under a delegation of responsibility by: (1) law; (2) the governor; (3) the chief executive officer of a political subdivision of the state; or (4) formal action by or for a public body. § 10-502(b). To the extent that information gathering falls within the scope of these definitions, then information gathering meetings would not be subject to the Act.

b. Deliberations toward decisions.

In 1991, emphasis shifted away from what functions are covered by the Act to what functions *are not* within its scope. All public bodies are

required to meet in open session unless they are performing executive, judicial or quasi-judicial functions. § 10-503(a). This, in effect, leaves the legislative, quasi-legislative or advisory functions of public bodies subject to the Act. *See* §§ 10-502, 10-503, 10-505. Note, however, that the Attorney General has opined that certain statutory provisions duplicative of the Act may be repealed as part of code revision without effecting a substantive change in the law; however, any such provision that states “no ordinance, resolution, rule, or regulation shall be finally adopted at [a meeting not open to the public]” should be retained. 94 Op. Att’y Gen. 161 (2009).

The public has the right to observe the deliberative process and the making of decisions by a public body at open meetings. § 10-501; *City of New Carrollton v. Rogers*, 287 Md. 56, 410 A.2d 1070 (1980); *cf.*, *Suburban Hospital Inc. v. Maryland Health Resources Planning Comm’n*, 125 Md. App. 579, 726 A.2d 807 (1999), *vacating as moot*, 364 Md. 353, 772 A.2d 1239 (2001) (hospital advised sufficient evidence to withstand motion for summary judgment made on the basis that there had been no violation of the Act); *see also* 65 Op. Att’y Gen. 396 (1980) (Thoroughbred Racing Board meeting to decide whether to permit Sunday racing was quasi-legislative function subject to access); 65 Op. Att’y Gen. 208 (1979) (decision by the State Lottery Commission to increase prize payout to daily lottery winners constituted an exercise of a legislative function under the Act).

Regardless of functional label, any deliberative process concerning the granting of a license or permit or regarding a zoning matter shall be within the scope of the Act’s requirements. § 10-503(b); *see also Wesley Chapel Bluemount Ass’n v. Baltimore County*, 347 Md. 125, 147, 699 A.2d 434, 445 (1997) (discussing the scope of the phrase “other zoning matter” as used in the Act, and holding that zoning board’s deliberations of a development plan were subject to the Act).

3. Electronic meetings.

a. Conference calls and video/Internet conferencing.

A telephone conference call in which a quorum of members is conducting business simultaneously is a “meeting” that must comply with the Act. *OMA Manual*, at 2-6-2-7. Thus, if a public body meets via telephone or video conference, it must afford the public access to the discussion. Such access might include a speaker-phone available at a previously announced location. *See OMA Manual*, at 2-7.

b. E-mail.

The Act does not address communication that may occur via e-mail. However the *OMA Manual* points out that “[a]lthough the simultaneous physical presence of members of a public body is not a prerequisite for a ‘meeting’ to occur, the simultaneous transaction of public business is. Therefore, the Act does not apply to correspondence among members of a public body.” *OMA Manual*, at 2-7. Moreover, a piece of paper moving from one individual to another does not convene a quorum of the public body, and therefore, is not subject to the Act. *Id.* The same logic would seem to apply to e-mail communications that applies to other written correspondence.

c. Text messages.

There is no statutory or case law addressing this issue.

d. Instant messaging.

There is no statutory or case law addressing this issue.

e. Social media and online discussion boards.

There is no statutory or case law addressing this issue.

E. Categories of meetings subject to the law.

1. Regular meetings.

a. Definition.

The Act makes no distinction between regular, special, emergency, formal or informal meetings. *See City of New Carrollton v. Rogers*, 287 Md. 56, 410 A.2d 1070 (1980).

b. Notice.

(1). Time limit for giving notice.

Before meeting in open or closed session, the public body must give reasonable advance notice. § 10-506; *see also Malamis v. Stein*, 69 Md. App. 221, 516 A.2d 1039 (1986); *City of New Carrollton v. Rogers*, 287 Md. 56, 410 A.2d 1070 (1980); 64 Op. Att’y Gen. 20 (1979). The Act does not provide a specific time limit for giving notice, but it must be “reasonable.” § 10-506; *CLUB v. Baltimore City Board of Elections*, 377 Md. 183, 194, 832 A.2d 804 (2003); *see also OMA Manual*, at 20. The General Assembly recognizes that sometimes meetings have to be held on short notice, and the Compliance Board has ruled that, “absent evidence that a public body scheduled a meeting primarily to foil the public’s right to attend and observe, the Compliance Board ordinarily will accept the determination . . . that a meeting is needed at a particular time.” *OMA Manual*, at 20. (citing 4 *OMCB Opinions* 51, 56 (2004)).

(2). To whom notice is given.

Units of the state government may publish notice in the Maryland Register. § 10-506(c)(1). For other public bodies, notice may be given by news media publication, by informing those members of the news media who regularly report on such matters, or by any other reasonable method. §§ 10-506(c)(2), 10-506(c)(4).

(3). Where posted.

Posting notice at a convenient public location at or near the place of the session is permitted provided that the public body has given public notice that this method will be used. § 10-506(c)(3). A public body shall keep a copy of all notices provided under § 10-506 for at least one year after the date of the session. § 10-506 (d).

(4). Public agenda items required.

The notice is required to be in writing and must include the date, time, and place of the session. § 10-506(b). There is no requirement that the notice provide the agenda of the meeting.

(5). Other information required in notice.

The notice shall, when reasonable and if appropriate, state that all or part of the meeting may be conducted in closed session. § 10-506(b) (3). Notice has been found sufficient, even though not formal, where information was conveyed to the press and advance notice of the meeting had been given to the public. 64 Op. Att’y Gen. 20 (1979).

(6). Penalties and remedies for failure to give adequate notice.

The Act provides two venues for redress for persons adversely affected by a public body’s failure to comply with the Act’s requirements, the Circuit Court and the Open Meetings Act Compliance Board.

Under the first, an adversely affected person may file a petition in the circuit court having proper venue, seeking declaratory relief, injunctive relief, a ruling that voids the action of the body altogether, or any other remedy that the court deems appropriate. § 10-510(b). In an action pursuant to the Act, the public body is presumed to have complied with the Act and the complainant has the burden of proving violation *vel non*. *See Suburban Hospital Inc. v. Maryland Health Resources Planning Comm’n*, 125 Md. App. 579, 588-89, 726 A.2d 807, 811 (1999). Injunctions and declaratory relief are available without proof that the violation was willful. 125 Md. App. at 590, 726 A.2d at 812. If the violation was willful, however, and no other remedy is adequate, the court may void the final action of the public body. § 10-505(d) (4); *see also* 125 Md. App. at 590, 726 A.2d at 812. “Willfully” under § 10-505(d), has been defined by the Maryland Court of Special Appeals as “non-accidentally,” and not requiring knowledge that the meeting actually violates the Act. 125 Md. App. at 596-97, 726 A.2d at 815.

The court may also award attorneys’ fees and expenses to the prevailing party. § 10-510(d)(5). *Wesley Chapel Bluemount Ass’n v. Balti-*

more County, 347 Md. 125, 150, 699 A.2d 434, 447 (1997). A prevailing party is not automatically entitled to recover its fees, however, nor does the fact of prevailing create a presumption in favor of a fee award. *Baltimore County v. Wesley Chapel Bluemount Ass'n*, 128 Md. App. 180, 189, 736 A.2d 1177, 1183 (1999). The prevailing party need not prove that the public body acted willfully in order to succeed on its attorneys' fees claim. *Id.*; see also *Suburban Hospital Inc.*, 125 Md. App. 579, 591, 726 A.2d 807, 812 (1999). Rather, in determining whether a fee award is appropriate, the court is to consider a variety of factors, including the public body's basis for closing the session, its degree of willfulness (if present), whether the issue of the applicability of the Act required appellate review, and the benefit to the parties and the public in resolving the issue. *Id.*

A member of a public body who willfully participates in a closed meeting with knowledge that the meeting is held in violation of the Act is subject to a civil penalty not to exceed \$100. § 10-511. The Maryland Court of Special Appeals, in this context, has noted that a higher level of violative conduct is required under § 10-511 because that provision imposes a more "personally intrusive penalty" on members of the public body than the "general curative remedies established by § 10-510 for the public body as a whole." *Suburban Hospital*, 125 Md. App. at 592, 726 A.2d at 813.

Alternatively, any person may file a complaint regarding a past or anticipated future violation of the Act by a public body with the State Open Meetings Law Compliance Board ("the Board"). §§ 10-502.5, 10-502.6. Upon consideration of the complaint and response, the Board will render an opinion concerning the propriety of the body's action. § 10-502.5(d). Its opinion cannot compel action by the public body, is solely advisory, and may not be used as evidence in a subsequent judicial proceeding. §§ 10-502.5(i) to 10-502.5(j). If the complaint concerns an anticipated future violation, the Act provides an expedited procedure for Board review. § 10-502.6.

c. Minutes.

(1). Information required.

The Act requires a public body to prepare minutes of the meeting as soon as practicable after it meets. § 10-509(b). The minutes must include each item considered, the action taken by the public body on each item, and each recorded vote. § 10-509(c).

(2). Are minutes public record?

The minutes are considered public records and shall be open to public inspection during ordinary business hours. § 10-509(d).

2. Special or emergency meetings.

The Act makes no distinction between regular, special, emergency, formal, or informal meetings. See *City of New Carrollton v. Rogers*, 287 Md. 56, 410 A.2d 1070 (1980). Rather, meetings are either open or closed. § 10-508. The criteria for closed sessions are discussed in part I.E.3. below.

3. Closed meetings or executive sessions.

a. Definition.

The Act permits sessions closed to the public under certain circumstances and permits the adjournment of an open session to a closed session. § 10-508(a). The presiding officer of the body must conduct a recorded vote on closing a meeting. § 10-508(d)(2)(i). A meeting may not be closed unless a majority of the body's members is present and votes in favor of closing the meeting. § 10-508(d)(1). The presiding officer must prepare a written statement of the reason for closing the meeting citing the authority that is the basis for closure and listing the topics to be discussed at the meeting. § 10-508(d)(2)(ii). *Handley v. Ocean Downs*, 151 Md. App. 615, 633, 827 A.2d 961, 972 (2003). Failure of a body to comply with these requirements provides a basis for declaratory or injunctive relief. See *Suburban Hospital Inc. v. Maryland Health Resources Planning Comm'n.*, 125 Md. App. 579, 589, 726

A.2d 807, 812, n.3 (1999). The body is required to send a copy of this statement to the Board if a person objects to the closing of a session. § 10-508(d)(3). The written statement will become a matter of public record. § 10-508(d)(4).

b. Notice requirements.

The Act requires notice of all meetings subject to its provisions, whether or not they are closed. § 10-506. No special notice, provisions are required prior to conducting a closed meeting. However, prior to closing the meeting, the public body must publicly vote to do so and must provide a written statement of the reasons for closure. § 10-508(d). Additionally, the reopening of a previously closed meeting requires a good-faith effort to notify the press and public of the changed status of the meeting. Further, the Act is violated if a meeting is open in name but not in reality. See Compliance Board Opinion 01-08 28:11 Md. Reg. 1018 (May 8, 2001).

(1). Time limit for giving notice.

Before meeting in open or closed session, the public body must give reasonable advance notice. § 10-506; see also *Malamis v. Stein*, 69 Md. App. 221, 516 A.2d 1039 (1986); *City of New Carrollton v. Rogers*, 287 Md. 56, 410 A.2d 1070 (1980); 64 Op. Att'y Gen. 20 (1979). The Act does not provide a specific time limit for giving notice, but it must be "reasonable." § 10-506.

(2). To whom notice is given.

There are no special notice requirements for closed meetings. Units of the state government may publish notice in the Maryland Register. § 10-506(c)(1). For other public bodies, notice may be given by news media publication, by informing those members of the news media who regularly report on such matters, or by any other reasonable method. §§ 10-506(c)(2), 10-506(c)(4).

(3). Where posted.

Posting notice at a convenient public location at or near the place of the session is permitted provided that the public body has given public notice that this method will be used. § 10-506(c)(3).

(4). Public agenda items required.

The notice is required to be in writing and must include the date, time, and place of the session. § 10-506(b). A statement of the reasons for closing the meeting, authority for doing so, and a listing of the topics to be discussed must be made prior to closing the meeting. § 10-508(d)(2)(i). A public body shall keep a copy of the written statement for at least one year after the date of the session. § 10-508(d)(5).

(5). Other information required in notice.

The notice shall, when reasonable and if appropriate, state that all or part of the meeting may be conducted in closed session. § 10-506(b)(3). A statement of the reasons for closing the meeting, authority for doing so, and a listing of the topics to be discussed must be made prior to closing the meeting. § 10-508(d)(2)(i). Notice has been found sufficient, even though not formal, where information was conveyed to the press and advance notice of the meeting had been given to the public. 64 Op. Att'y Gen. 20 (1979).

(6). Penalties and remedies for failure to give adequate notice.

The Act provides two venues for redress for persons adversely affected by a public body's failure to comply with the Act's requirements, the circuit court and the Open Meetings Act Compliance Board.

Under the first, an adversely affected person may file a petition in the circuit court having proper venue, seeking declaratory relief, injunctive relief, a ruling that voids the action of the body altogether, or any other remedy that the court deems appropriate. § 10-510(b). In an action pursuant to the Act, the public body is presumed to have complied with the Act and the complainant has the burden of proving

violation *vel non*. See *Suburban Hospital Inc. v. Maryland Health Resources Planning Comm'n*, 125 Md. App. 579, 588-89, 726 A.2d 807, 811 (1999). Injunctions and declaratory relief are available without proof that the violation was willful. 125 Md. App. at 590, 726 A.2d at 812. If the violation was willful, however, and no other remedy is adequate, the court may void the final action of the public body. § 10-505(d)(4); see also 125 Md. App. at 590, 726 A.2d at 812. “Willfully” under § 10-505(d), has been defined by the Maryland Court of Special Appeals as “non-accidentally,” and not requiring knowledge that the meeting actually violates the Act. 125 Md. App. at 596-97, 726 A.2d at 815.

The court may also award attorneys’ fees and expenses to the prevailing party. § 10-510(d)(5). *Wesley Chapel Bluemount Ass’n v. Baltimore County*, 347 Md. 125, 150, 699 A.2d 434, 447 (1997). A prevailing party is not automatically entitled to recover its fees, however, nor does the fact of prevailing create a presumption in favor of a fee award. *Baltimore County v. Wesley Chapel Bluemount Ass’n*, 128 Md. App. 180, 189, 736 A.2d 1177, 1183 (1999). The prevailing party need not prove that the public body acted willfully in order to succeed on its attorneys’ fees claim. *Id.*; see also *Suburban Hospital Inc.*, 125 Md. App. 579, 591, 726 A.2d 807, 812 (1999). Rather, in determining whether a fee award is appropriate, the court is to consider a variety of factors, including the public body’s basis for closing the session, its degree of willfulness (if present), whether the issue of the applicability of the Act required appellate review, and the benefit to the parties and the public in resolving the issue. *Id.*

A member of a public body who willfully participates in a closed meeting with knowledge that the meeting is held in violation of the Act is subject to a civil penalty not to exceed \$100. § 10-511. The Maryland Court of Special Appeals, in this context, has noted that a higher level of violative conduct is required under § 10-511 because that provision imposes a more “personally intrusive penalty” on members of the public body than the “general curative remedies established by § 10-510 for the public body as a whole.” *Suburban Hospital*, 125 Md. App. at 592, 726 A.2d at 813.

Alternatively, any person may file a complaint regarding a past or anticipated future violation of the Act by a public body with the Board. §§ 10-502.5, 10-502.6. Upon consideration of the complaint and response, the Board will render an opinion concerning the propriety of the body’s action. § 10-502.5(d). Its opinion cannot compel action by the public body, is solely advisory, and may not be used as evidence in a subsequent judicial proceeding. §§ 10-502.5(i) to 10-502.5(j). If the complaint concerns an anticipated future violation, the Act provides an expedited procedure for Board review. § 10-506.2.

c. Minutes.

Minutes are required for all meetings subject to the Act. § 10-509(b).

(1). Information required.

Where the public body meets in closed session, the minutes of its next open session must include a statement of the time, place and purpose of the closed session; the recorded vote of each member as to closing the session; and a citation of authority under the Act for closing the session. § 10-509(c)(2). In addition, the Act requires closed meeting minutes to list “the topics of discussion, persons present, and each action taken during the session.” § 10-509(c)(2)(iv).

(2). Are minutes a public record?

Except as otherwise provided in § 10-509(4), minutes of closed meetings and any tape recordings shall remain sealed from public inspection, and may not be open to public inspection. § 10-509(c)(3). However, § 10-509(4)(e) provides that a public body shall keep a copy of the minutes and tape recordings for at least one year after the date of the session. § 10-509(4)(e) The minutes and recordings (if made) shall be unsealed if a majority of the body votes in favor of opening the records either on the body’s own initiative or at the request of a person. § 10-509(c)(4)(iii). For meetings closed for the purpose of considering the investment of public funds or the marketing of public

securities, the minutes are required to be unsealed once the funds have been invested or the securities have been marketed. § 10-509(c)(4).

d. Requirement to meet in public before closing meeting.

The Act does not require the public body to meet in open session before closing the meeting. However, the Act does permit a public body meeting in open session to adjourn to closed session. § 10-508(a).

e. Requirement to state statutory authority for closing meetings before closure.

A public body is required to cite statutory authority for closing a meeting in a written statement prepared *before* closing a meeting. § 10-508(2). The public body is also required to cite the statutory authority for closure in the minutes of its next open session. § 10-509(c)(2).

f. Tape recording requirements.

There is no requirement that closed sessions be tape recorded; however, sessions *may* be tape recorded by a public body. § 10-509(c)(3)(i).

F. Recording/broadcast of meetings.

1. Sound recordings allowed.

The Act makes no provision for recording or broadcasting open meetings. However, as a practical matter recording or broadcasting the meeting would probably be allowed. The Act expressly provides that a public body may tape record its closed sessions. § 10-509(c)(3)(i).

2. Photographic recordings allowed.

The Act makes no provision for photographic recordings of closed meetings.

G. Are there sanctions for noncompliance?

The 1991 amendments to the Open Meetings Act added a civil penalty provision for knowing and willful violations of the Act. According to § 10-511, a member of a public body who willfully participates in a meeting of the body with knowledge that the meeting is being held in violation of the Act is subject to a civil penalty not to exceed \$100. *OMA Manual*, at 5-4. Civil penalties cannot be imposed where a violation is the result of mere carelessness, a good-faith mistake, or reliance on incorrect legal advice. *Id.* at 5-5. Only a court may impose a civil penalty. *Id.* at 5-4.

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

A. Exemptions in the open meetings statute.

1. Character of exemptions.

In general, closed sessions are permitted for personnel matters, to protect the privacy interests of individuals, and to consider preliminary matters involving state investments, litigation matters and public security matters. See § 10-508.

a. General or specific.

Prior to 1991, the Act permitted closure for exceptional reasons by a two-thirds vote of the members of the public body who are present at the session. § 10-508(a)(14) (1984) (repealed 1992). This catch-all exception was eliminated in 1991, thus requiring a public body to fulfill the requirement of identifying a specific exception to justify a meeting’s closure. § 10-508(a); see also *OMA Manual*, at 4-3.

b. Mandatory or discretionary closure.

The Act provides for closure where specific constitutional, statutory or judicial requirements prevent public disclosure regarding a particular proceeding or matter. § 10-508(a)(13). This provision appears to be mandatory. In general, however, the exemptions to open sessions are discretionary. See § 10-508.

2. Description of each exemption.

(a) *Personnel Matters*. Meetings that concern the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of appointees, employees or officials over whom the entity has jurisdiction or any other personnel matter affecting one or more specific individuals may be closed. § 10-508(a)(1). However, this exception is to be construed narrowly and is inapplicable to discussions of issues affecting classes of public employees, as distinct from specific individuals. *OMA Manual*, at 4-4. See also Compliance Board Opinion 00-15, 28:2 Md. Reg. 77 (December 27, 2000).

(b) *Privacy Matters*. Meetings that involve an individual's privacy or reputation with respect to a matter unrelated to public business may be closed. § 10-508(a)(2).

(c) *Commercial/Business Matters*. Meetings that relate to the acquisition of real property, matters concerning a proposal for the location, expansion or retention of a business or industrial organization within the state, the investment of public funds, and the marketing of public securities may be closed. § 10-508(a)(3) to 10-508(a)(6); see, e.g., *J. P. Delphey Ltd. P'ship v. Mayor and City of Frederick*, 396 Md. 180, 913 A.2d s8 (2006) (concluding that aldermen had the authority to act upon an earlier, public decision to condemn property made in a closed session). The Act also allows a body to close a meeting "before a contract is awarded or bids are opened [to] discuss a matter directly related to a negotiating strategy or the contents of a bid or proposal, if public discussion or disclosure would adversely impact the ability of the public body to participate in the competitive bidding or proposal process." § 10-508(a)(14).

(d) *Litigation Matters*. Meetings that involve consultation with counsel to obtain legal advice, or consultation with staff, consultants, or other individuals regarding pending or potential litigation may be closed. §§ 10-508(a)(7) and 10-508(8). The Act, prior to the 1991 amendment, allowed bodies to close meetings to "consult with counsel." § 10-508(a)(7) (1984) (repealed 1992). The amendment narrowed this to "consult with counsel to obtain legal advice." § 10-508(a)(7). The *OMA Manual* notes that this language is intended to prevent public bodies from using the presence of counsel as a subterfuge for wrongfully closing a meeting — i.e., "lawyer as potted plant." *Manual*, at 4-5. Section 10-508(a)(8) may only be invoked when the discussion directly relates to the pending or potential litigation, and not to discuss the underlying policy issue. *Id.* The Act also allows closure of discussions of legislative findings when the legislative findings are discussed solely in the context of pending litigation. Compliance Board Opinion 00-14, 28:2 Md. Reg. 75 (Dec. 8, 2000). The exception applies only if the potential for litigation is concrete, rather than speculative. *Id.* at 4-6.

(e) *Collective Bargaining Negotiations*. Meetings to conduct collective bargaining negotiations or to consider matters regarding negotiations may be closed. § 10-508(a)(9). The *OMA Manual* notes that this exception is intended to "protect against premature disclosure of sensitive information like the public body's negotiating strategy." *OMA Manual*, at 4-6.

(f) *Public Security Matters*. Meetings to discuss the deployment of fire and police services and staff, and the development and implementation of emergency plans may be closed. § 10-508(a)(10).

(g) *Examinations*. Meetings to prepare, administer or grade scholastic, licensing or qualifying examinations may be closed. § 10-508(a)(11).

(h) *Criminal Investigations*. Investigative meetings of actual or possible criminal conduct may be closed. § 10-508(a)(12).

B. Any other statutory requirements for closed or open meetings.

A public body acting in closed session may not discuss or act on any matter not exempt under the Act. § 10-508(b).

C. Court mandated opening, closing.

Section 10-508(a)(13) provides for constitutional, statutory or judicially mandated closure. Section 10-510(d)(2) permits the court to enjoin a public body from violating the open session requirements.

III. MEETING CATEGORIES -- OPEN OR CLOSED.

A. Adjudications by administrative bodies.

The Act's provisions apply to meetings of all public bodies unless they are engaging in executive, judicial, or quasi-judicial functions. To the extent that an administrative adjudication falls within these functions, the Act does not apply. See §§ 10-502, 10-503. To the extent that an administrative body exercises other functions (e.g. advisory, legislative, or quasi-legislative), its meetings, including its deliberative and decision making processes, must be open to the public. See § 10-505. All meetings in which the granting of a license or permit or in which zoning matters are being considered are explicitly within the scope of the Act. § 10-503(b); see also *Wesley Chapel Bluemount Ass'n. v. Baltimore County*, 347 Md. 125, 699 A.2d 434 (1997) (construing phrase "other zoning matter" and determining that zoning board was required to conduct development plan deliberations in open session).

1. Deliberations closed, but not fact-finding.

See above.

2. Only certain adjudications closed, i.e. under certain statutes.

See above.

B. Budget sessions.

Although the Act does not specifically exempt public bodies engaged in budget matters, such functions arguably fall within the commercial investment exemptions under the Act. See §§ 10-508(3) to 10-508(6). In *Avara v. Baltimore News American*, 292 Md. 543, 551-52, 440 A.2d 368, 372 (1982), the Court suggested that meetings of the Budget Conference Committee were subject to the open session requirement unless closed in accordance with the exemptions noted in § 10-508. The Act's enforcement section does specifically exempt actions taken by public bodies regarding the appropriations of public funds. § 10-510; see also *Avara*, 292 Md. at 552, 440 A.2d at 372-73 (the deliberations of the Budget Conference Committee in the process of enacting the budget bill into law comes within the appropriating public funds exception and, thus, are not subject to the enforcement provisions of the Act); *Board of County Comm'rs v. Landmark Community Newspapers of Md. Inc.*, 293 Md. 595, 446 A.2d 63 (1982) (budget work session of Board of County Commissioners is within the exception).

C. Business and industry relations.

Meetings that relate to the acquisition of real property, matters concerning a proposal for the location, expansion or retention of a business or industrial organization within the state, the investment of public funds, and the marketing of public securities may be closed. § 10-508(a)(3) to 10-508(a)(6). The Act also allows a body to close a meeting "before a contract is awarded or bids are opened [to] discuss a matter directly related to a negotiating strategy or the contents of a bid or proposal, if public discussion or disclosure would adversely impact the ability of the public body to participate in the competitive bidding or proposal process." § 10-508(a)(14).

D. Federal programs.

To the extent that the federal program involves matters exempt under the Act, it may be the subject of a closed session. § 10-508(a).

E. Financial data of public bodies.

Meetings that relate to the acquisition of real property, matters concerning a proposal for the location, expansion or retention of a business or industrial organization within the state, the investment of public funds, and the marketing of public securities may be closed.

§ 10-508(a)(3) to 10-508(a)(6). The Act also allows a body to close a meeting “before a contract is awarded or bids are opened [to] discuss a matter directly related to a negotiating strategy or the contents of a bid or proposal, if public discussion or disclosure would adversely impact the ability of the public body to participate in the competitive bidding or proposal process.” § 10-508(a)(14).

F. Financial data, trade secrets or proprietary data of private corporations and individuals.

Meetings that involve an individual’s privacy or reputation with respect to a matter unrelated to public business may be closed. § 10-508(a)(2).

Meetings that relate to the acquisition of real property, matters concerning a proposal for the location, expansion or retention of a business or industrial organization within the state, the investment of public funds, and the marketing of public securities may be closed. §§ 10-508(a)(3) to 10-508(a)(6). The Act also allows a body to close a meeting “before a contract is awarded or bids are opened [to] discuss a matter directly related to a negotiating strategy or the contents of a bid or proposal, if public discussion or disclosure would adversely impact the ability of the public body to participate in the competitive bidding or proposal process.” § 10-508(a)(14).

G. Gifts, trusts and honorary degrees.

The Act does not provide an exemption for meetings within this category.

H. Grand jury testimony by public employees.

The provisions of the Act are not applicable to judicial functions which include, by the Act’s definition, the function of a grand jury. *See* §§ 10-503(a) and 10-503(e).

I. Licensing examinations.

Meetings to prepare, administer, or grade scholastic, licensing or qualifying examinations may be closed. § 10-508(a)(11).

J. Litigation; pending litigation or other attorney-client privileges.

Meetings that involve consultation with counsel to obtain legal advice, or consultation with staff, consultants, or other individuals regarding pending or potential litigation may be closed. §§ 10-508(a)(7) and 10-508(a)(8). The Act, prior to its amendment in 1991, allowed bodies to close meetings to “consult with counsel.” § 10-508(a)(7) (1984) (repealed 1992). The 1991 amendment narrowed this to “consult with counsel to obtain legal advice.” § 10-508(a)(7). The *OMA Manual* notes that this language is intended to prevent public bodies from using the presence of counsel as a subterfuge for wrongfully closing a meeting — i.e., “lawyer as potted plant.” *OMA Manual*, at 4-5. Section 10-508(a)(8) may only be invoked when the discussion directly relates to the pending or potential litigation, and not to discuss the underlying policy issue. *Id.*

K. Negotiations and collective bargaining of public employees.

Meetings to conduct collective bargaining negotiations or to consider matters regarding negotiations may be closed. § 10-508(a)(9). The *OMA Manual* notes that this exception is intended to “protect against premature disclosure of sensitive information like the public body’s negotiating strategy.” *OMA Manual*, at 4-6.

1. Any sessions regarding collective bargaining.

Meetings to conduct collective bargaining negotiations or to consider matters regarding negotiations may be closed. § 10-508(a)(9).

2. Only those between the public employees and the public body.

The Act makes no such distinction. § 10-508(a)(9).

L. Parole board meetings, or meetings involving parole board decisions.

Because a parole board exercises an executive or quasi-judicial function, it is not required to open its meeting. 65 Op. Att’y Gen. 341 (Md. 1980).

M. Patients; discussions on individual patients.

Although the Act is silent, arguably such meetings would be closed pursuant to the PIA since such information is exempt under the PIA. *See e.g.*, § 10-508(2) (allowing for closure to protect privacy of individuals concerning matters unrelated to the public business); § 10-508(a)(13) (which allows closure to comply with a specific statutory imposed requirement preventing public disclosure); §§ 10-616, 10-617(b).

N. Personnel matters.

Meetings that concern the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of appointees, employees or officials over whom the entity has jurisdiction or any other personnel matter affecting one or more specific individuals may be closed. § 10-508(a)(1). However, this exception is to be construed narrowly and is inapplicable to discussions of issues affecting classes of public employees, as distinct from specific individuals. *OMA Manual*, at 4-4.

1. Interviews for public employment.

Meetings that concern the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of appointees, employees or officials over whom the entity has jurisdiction or any other personnel matter affecting one or more specific individuals may be closed. § 10-508(a)(1).

2. Disciplinary matters, performance or ethics of public employees.

Meetings that concern the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of appointees, employees or officials over whom the entity has jurisdiction or any other personnel matter affecting one or more specific individuals may be closed. § 10-508(a)(1).

3. Dismissal; considering dismissal of public employees.

Meetings that concern the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of appointees, employees or officials over whom the entity has jurisdiction or any other personnel matter affecting one or more specific individuals may be closed. § 10-508(a)(1).

O. Real estate negotiations.

Meetings that relate to the acquisition of real property, matters concerning a proposal for the location, expansion or retention of a business or industrial organization within the state, the investment of public funds, and the marketing of public securities may be closed. §§ 10-508(a)(3) to 10-508(a)(6). The Act also allows a body to close a meeting “before a contract is awarded or bids are opened [to] discuss a matter directly related to a negotiating strategy or the contents of a bid or proposal, if public discussion or disclosure would adversely impact the ability of the public body to participate in the competitive bidding or proposal process.” § 10-508(a)(14).

P. Security, national and/or state, of buildings, personnel or other.

Meetings to discuss the deployment of fire and police services and staff, and the development and implementation of emergency plans may be closed. § 10-508(a)(10).

Q. Students; discussions on individual students.

Meetings to prepare, administer or grade scholastic, licensing or qualifying examinations may be closed. § 10-508(a)(11).

IV. PROCEDURE FOR ASSERTING RIGHT OF ACCESS

A. When to challenge.

As soon as the public body fails to comply with the Act's open session, attendance, notice or minutes requirements, an adversely affected person may petition the circuit court for relief. § 10-510(b). The aggrieved individual must file a petition complaining of an alleged violation of the open session or attendance provisions within 45 days of the issuance of minutes documenting the prior closed session. § 10-510(b)(3). A petition complaining of an alleged violation of the notice or minutes requirements must be filed within 45 days of the alleged violation. § 10-510(b)(2). The 45-day limitations period does not apply to a claim about an Open Meeting Act violation that is included in a petition for judicial review of a governmental agency's action. *Handley v. Ocean Downs, LLC*, 151 Md. App. 615, 827, A.2d 961 (2003); see also *OMA Manual*, at 5-3.

The limitation periods are tolled by the use of Board complaint procedures until the issuance of a written opinion by the Board. § 10-510(b)(4). The Act permits any adversely affected person to file a complaint for past or anticipated future violations of the Act. §§ 10-502-5, 10-502.6.

1. Does the law provide expedited procedure for reviewing request to attend upcoming meetings?

Although the Act does not specifically provide for expedited judicial review regarding a request to attend an upcoming meeting, the court is authorized to issue an injunction and to require compliance with the Act. §§ 10-510(b), 10-510(d).

The Board will consider oral or written complaints of anticipated future violations. § 10-502.6. Upon receipt of the complaint, the chairman, a designated Board member, or an authorized staff person may contact the body to determine the nature of the meeting and the reason for its expected closure. § 10-502.6(a). If at least two Board members determine that closure would violate the Act, the person acting for the Board shall immediately inform the body of the potential violation and any lawful means for the body to conduct its meeting and achieve its purposes. § 10-502.6(b). The person acting for the Board shall also prepare a written report describing the complaint and efforts to achieve compliance with the Act. § 10-502.6(d). The person acting for the Board must also inform the complainant of the Board's efforts to achieve compliance. § 10-502.6(c). Use of this procedure does not bar the complainant from filing a subsequent written complaint under § 10-502.5. § 10-502.6(e).

2. When barred from attending.

Section 10-510, provides for enforcement of the Act through judicial review. It does not apply to matters involving the appropriation of public funds; levying a tax; or providing for the issuance of bonds, notes, or other evidences of public obligation. § 10-510(a)(1). These exceptions do not govern the use of Board complaint procedures. See §§ 10-502.5, 10-502.6, 10-510(a)(3). In addition, a court may not void the action of a public body due to another public body's violation of the Act. § 10-510(a)(2).

3. To set aside decision.

A court may void the action of the public body if it finds a willful violation of the open session, notice, attendance or minutes requirements and it finds that no other adequate remedy is available. § 10-510(d)(4); see also *Wesley Chapel Bluemount Ass'n. v. Baltimore County*, 347 Md. 125, 149, 699 A.2d 434, 447 (1997) (trial court erred in voiding zoning board's action when there was no evidence that the board's erroneous decision to close its meeting was willful), *CLUB v. Baltimore City Board of Elections*, 377 Md. 183, 189 832 A.2d 804, 807 (2003). But, a court may not void the action of a public body due to another public body's violation of the Act. § 10-510(a)(2).

4. For ruling on future meetings.

Because the court is authorized to rule on violations of the notice requirement and to require compliance with the Act, the court has the power to require opening of future meetings. See § 10-510(b).

5. Other.

The court has the power to determine the *applicability* of the open session, notice, minutes, and attendance requirements of the Act and to grant any other relief the court deems appropriate. § 10-510(b).

B. How to start.

1. Where to ask for ruling.

a. Administrative forum.

(1). Agency procedure for challenge.

To the extent that another law provides more stringent requirements, that law will apply. See § 10-504. Thus, if there are provisions mandating agency procedures for open meetings, they may provide a forum. The Act does not provide agency-based procedures.

(2). Commission or independent agency.

The Act establishes a State Open Meetings Law Compliance Board (the "Board"), which provides a non-judicial forum for consideration of past and prospective violations of the Act. See §§ 10-502.1 to 10-502.6. The Board's opinion is solely advisory and cannot compel action by the public body, nor can the Board's opinion be introduced as evidence in a legal action against the public body. §§ 10-502.5(i), 10-502.5(j).

b. State attorney general.

A person may seek review of a public body's action under the Act by submitting a complaint to the Open Meetings Compliance Board. *OMA Manual*, at 5-1.

c. Court.

The Act specifically provides for a petition to be filed with the circuit court by a person adversely affected by a public body's failure to comply with the Act. § 10-510(b). A party need not exhaust administrative remedies before bringing its complaint. *Suburban Hospital Inc. v. Maryland Health Resources Planning Comm'n.*, 125 Md. App. 579, 600, 726 A.2d 807, 817, n.8 (1999).

2. Applicable time limits.

Upon receipt of the petition, the Board shall send a copy of the complaint to the identified public body requesting a response within 30 days. § 10-502(c). If the Board has sufficient information based on the written materials before it, it shall issue a written opinion within 30 days of receiving the public body's response. § 10-502.5(d). Otherwise, it may conduct an informal conference with the parties or other appropriate persons to gather additional information. § 10-502.5(e). The Board shall then issue its opinion 30 days following the conference. *Id.*

3. Contents of request for ruling.

A complaint, signed by the person making it, shall identify the public body, its action, and the date and circumstances of the action. § 10-502.5(b).

4. How long should you wait for a response?

Upon receipt of the petition, the Board shall send a copy of the complaint to the identified public body requesting a response within 30 days. § 10-502(c)(2)(i). On request of the Board, the public body shall include with its written response a copy of a notice provided under § 10-506, a written statement made under § 10-508(d)(2)(ii) and minutes of any tape recording made by the public body under § 10-509. § 10-502(c)(2)(ii). The Board shall maintain the confidentiality of minutes and tape recordings submitted. § 10-502(c)(2)(iii). If the Board has sufficient information based on the written materials before it, it shall issue a written opinion within 30 days of receiving the public body's response. § 10-502.5(d). Otherwise, it may conduct an informal conference with the parties or other appropriate persons to gather additional information. § 10-502.5(e). The Board shall then issue its

opinion 30 days following the conference. *Id.*

5. Are subsequent or concurrent measures (formal or informal) available?

Injunctive, declaratory relief, and any other appropriate relief are available. § 10-510(d).

C. Court review of administrative decision.

1. Who may sue?

Any person adversely affected by the public body's action may petition the court for relief. § 10-510(b).

2. Will the court give priority to the pleading?

If the person alleges a violation of §§ 10-505, 10-506, 10-507, 10-508, or 10-509(c) of the Act, the court will give the petition priority.

3. Pro se possibility, advisability.

Because the action of the public body is presumed correct, proceeding *pro se* may not be advisable. § 10-510(c).

4. What issues will the court address?

a. Open the meeting.

The court is expressly authorized to issue an injunction under the Act. § 10-510(d)(2). Thus, the court may enjoin the public body from closing meetings or committing future violations of the Act.

b. Invalidate the decision.

If the court finds a willful failure to comply with the open meeting, notice, public attendance or minutes requirements and finds that there is no other adequate remedy, the court may declare void the final action of the public body. § 10-510(d)(4); *Wesley Chapel Bluemount Ass'n v. Baltimore County*, 347 Md. 125, 149, 699 A.2d 434, 446 (1997). However, this remedy is not available to public bodies meeting to consider the appropriation of public funds, levying a tax, or providing for the issuance of bonds, notes, or other evidences of public obligation. § 10-510(a).

c. Order future meetings open.

The court is expressly authorized to issue an injunction under the Act. § 10-510(d)(2). Thus, it appears that the court may enjoin the public body from closing meetings or committing future violations of the Act.

5. Pleading format.

The Act requires the filing of a petition. § 10-510(b). The petition may request a determination of the applicability of the Act's provisions, request the court to compel the public body to comply with the Act, or request that the action of the public body be voided. § 10-510(b)(1). It must be noted that the public body enjoys a rebuttable presumption that its actions did not violate the Act. § 10-510(c). Thus, the party alleging a failure to comply has the burden of proof. *Id.*

6. Time limit for filing suit.

If a violation of the notice or minutes requirements is alleged, then the petition must be filed within 45 days after the date of the alleged violation. § 10-510(c)(2). If a violation of the open meetings or public attendance requirements is alleged, then the petition must be filed within 45 days after the public body includes in the minutes of its next open session the information detailing its prior closed session as required by Section 10-509(c)(2) of the Act. § 10-510(b)(3). The limitation periods are tolled by the use of the Board complaint procedures until the issuance of a written opinion by the Board. § 10-510(b)(4).

7. What court.

The petition must be filed in a circuit court that has venue over the action. § 10-510(b)(1).

8. Judicial remedies available.

Injunctive, declaratory relief, and any other appropriate relief are available. § 10-510(d).

9. Availability of court costs and attorneys' fees.

The court may award a prevailing party reasonable attorney fees and litigation expenses. § 10-510(d)(5); see *Wesley Chapel Bluemount Ass'n v. Baltimore County*, 347 Md. 125, 149, 699 A.2d 434, 446 (1997). In determining whether to award attorneys' fees, the court is to consider, among other things, the public body's basis for closing the meeting, whether its actions were willful, whether the amounts claimed were reasonable, and the degree of good faith shown by both parties. 347 Md. at 150, 699 A.2d at 447. However, the Act does not require a finding of willfulness as a precondition to the assessment of counsel fees and litigation expenses. *Armstrong v. Mayor of Baltimore*, 409 Md. 648, 976 A.2d 349 (2009).

A prevailing party is not automatically entitled to recover its fees, nor does prevailing create a presumption in favor of a fee award. *Baltimore County v. Wesley Chapel Bluemount Ass'n.*, 128 Md. App. 180, 189, 736 A.2d 1177, 1183 (1999). On the other hand, the prevailing party need not prove animus or bad faith on the part of the government body to justify its claim for fees. 128 Md. App. at 190, 736 A.2d at 1182. *Malamis v. Stein*, 69 Md. App. 221, 516 A.2d 1039 (1986). The court may also require a bond to ensure compliance. § 10-510(d)(5).

10. Fines.

The Act provides for a civil penalty of up to \$100 for any member of a public body who willfully takes part in a closed meeting knowing that it is being held in violation of the Act. § 10-511.

11. Other penalties.

None.

D. Appealing initial court decisions.

1. Appeal routes.

The Act does not provide procedures for an appeal. Parties generally, however, are absolutely entitled to an appeal of current court decisions to the Maryland Court of Special Appeals; review of that decision is then subject to discretionary review by the Court of Appeals. Md. Rules 8-201, 8-202, 8-301, 8-303.

2. Time limits for filing appeals.

A party may appeal from a circuit court judgment within thirty days after judgment is entered. Md. Rule 8-202(a).

3. Contact of interested amici.

Any parties interested in submitting *amicus curiae* briefs may contact the law firm of Saul, Ewing, LLP 100 South Charles Street, Baltimore, Maryland 21201.

The Reporters Committee for Freedom of the Press frequently files friend-of-the-court briefs in open records cases being considered at the highest appeal level in the state.

V. ASSERTING A RIGHT TO COMMENT.

The Act protects only the right to observe; it makes no reference to a right to comment or participate. § 10-501(a).

Statute

Open Records

Maryland Code

State Government

Title 10. Governmental Procedures

Subtitle 6. Records

Part III. Access to Public Records

§ 10-611. Definitions

(a) In this Part III of this subtitle the following words have the meanings indicated.

(b) “Applicant” means a person or governmental unit that asks to inspect a public record.

(c) “Custodian” means:

(1) the official custodian; or

(2) any other authorized individual who has physical custody and control of a public record.

(d) “Official custodian” means an officer or employee of the State or of a political subdivision who, whether or not the officer or employee has physical custody and control of a public record, is responsible for keeping the public record.

(e) “Person in interest” means:

(1) a person or governmental unit that is the subject of a public record or a designee of the person or governmental unit;

(2) if the person has a legal disability, the parent or legal representative of the person; or

(3) as to requests for correction of certificates of death under § 5-310(d) of the Health-General Article, the spouse, adult child, parent, adult sibling, grandparent, or guardian of the person of the deceased at the time of the deceased’s death.

(f)

(1) “Personal information” means information that identifies an individual including an individual’s address, driver’s license number or any other identification number, medical or disability information, name, photograph or computer generated image, Social Security number, or telephone number.

(2) “Personal information” does not include an individual’s driver’s status, driving offenses, 5-digit zip code, or information on vehicular accidents.

(g)

(1) “Public record” means the original or any copy of any documentary material that:

(i) is made by a unit or instrumentality of the State government or of a political subdivision or received by the unit or instrumentality in connection with the transaction of public business; and

(ii) is in any form, including:

1. a card;
2. a computerized record;
3. correspondence;
4. a drawing;
5. film or microfilm;
6. a form;
7. a map;
8. a photograph or photostat;

9. a recording; or

10. a tape.

(2) “Public record” includes a document that lists the salary of an employee of a unit or instrumentality of the State government or of a political subdivision.

(3) “Public record” does not include a digital photographic image or signature of an individual, or the actual stored data thereof, recorded by the Motor Vehicle Administration.

(h)

(1) “Telephone solicitation” means the initiation of a telephone call to an individual or to the residence or business of an individual for the purpose of encouraging the purchase or rental of or investment in property, goods, or services.

(2) “Telephone solicitation” does not include a telephone call or message:

(i) to an individual who has given express permission to the person making the telephone call;

(ii) to an individual with whom the person has an established business relationship; or

(iii) by a tax-exempt, nonprofit organization.

§ 10-612. General Right to information

(a) All persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees.

(b) To carry out the right set forth in subsection (a) of this section, unless an unwarranted invasion of the privacy of a person in interest would result, this Part III of this subtitle 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.

(c) This Part III of this subtitle does not preclude a member of the General Assembly from acquiring the names and addresses of and statistical information about individuals who are licensed or, as required by a law of the State, registered.

§ 10-613. Inspection of public records

(a)

(1) Except as otherwise provided by law, a custodian shall permit a person or governmental unit to inspect any public record at any reasonable time.

(2) Inspection or copying of a public record may be denied only to the extent provided under this Part III of this subtitle.

(b) To protect public records and to prevent unnecessary interference with official business, each official custodian shall adopt reasonable rules or regulations that, subject to this Part III of this subtitle, govern timely production and inspection of a public record.

(c) Each official custodian shall consider whether to:

(1) designate specific types of public records of the governmental unit that are to be made available to any applicant immediately upon request; and

(2) maintain a current list of the types of public records that have been designated as available to any applicant immediately upon request.

§ 10-614. Applications

(a)

(1) Except as provided in paragraph (2) of this subsection, a person or governmental unit that wishes to inspect a public record shall submit a written application to the custodian.

(2) A person or governmental unit need not submit a written application to the custodian if:

(i) the person or governmental unit seeks to inspect a public record listed by an official custodian in accordance with § 10-613(c)(2) of this subtitle; or

(ii) the custodian waives the requirement for a written application.

(3) If the individual to whom the application is submitted is not the custodian of the public record, within 10 working days after receiving the application, the individual shall give the applicant:

- (i) notice of that fact; and
- (ii) if known:

1. the name of the custodian; and
2. the location or possible location of the public record.

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

(i) if the custodian has reached this determination upon initial review of the application, immediately; or

(ii) if the custodian has reached this determination after a search for potentially responsive public records, promptly after the search is completed but not to exceed 30 days after receiving the application.

(b)

(1) The custodian shall grant or deny the application promptly, but not to exceed 30 days after receiving the application.

(2) A custodian who approves the application shall produce the public record immediately or within the reasonable period that is needed to retrieve the public record, but not to exceed 30 days after receipt of the application.

(3) A custodian who denies the application shall:

- (i) immediately notify the applicant;
- (ii) within 10 working days, give the applicant a written statement that gives:
 1. the reasons for the denial;
 2. the legal authority for the denial; and
 3. notice of the remedies under this Part III of this subtitle for review of the denial; and
- (iii) permit inspection of any part of the record that is subject to inspection and is reasonably severable.

(4) With the consent of the applicant, any time limit imposed under this subsection may be extended for not more than 30 days.

(c)

(1) Except to the extent that the grant of an application is related to the status of the applicant as a person in interest and except as required by other law or regulation, the custodian may not condition the grant of an application on:

- (i) the identity of the applicant;
- (ii) any organizational or other affiliation of the applicant; or
- (iii) a disclosure by the applicant of the purpose for an application.

(2) This subsection does not preclude an official custodian from considering the identity of the applicant, any organizational or other affiliation of the applicant, or the purpose for the application if:

(i) the applicant chooses to provide this information for the custodian to consider in making a determination under § 10-618 of this subtitle;

(ii) the applicant has requested a waiver of fees pursuant to § 10-621(e) of this subtitle; or

(iii) the identity of the applicant, any organizational or other affiliation of the applicant, or the purpose for the application is material to the determination of the official custodian in accordance with § 10-621(e)(2) of this subtitle.

(3) Consistent with this subsection, an official may request the identity of an applicant for the purpose of contacting the applicant.

§ 10-615. Required denials – In general

A custodian shall deny inspection of a public record or any part of a public record if:

- (1) by law, the public record is privileged or confidential; or

(2) the inspection would be contrary to:

- (i) a State statute;
- (ii) a federal statute or a regulation that is issued under the statute and has the force of law;
- (iii) the rules adopted by the Court of Appeals; or
- (iv) an order of a court of record.

§ 10-616. Required denials – Specific records

(a) Unless otherwise provided by law, a custodian shall deny inspection of a public record, as provided in this section.

(b) A custodian shall deny inspection of public records that relate to the adoption of an individual.

(c) A custodian shall deny inspection of public records that relate to welfare for an individual.

(d) A custodian shall deny inspection of a letter of reference.

(e)

(1) Subject to the provisions of paragraph (2) of this subsection, a custodian shall prohibit inspection, use, or disclosure of a circulation record of a public library or other item, collection, or grouping of information about an individual that:

- (i) is maintained by a library;
- (ii) contains an individual's name or the identifying number, symbol, or other identifying particular assigned to the individual; and
- (iii) identifies the use a patron makes of that library's materials, services, or facilities.

(2) A custodian shall permit inspection, use, or disclosure of a circulation record of a public library only in connection with the library's ordinary business and only for the purposes for which the record was created.

(f) A custodian shall deny inspection of library, archival, or museum material given by a person to the extent that the person who made the gift limits disclosure as a condition of the gift.

(g)

(1) Subject to paragraphs (2) through (7) of this subsection, a custodian shall deny inspection of a retirement record for an individual.

(2) A custodian shall permit inspection:

- (i) by the person in interest;
- (ii) by the appointing authority of the individual;
- (iii) after the death of the individual, by a beneficiary, personal representative, or other person who satisfies the administrators of the retirement and pension systems that the person has a valid claim to the benefits of the individual; and

(iv) by any law enforcement agency in order to obtain the home address of a retired employee of the agency when contact with a retired employee is documented to be necessary for official agency business.

(3) A custodian shall permit inspection by the employees of a county unit that, by county law, is required to audit the retirement records for current or former employees of the county. However, the information obtained during the inspection is confidential, and the county unit and its employees may not disclose any information that would identify a person in interest.

(4) On request, a custodian shall state whether the individual receives a retirement or pension allowance.

(5) A custodian shall permit release of information as provided in § 21-504 or § 21-505 of the State Personnel and Pensions Article.

(6) On written request, a custodian shall:

(i) disclose the amount of that part of a retirement allowance that is derived from employer contributions and that is granted to:

1. a retired elected or appointed official of the State;

- 2. a retired elected official of a political subdivision; or
- 3. a retired appointed official of a political subdivision who is a member of a separate system for elected or appointed officials; or

(ii) disclose the benefit formula and the variables for calculating the retirement allowance of:

- 1. a current elected or appointed official of the State;
- 2. a current elected official of a political subdivision; or
- 3. a current appointed official of a political subdivision who is a member of a separate system for elected or appointed officials.

(7)

(i) This paragraph applies to Anne Arundel County.

(ii) On written request, a custodian of retirement records shall disclose:

- 1. the total amount of that part of a pension or retirement allowance that is derived from employer contributions and that is granted to a retired elected or appointed official of the county;
- 2. the total amount of that part of a pension or retirement allowance that is derived from employee contributions and that is granted to a retired elected or appointed official of the county, if the retired elected or appointed official consents to the disclosure;
- 3. the benefit formula and the variables for calculating the retirement allowance of a current elected or appointed official of the county; or
- 4. the amount of the employee contributions plus interest attributable to a current elected or appointed official of the county, if the current elected or appointed official consents to the disclosure.

(iii) A custodian of retirement records shall maintain a list of those elected or appointed officials of the county who have consented to the disclosure of information under subparagraph (ii) 2 or 4 of this paragraph.

(h)

(1) This subsection applies only to public records that relate to:

- (i) police reports of traffic accidents;
- (ii) criminal charging documents prior to service on the defendant named in the document; and
- (iii) traffic citations filed in the Maryland Automated Traffic System.

(2) A custodian shall deny inspection of a record described in paragraph (1) of this subsection to any of the following persons who request inspection of records for the purpose of soliciting or marketing legal services:

- (i) an attorney who is not an attorney of record of a person named in the record; or
- (ii) a person who is employed by, retained by, associated with, or acting on behalf of an attorney described in this paragraph.

(i)

(1) Subject to paragraph (2) of this subsection, a custodian shall deny inspection of a personnel record of an individual, including an application, performance rating, or scholastic achievement information.

(2) A custodian shall permit inspection by:

- (i) the person in interest; or
- (ii) an elected or appointed official who supervises the work of the individual.

(j) A custodian shall deny inspection of a hospital record that:

- (1) relates to:
 - (i) medical administration;
 - (ii) staff;
 - (iii) medical care; or
 - (iv) other medical information; and
- (2) contains general or specific information about 1 or more individuals.

(k)

(1) Subject to paragraphs (2) and (3) of this subsection, a custodian shall deny inspection of a school district record about the home address, home phone number, biography, family, physiology, religion, academic achievement, or physical or mental ability of a student.

(2) A custodian shall permit inspection by:

- (i) the person in interest; or
- (ii) an elected or appointed official who supervises the student.

(3)

(i) A custodian may permit inspection of the home address or home phone number of a student of a public school by:

- 1. an organization of parents, teachers, students, or former students, or any combination of those groups, of the school;
- 2. an organization or force of the military;
- 3. a person engaged by a school or board of education to confirm a home address or home phone number;
- 4. a representative of a community college in the State; or
- 5. the Maryland Higher Education Commission.

(ii) The Commission or a person, organization, or community college that obtains information under this paragraph may not:

- 1. use this information for a commercial purpose; or
- 2. disclose this information to another person, organization, or community college.

(iii) When a custodian permits inspection under this paragraph, the custodian shall notify the Commission, person, organization, or community college of the prohibitions under subparagraph (ii) of this paragraph regarding use and disclosure of this information.

(l) Subject to the provisions of § 4-310 of the Insurance Article, a custodian shall deny inspection of all RBC reports and RBC plans and any other records that relate to those reports or plans.

(m)

(1) Subject to the provisions of paragraph (2) of this subsection, a custodian shall deny inspection of all photographs, videotapes or electronically recorded images of vehicles, vehicle movement records, personal financial information, credit reports, or other personal or financial data created, recorded, obtained by or submitted to the Maryland Transportation Authority or its agents or employees in connection with any electronic toll collection system or associated transaction system.

(2) A custodian shall permit inspection of the records enumerated in paragraph (1) of this subsection by:

- (i) an individual named in the record;
- (ii) the attorney of record of an individual named in the record;

(iii) employees or agents of the Maryland Transportation Authority in any investigation or proceeding relating to a violation of speed limitations or to the imposition of or indemnification from liability for failure to pay a toll in connection with any electronic toll collection system;

(iv) employees or agents of a third party that has entered into an agreement with the Maryland Transportation Authority to use an electronic toll collection system for nontoll applications in the collection of revenues due to the third party; or

(v) employees or agents of an entity in another state operating or having jurisdiction over a toll facility.

(n)

(1) Subject to paragraph (2) of this subsection, a custodian shall deny inspection of any record disclosing:

- (i) the name of an account holder or qualified beneficiary of a prepaid contract under Title 18, Subtitle 19 of the Education Article; and
- (ii) the name of an account holder or qualified designated beneficiary of

an investment account under Title 18, Subtitle 19A of the Education Article.

(2) A custodian:

(i) shall permit inspection by a person in interest; and

(ii) may release information to an eligible institution of higher education designated:

1. by an account holder of a prepaid contract or qualified beneficiary under Title 18, Subtitle 19A of the Education Article; or

2. by an account holder or qualified designated beneficiary under Title 18, Subtitle 19A of the Education Article.

(o)

(1) In this subsection, “recorded images” has the meaning stated in § 21-202.1, § 21-809 or § 21-810 of the Transportation Article.

(2) Except as provided in paragraph (3) of this subsection, a custodian of recorded images produced by a traffic control signal monitoring system operated under § 21-202.1 of the Transportation Article, a speed monitoring system operated under § 21-809 of the Transportation Article, or a work zone speed control system operated under § 21-810 of the Transportation Article shall deny inspection of the recorded images.

(3) A custodian shall allow inspection of recorded images:

(i) as required in § 21-202.1, § 21-809 or § 21-810 of the Transportation Article;

(ii) by any person issued a citation under § 21-202.1, § 21-809 or § 21-810 of the Transportation Article, or an attorney of record for the person; or

(iii) by an employee or agent of an agency in an investigation or proceeding relating to the imposition of or indemnification from civil liability pursuant to § 21-202.1, § 21-809 or § 21-810 of the Transportation Article.

(p)

(1) Except as provided in paragraphs (2) through (5) of this subsection, a custodian may not knowingly disclose a public record of the Motor Vehicle Administration containing personal information.

(2) A custodian shall disclose personal information when required by federal law.

(3)

(i) This paragraph applies only to the disclosure of personal information for any use in response to a request for an individual motor vehicle record.

(ii) The custodian may not disclose personal information without written consent from the person in interest.

(iii)

1. At any time the person in interest may withdraw consent to disclose personal information by notifying the custodian.

2. The withdrawal by the person in interest of consent to disclose personal information shall take effect as soon as practicable after it is received by the custodian.

(4)

(i) This paragraph applies only to the disclosure of personal information for inclusion in lists of information to be used for surveys, marketing, and solicitations.

(ii) The custodian may not disclose personal information for surveys, marketing, and solicitations without written consent from the person in interest.

(iii)

1. At any time the person in interest may withdraw consent to disclose personal information by notifying the custodian.

2. The withdrawal by the person in interest of consent to disclose personal information shall take effect as soon as practicable after it is received by the custodian.

(iv) The custodian may not disclose personal information under this paragraph for use in telephone solicitations.

(v) Personal information disclosed under this paragraph may be used only for surveys, marketing, or solicitations and only for a purpose approved by the Motor Vehicle Administration.

(5) Notwithstanding the provisions of paragraphs (3) and (4) of this subsection, a custodian shall disclose personal information:

(i) for use by a federal, state, or local government, including a law enforcement agency, or a court in carrying out its functions;

(ii) for use in connection with matters of:

1. motor vehicle or driver safety;

2. motor vehicle theft;

3. motor vehicle emissions;

4. motor vehicle product alterations, recalls, or advisories;

5. performance monitoring of motor vehicle parts and dealers; and

6. removal of nonowner records from the original records of motor vehicle manufacturers;

(iii) for use by a private detective agency licensed by the Secretary of State Police under Title 13 of the Business Occupations and Professions Article or a security guard service licensed by the Secretary of State Police under Title 19 of the Business Occupations and Professions Article for a purpose permitted under this paragraph;

(iv) for use in connection with a civil, administrative, arbitral, or criminal proceeding in a federal, state, or local court or regulatory agency for service of process, investigation in anticipation of litigation, and execution or enforcement of judgments or orders;

(v) for purposes of research or statistical reporting as approved by the Motor Vehicle Administration provided that the personal information is not published, redisclosed, or used to contact the individual;

(vi) for use by an insurer, insurance support organization, or self-insured entity, or its employees, agents, or contractors, in connection with rating, underwriting, claims investigating, and antifraud activities;

(vii) for use in the normal course of business activity by a legitimate business entity, its agents, employees, or contractors, but only:

1. to verify the accuracy of personal information submitted by the individual to that entity; and

2. if the information submitted is not accurate, to obtain correct information only for the purpose of:

A. preventing fraud by the individual;

B. pursuing legal remedies against the individual; or

C. recovering on a debt or security interest against the individual;

(viii) for use by an employer or insurer to obtain or verify information relating to a holder of a commercial driver’s license that is required under the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. § 31101 et seq.);

(ix) for use in connection with the operation of a private toll transportation facility;

(x) for use in providing notice to the owner of a towed or impounded motor vehicle;

(xi) for use by an applicant who provides written consent from the individual to whom the information pertains if the consent is obtained within the 6-month period before the date of the request for personal information;

(xii) for use in any matter relating to:

1. the operation of a Class B (for hire), Class C (funeral and ambulance), or Class Q (limousine) vehicle; and

2. public safety or the treatment by the operator of a member of the public;

(xiii) for a use specifically authorized by the law of this State, if the use is related to the operation of a motor vehicle or public safety;

(xiv) for use by a hospital to obtain, for hospital security purposes, information relating to ownership of vehicles parked on hospital property; and

(xv) for use by a procurement organization requesting information under § 4-512 of the Estates and Trusts Article for the purposes of organ, tissue, and eye donation.

(6)

(i) A person receiving personal information under paragraph (4) or (5) of this subsection may not use or redisclose the personal information for a purpose other than the purpose for which the custodian disclosed the personal information.

(ii) A person receiving personal information under paragraph (4) or (5) of this subsection who rediscloses the personal information shall:

1. keep a record for 5 years of the person to whom the information is redisclosed and the purpose for which the information is to be used; and
2. make the record available to the custodian on request.

(7)

(i) The custodian shall adopt regulations to implement and enforce the provisions of this subsection.

(ii)

1. The custodian shall adopt regulations and procedures for securing a person in interest's waiver of privacy rights under this subsection when an applicant requests personal information about the person in interest that the custodian is not authorized to disclose under paragraphs (2) through (5) of this subsection.

2. The regulations and procedures adopted under this subparagraph shall:

A. state the circumstances under which the custodian may request a waiver; and

B. conform with the waiver requirements in the federal Driver's Privacy Protection Act of 1994 and other federal law.

(8) The custodian may develop and implement methods for monitoring compliance with this section and ensuring that personal information is used only for purposes for which it is disclosed.

(q)

(1) Except as provided in paragraph (4) of this subsection and subject to the provisions of paragraph (5) of this subsection, unless otherwise ordered by the court, files and records of the court pertaining to an arrest warrant issued pursuant to Maryland Rule 4-212(d)(1) or (2) and the charging document upon which the arrest warrant was issued may not be open to inspection until either:

- (i) the arrest warrant has been served and a return of service has been filed in compliance with Maryland Rule 4-212(g); or
- (ii) 90 days have elapsed since the arrest warrant was issued.

(2) Except as provided in paragraph (4) of this subsection and subject to the provisions of paragraph (5) of this subsection, unless otherwise ordered by the court, files and records of the court pertaining to an arrest warrant issued pursuant to a grand jury indictment or conspiracy investigation and the charging document upon which the arrest warrant was issued may not be open to inspection until all arrest warrants for any co-conspirators have been served and all returns of service have been filed in compliance with Maryland Rule 4-212(g).

(3) Subject to the provisions of paragraphs (1) and (2) of this subsection, unless sealed pursuant to Maryland Rule 4-201(d), the files and records shall be open to inspection.

(4)

(i) Subject to subparagraph (ii) of this paragraph, the name, address, birth date, driver's license number, sex, height, and weight of an individual contained in an arrest warrant issued pursuant to Maryland Rule 4-212(d)(1) or (2) or issued pursuant to a grand jury indictment or conspiracy investigation may be released to the Motor Vehicle Administration for use by the Administration for purposes of § 13-406.1 or § 16-204 of the Transportation Article.

(ii) Except as provided in subparagraph (i) of this paragraph, information contained in a charging document that identifies an individual may not be released to the Motor Vehicle Administration.

(5) The provisions of paragraphs (1) and (2) of this subsection may not be construed to prohibit:

(i) the release of statistical information concerning unserved arrest warrants;

(ii) the release of information by a State's Attorney or peace officer concerning an unserved arrest warrant and the charging document upon which the arrest warrant was issued; or

(iii) inspection of files and records, of a court pertaining to an unserved arrest warrant and the charging document upon which the arrest warrant was issued, by:

1. a judicial officer;
2. any authorized court personnel;
3. a State's Attorney;
4. a peace officer;
5. a correctional officer who is authorized by law to serve an arrest warrant;
6. a bail bondsman, surety insurer, or surety who executes bail bonds who executed a bail bond for the individual who is subject to arrest under the arrest warrant;
7. an attorney authorized by the individual who is subject to arrest under the arrest warrant;
8. the Department of Public Safety and Correctional Services or the Department of Juvenile Services for the purpose of notification of a victim under the provisions of § 11-507 of the Criminal Procedure Article;
9. a federal, State, or local criminal justice agency described under Title 10, Subtitle 2 of the Criminal Procedure Article.

(r)

(1) Except as provided in paragraph (2) of this subsection, a custodian shall deny inspection of all records of persons created, generated, obtained by, or submitted to the Maryland Transit Administration, its agents, or employees in connection with the use or purchase of electronic fare media provided by the Maryland Transit Administration, its agents, employees, or contractors.

(2) A custodian shall permit inspection of the records enumerated in paragraph (1) of this subsection by:

- (i) an individual named in the record; or
- (ii) the attorney of record of an individual named in the record.

(s)

(1) Except as provided in paragraph (2) of this subsection, a custodian may not knowingly disclose a public record of the Department of Natural Resources containing personal information.

(2) Notwithstanding paragraph (1) of this subsection, a custodian shall disclose personal information for use in the normal course of business activity by a financial institution, as defined in § 1-101(i) of the Financial Institutions Article, its agents, employees, or contractors, but only:

- (i) to verify the accuracy of personal information submitted by the individual to that financial institution; and
- (ii) if the information submitted is not accurate, to obtain correct information only for the purpose of:
 1. preventing fraud by the individual;
 2. pursuing legal remedies against the individual; or
 3. recovering on a debt or security interest against the individual.

(t) A custodian shall deny inspection of an application for renewable energy credit certification or a claim for renewable energy credits under Title 10, Subtitle 15 of the Agriculture Article.

(u)

(1) In this subsection, "surveillance image" has the meaning stated in § 10-112 of the Criminal Law Article.

(2) Except as provided in paragraph (3) of this subsection, a custodian of a surveillance image shall deny inspection of the surveillance image.

(3) A custodian shall allow inspection of a surveillance image:

(i) as required in § 10-112 of the Criminal Law Article;

(ii) by any person issued a citation under § 10-112 of the Criminal Law Article, or an attorney of record for the person; or

(iii) by an employee or agent of the Baltimore City Department of Public Works in an investigation or proceeding relating to the imposition of or indemnification from civil liability under § 10-112 of the Criminal Law Article.

§ 10-617. Required denials – Specific information

(a) Unless otherwise provided by law, a custodian shall deny inspection of a part of a public record, as provided in this section.

(b)

(1) In this subsection, “disability” has the meaning stated in § 20-701 of this article.

(2) Subject to paragraph (3) of this subsection, a custodian shall deny inspection of the part of a public record that contains:

(i) medical or psychological information about an individual, other than an autopsy report of a medical examiner;

(ii) personal information about an individual with a disability or an individual perceived to have a disability; or

(iii) any report on human immunodeficiency virus or acquired immunodeficiency syndrome submitted in accordance with Title 18 of the Health-General Article.

(3) A custodian shall permit the person in interest to inspect the public record to the extent permitted under § 4-304(a) of the Health - General Article.

(4) Except for paragraph (2)(iii) of this subsection, this subsection does not apply to:

(i) a nursing home as defined in § 19-1401 of the Health-General Article; or

(ii) an assisted living facility as defined in § 19-1801 of the Health-General Article.

(c) If the official custodian has adopted rules or regulations that define sociological information for purposes of this subsection, a custodian shall deny inspection of the part of a public record that contains sociological information, in accordance with the rules or regulations.

(d) A custodian shall deny inspection of the part of a public record that contains any of the following information provided by or obtained from any person or governmental unit:

(1) a trade secret;

(2) confidential commercial information;

(3) confidential financial information; or

(4) confidential geological or geophysical information.

(e) Subject to § 21-504 of the State Personnel and Pensions Article, a custodian shall deny inspection of the part of a public record that contains the home address or telephone number of an employee of a unit or instrumentality of the State or of a political subdivision unless:

(1) the employee gives permission for the inspection; or

(2) the unit or instrumentality that employs the individual determines that inspection is needed to protect the public interest.

(f)

(1) This subsection does not apply to the salary of a public employee.

(2) Subject to paragraph (3) of this subsection, a custodian shall deny inspection of the part of a public record that contains information about the finances of an individual, including assets, income, liabilities, net worth, bank balances, financial history or activities, or creditworthiness.

(3) A custodian shall permit inspection by the person in interest.

(g) A custodian shall deny inspection of the part of a public record that contains information about the security of an information system.

(h)

(1) Subject to paragraphs (2) through (4) of this subsection, a custodian shall deny inspection of the part of a public record that contains information about the licensing of an individual in an occupation or profession.

(2) A custodian shall permit inspection of the part of a public record that gives:

(i) the name of the licensee;

(ii) the business address of the licensee or, if the business address is not available, the home address of the licensee after the custodian redacts all information, if any, that identifies the location as the home address of an individual with a disability as defined in subsection (b) of this section;

(iii) the business telephone number of the licensee;

(iv) the educational and occupational background of the licensee;

(v) the professional qualifications of the licensee;

(vi) any orders and findings that result from formal disciplinary actions; and

(vii) any evidence that has been provided to the custodian to meet the requirements of a statute as to financial responsibility.

(3) A custodian may permit inspection of other information about a licensee if:

(i) the custodian finds a compelling public purpose; and

(ii) the rules or regulations of the official custodian permit the inspection.

(4) Except as otherwise provided by this subsection or other law, a custodian shall permit inspection by the person in interest.

(5) A custodian who sells lists of licensees shall omit from the lists the name of any licensee, on written request of the licensee.

(i) A custodian shall deny inspection of the part of a public record that contains information, generated by the bid analysis management system, concerning an investigation based on a transportation contractor’s suspected collusive or anticompetitive activity submitted to the Department by:

(1) the United States Department of Transportation; or

(2) another state.

(j)

(1) Subject to paragraphs (2) through (5) of this subsection, a custodian shall deny inspection of the part of a public record that contains information about the application and commission of a person as a notary public.

(2) A custodian shall permit inspection of the part of a public record that gives:

(i) the name of the notary public;

(ii) the home address of the notary public;

(iii) the home and business telephone numbers of the notary public;

(iv) the issue and expiration dates of the notary public’s commission;

(v) the date the person took the oath of office as a notary public; or

(vi) the signature of the notary public.

(3) A custodian may permit inspection of other information about a notary public if the custodian finds a compelling public purpose.

(4) A custodian may deny inspection of a record by a notary public or any other person in interest only to the extent that the inspection could:

(i) interfere with a valid and proper law enforcement proceeding;

(ii) deprive another person of a right to a fair trial or an impartial adjudication;

- (iii) constitute an unwarranted invasion of personal privacy;
- (iv) disclose the identity of a confidential source;
- (v) disclose an investigative technique or procedure;
- (vi) prejudice an investigation; or
- (vii) endanger the life or physical safety of an individual.

(5) A custodian who sells lists of notaries public shall omit from the lists the name of any notary public, on written request of the notary public.

(k)

(1) Except as provided in paragraph (2) of this subsection, a custodian shall deny inspection of the part of an application for a marriage license under § 2-402 of the Family Law Article or a recreational license under Title 4 of the Natural Resources Article that contains a Social Security number.

(2) A custodian shall permit inspection of the part of an application described in paragraph (1) of this subsection that contains a Social Security number to:

- (i) a person in interest; or
- (ii) on request, the State Child Support Enforcement Administration.

(l)

(1) Except as provided in paragraph (2) of this subsection, a custodian shall deny inspection of the part of a public record that identifies or contains personal information about a person, including a commercial entity, that maintains an alarm or security system.

(2) A custodian shall permit inspection by:

- (i) the person in interest;
- (ii) an alarm or security system company if the company can document that it currently provides alarm or security services to the person in interest;
- (iii) law enforcement personnel; and
- (iv) emergency services personnel, including:
 1. a career firefighter;
 2. an emergency medical services provider, as defined in § 13-516 of the Education Article;
 3. a rescue squad employee; and
 4. a volunteer firefighter, rescue squad member, or advanced life support unit member.

§ 10-618. Permissible denials

(a) Unless otherwise provided by law, if a custodian believes that inspection of a part of a public record by the applicant would be contrary to the public interest, the custodian may deny inspection by the applicant of that part, as provided in this section.

(b) A custodian may deny inspection of any part of an interagency or intra-agency letter or memorandum that would not be available by law to a private party in litigation with the unit.

(c)

(1) Subject to paragraph (2) of this subsection, a custodian may deny inspection of test questions, scoring keys, and other examination information that relates to the administration of licenses, employment, or academic matters.

(2) After a written promotional examination has been given and graded, a custodian shall permit a person in interest to inspect the examination and the results of the examination, but may not permit the person in interest to copy or otherwise to reproduce the examination.

(d)

(1) Subject to paragraph (2) of this subsection, a custodian may deny inspection of a public record that contains the specific details of a research project that an institution of the State or of a political subdivision is conducting.

(2) A custodian may not deny inspection of the part of a public record that

gives only the name, title, expenditures, and date when the final project summary will be available.

(e)

(1) Subject to paragraph (2) of this subsection or other law, until the State or a political subdivision acquires title to property, a custodian may deny inspection of a public record that contains a real estate appraisal of the property.

(2) A custodian may not deny inspection to the owner of the property.

(f)

(1) Subject to paragraph (2) of this subsection, a custodian may deny inspection of:

(i) records of investigations conducted by the Attorney General, a State's Attorney, a city or county attorney, a police department, or a sheriff;

(ii) an investigatory file compiled for any other law enforcement, judicial, correctional, or prosecution purpose; or

(iii) records that contain intelligence information or security procedures of the Attorney General, a State's Attorney, a city or county attorney, a police department, a State or local correctional facility, or a sheriff.

(2) A custodian may deny inspection by a person in interest only to the extent that the inspection would:

(i) interfere with a valid and proper law enforcement proceeding;

(ii) deprive another person of a right to a fair trial or an impartial adjudication;

(iii) constitute an unwarranted invasion of personal privacy;

(iv) disclose the identity of a confidential source;

(v) disclose an investigative technique or procedure;

(vi) prejudice an investigation; or

(vii) endanger the life or physical safety of an individual.

(g)

(1) A custodian may deny inspection of a public record that contains information concerning the site-specific location of an endangered or threatened species of plant or animal, a species of plant or animal in need of conservation, a cave, or a historic property as defined in § 5A-301 of the State Finance and Procurement Article.

(2) A custodian may not deny inspection of a public record described in paragraph (1) of this subsection if requested by:

(i) the owner of the land upon which the resource is located; or

(ii) any entity that could take the land through the right of eminent domain.

(h)

(1) Subject to paragraph (2) of this subsection, a custodian may deny inspection of that part of a public record that contains information disclosing or relating to an invention owned in whole or in part by a State public institution of higher education for 4 years to permit the institution to evaluate whether to patent or market the invention and pursue economic development and licensing opportunities related to the invention.

(2) A custodian may not deny inspection of a part of a public record described in paragraph (1) of this subsection if:

(i) the information disclosing or relating to an invention has been published or disseminated by the inventors in the course of their academic activities or disclosed in a published patent;

(ii) the invention referred to in that part of the record has been licensed by the institution for at least 4 years; or

(iii) 4 years have elapsed from the date of the written disclosure of the invention to the institution.

(i) A custodian may deny inspection of that part of a public record that contains information disclosing or relating to a trade secret, confidential commercial information, or confidential financial information owned in whole or in

part by:

- (1) the Maryland Technology Development Corporation; or
- (2) a public institution of higher education, if the information is part of the institution's activities under § 15-107 of the Education Article.

(j)

(1) Subject to paragraphs (2), (3), and (4) of this subsection, a custodian may deny inspection of:

(i) response procedures or plans prepared to prevent or respond to emergency situations, the disclosure of which would reveal vulnerability assessments, specific tactics, specific emergency procedures, or specific security procedures;

(ii)

1. building plans, blueprints, schematic drawings, diagrams, operational manuals, or other records of ports and airports and other mass transit facilities, bridges, tunnels, emergency response facilities or structures, buildings where hazardous materials are stored, arenas, stadiums, waste and water systems, and any other building, structure, or facility, the disclosure of which would reveal the building's, structure's or facility's internal layout, specific location, life, safety, and support systems, structural elements, surveillance techniques, alarm or security systems or technologies, operational and transportation plans or protocols, or personnel deployments; or

2. records of any other building, structure, or facility, the disclosure of which would reveal the building's, structure's, or facility's life, safety, and support systems, surveillance techniques, alarm or security systems or technologies, operational and evacuation plans or protocols, or personnel deployments; or

(iii) records prepared to prevent or respond to emergency situations identifying or describing the name, location, pharmaceutical cache, contents, capacity, equipment, physical features, or capabilities of individual medical facilities, storage facilities, or laboratories.

(2) The custodian may deny inspection of a part of a public record under paragraph (1) of this subsection only to the extent that the inspection would:

- (i) jeopardize the security of any building, structure, or facility;
- (ii) facilitate the planning of a terrorist attack; or
- (iii) endanger the life or physical safety of an individual.

(3)

(i) Subject to subparagraph (ii) of this paragraph, a custodian may not deny inspection of a public record under paragraph (1) or (2) of this subsection that relates to a building, structure, or facility that has been subjected to a catastrophic event, including a fire, explosion, or natural disaster.

(ii) This paragraph does not apply to the records of any building, structure, or facility owned or operated by the State or any of its political subdivisions.

(4)

(i) Subject to paragraphs (1) and (2) of this subsection and subparagraph (ii) of this paragraph, a custodian may not deny inspection of a public record that relates to an inspection of or issuance of a citation concerning a building, structure, or facility by an agency of the State or any political subdivision.

(ii) This paragraph does not apply to the records of any building, structure, or facility owned or operated by the State or any of its political subdivisions.

(k)

(1) A custodian may deny inspection of any part of a public record that contains:

(i) stevedoring or terminal services or facility use rates or proposed rates generated, received, or negotiated by the Maryland Port Administration or any private operating company created by the Maryland Port Administration;

(ii) a proposal generated, received, or negotiated by the Maryland Port Administration or any private operating company created by the Maryland Port Administration for use of stevedoring or terminal services or facilities to increase waterborne commerce through the ports of the State; or

(iii) except as provided in paragraph (2) of this subsection, research or analysis related to maritime businesses or vessels compiled for the Maryland Port Administration or any private operating company created by the Maryland Port Administration to evaluate its competitive position with respect to other ports.

(2)

(i) A custodian may not deny inspection of any part of a public record under paragraph (1)(iii) of this subsection by the exclusive representative identified in Section 1 of the memorandum of understanding, or any identical section of a successor memorandum, between the State and the American Federation of State, County and Municipal Employees dated June 28, 2000 or the memorandum of understanding, or any identical section of a successor memorandum, between the State and the Maryland Professional Employees Council dated August 18, 2000 if the part of the public record:

1. is related to State employees; and

2. would otherwise be available to the exclusive representative under Article 4, Section 12 of the memorandum of understanding or any identical section of a successor memorandum of understanding.

(ii) Before the inspection of any part of a public record under subparagraph (i) of this paragraph, the exclusive representative shall enter into a nondisclosure agreement with the Maryland Port Administration to ensure the confidentiality of the information provided.

(l)

(1) A custodian may deny inspection of any part of a public record that relates to the University of Maryland University College's competitive position with respect to other providers of education services and that contains:

(i) fees, tuition, charges, and any information supporting fees, tuition, and charges, proposed, generated, received, or negotiated for receipt by the University of Maryland University College, except fees, tuition, and charges published in catalogues and ordinarily charged to students;

(ii) a proposal generated, received, or negotiated by the University of Maryland University College, other than with its students, for the provision of education services; or

(iii) any research, analysis, or plans compiled by or for the University of Maryland University College relating to its operations or proposed operations.

(2) A custodian may not deny inspection of any part of a public record under paragraph (1) of this subsection if:

(i) the record relates to a procurement by the University of Maryland University College;

(ii) the University of Maryland University College is required to develop or maintain the record by law or at the direction of the Board of Regents of the University System of Maryland; or

(iii)

1. the record is requested by the exclusive representative of any bargaining unit of employees of the University of Maryland University College;

2. the record relates to a matter that is the subject of collective bargaining negotiations between the exclusive representative and the University of Maryland University College; and

3. the exclusive representative has entered into a nondisclosure agreement with the University of Maryland University College to ensure the confidentiality of the information provided.

(m) Public institutions of higher education

(1) (i) In this subsection the following words have the meanings indicated,

(ii) "Discretionary information" has the same meaning as provided in 20 U.S.C. § 1232g.

(iii) "Personal information" means:

- 1. an address;
- 2. a phone number;
- 3. an electronic mail address; or
- 4. directory information.

(2) A custodian of a record kept by a public institution of higher education that contains personal information relating to a student, former student, or applicant may:

- (i) require that a request to inspect a record containing personal information be made in writing and sent by first-class mail; and
- (ii) if the information is requested for commercial purposes, deny inspection of the part of the record containing the personal information.

§ 10-619. *Temporary denials*

(a) Whenever this Part III of this subtitle authorizes inspection of a public record but the official custodian believes that inspection would cause substantial injury to the public interest, the official custodian may deny inspection temporarily.

(b)

(1) Within 10 working days after the denial, the official custodian shall petition a court to order permitting the continued denial of inspection.

(2) The petition shall be filed with the circuit court for the county where:

- (i) the public record is located; or
- (ii) the principal place of business of the official custodian is located.

(3) The petition shall be served on the applicant, as provided in the Maryland Rules.

(c) The applicant is entitled to appear and to be heard on the petition.

(d) If, after the hearing, the court finds that inspection of the public record would cause substantial injury to the public interest, the court may pass an appropriate order permitting the continued denial of inspection.

§ 10-620. *Copies*

(a)

(1) Except as otherwise provided in this subsection, an applicant who is authorized to inspect a public record may have:

- (i) a copy, printout, or photograph of the public record; or
- (ii) if the custodian does not have facilities to reproduce the public record, access to the public record to make the copy, printout, or photograph.

(2) An applicant may not have a copy of a judgment until:

- (i) the time for appeal expires; or
- (ii) if an appeal is noted, the appeal is dismissed or adjudicated.

(b)

(1) The copy, printout, or photograph shall be made:

- (i) while the public record is in the custody of the custodian; and
- (ii) whenever practicable, where the public record is kept.

(2) The official custodian may set a reasonable time schedule to make copies, printouts, or photographs.

§ 10-621. *Fees*

(a) In this section, “reasonable fee” means a fee bearing a reasonable relationship to the recovery of actual costs incurred by a governmental unit.

(b) Subject to the limitations in this section, the official custodian may charge an applicant a reasonable fee for the search for, preparation of, and reproduction of a public record.

(c) The official custodian may not charge a fee for the first 2 hours that are needed to search for a public record and prepare it for inspection.

(d)

(1) If another law sets a fee for a copy, printout, or photograph of a public record, that law applies.

(2) The official custodian otherwise may charge any reasonable fee for making or supervising the making of a copy, printout, or photograph of a public record.

(3) The official custodian may charge for the cost of providing facilities for the reproduction of the public record if the custodian did not have the facilities.

(e) The official custodian may waive a fee under this section if:

(1) the applicant asks for a waiver; and

(2) after consideration of the ability of the applicant to pay the fee, and other relevant factors, the official custodian determines that the waiver would be in the public interest.

§ 10-622. *Administrative review*

(a) This section does not apply when the official custodian temporarily denies inspection under § 10-619 of this subtitle.

(b) If a unit is subject to Subtitle 2 of this title, a person or governmental unit may seek administrative review in accordance with that subtitle of a decision of the unit, under this Part III of this subtitle, to deny inspection of any part of a public record.

(c) A person or governmental unit need not exhaust the remedy under this section before filing suit.

§ 10-623. *Judicial review*

(a) Whenever a person or governmental unit is denied inspection of a public record, the person or governmental unit may file a complaint with the circuit court for the county where:

- (1) the complainant resides or has a principal place of business; or
- (2) the public record is located.

(b)

(1) Unless, for good cause shown, the court otherwise directs and notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to the complaint within 30 days after service of the complaint.

(2) The defendant:

(i) has the burden of sustaining a decision to deny inspection of a public record; and

(ii) in support of the decision, may submit a memorandum to the court.

(c)

(1) Except for cases that the court considers of greater importance, a proceeding under this section, including an appeal, shall:

- (i) take precedence on the docket;
- (ii) be heard at the earliest practicable date; and
- (iii) be expedited in every way.

(2) The court may examine the public record in camera to determine whether any part of it may be withheld under this Part III of this subtitle.

(3) The court may:

(i) enjoin the State, a political subdivision, or a unit, official, or employee of the State or of a political subdivision from withholding the public record;

(ii) pass an order for the production of the public record that was withheld from the complainant; and

(iii) for noncompliance with the order, punish the responsible employee for contempt.

(d)

(1) A defendant governmental unit is liable to the complainant for actual damages that the court considers appropriate if the court finds by clear and convincing evidence that any defendant knowingly and willfully failed to disclose or fully to disclose a public record that the complainant was entitled to inspect under this Part III of this subtitle.

(2) An official custodian is liable for actual damages that the court considers appropriate if the court finds that, after temporarily denying inspection of a public record, the official custodian failed to petition a court for an order to continue the denial.

(e)

(1) Whenever the court orders the production of a public record that was withheld from the applicant and, in addition, finds that the custodian acted arbitrarily or capriciously in withholding the public record, the court shall send a certified copy of its finding to the appointing authority of the custodian.

(2) On receipt of the statement of the court and after an appropriate investigation, the appointing authority shall take the disciplinary action that the circumstances warrant.

(f) If the court determines that the complainant has substantially prevailed, the court may assess against a defendant governmental unit reasonable counsel fees and other litigation costs that the complainant reasonably incurred.

§ 10-624. Personal records

(a) In this section, “personal record” means a public record that names or, with reasonable certainty, otherwise identifies an individual by an identifying factor such as:

- (1) an address;
- (2) a description;
- (3) a finger or voice print;
- (4) a number; or
- (5) a picture.

(b)

(1) Personal records may not be created unless the need for the information has been clearly established by the unit collecting the records.

(2) Personal information collected for personal records:

- (i) shall be appropriate and relevant to the purposes for which it is collected;
- (ii) shall be accurate and current to the greatest extent practicable; and
- (iii) may not be obtained by fraudulent means.

(c)

(1) This subsection only applies to units of State government.

(2) Except as otherwise provided by law, an official custodian who keeps personal records shall, to the greatest extent practicable, collect personal information from the person in interest.

(3) An official custodian who requests personal information for personal records shall provide the following information to each person in interest from whom personal information is collected:

- (i) the purpose for which the personal information is collected;
- (ii) any specific consequences to the person for refusal to provide the personal information;
- (iii) the person’s right to inspect, amend, or correct personal records, if any;
- (iv) whether the personal information is generally available for public inspection; and
- (v) whether the personal information is made available or transferred to or shared with any entity other than the official custodian.

(4) Each unit of State government shall post its privacy policies with regard to the collection of personal information, including the policies specified in this subsection, on its Internet website.

(5) The following personal records shall be exempt from the requirements of this subsection:

(i) information pertaining to the enforcement of criminal laws or the administration of the penal system;

(ii) information contained in investigative materials kept for the purpose of investigating a specific violation of State law and maintained by a State agency whose principal function may be other than law enforcement;

(iii) information contained in public records which are accepted by the State Archivist for deposit in the Maryland Hall of Records;

(iv) information gathered as part of formal research projects previously reviewed and approved by federally mandated institutional review boards; and

(v) any other personal records exempted by regulations adopted by the Secretary of Budget and Management, based on the recommendation of the Secretary of Information Technology.

(6) If the Secretary of Budget and Management adopts regulations under paragraph (5)(v) of this subsection, the Secretary shall, in accordance with § 2-1246 of this article, report to the General Assembly on the personal records exempted from the requirements of this subsection.

(d)

(1) This subsection does not apply to:

- (i) a unit in the Legislative Branch of the State government;
- (ii) a unit in the Judicial Branch of the State government; or
- (iii) a board of license commissioners.

(2) If a unit or instrumentality of the State government keeps personal records, the unit or instrumentality shall submit an annual report to the Secretary of General Services, as provided in this subsection.

(3) An annual report shall state:

- (i) the name of the unit or instrumentality;
- (ii) for each set of the personal records:
 1. the name;
 2. the location; and
 3. if a subunit keeps the set, the name of the subunit;
- (iii) for each set of personal records that has not been previously reported:
 1. the category of individuals to whom the set applies;
 2. a brief description of the types of information that the set contains;
 3. the major uses and purposes of the information;
 4. by category, the source of information for the set; and
 5. the policies and procedures of the unit or instrumentality as to access and challenges to the personal record by the person in interest and storage, retrieval, retention, disposal, and security, including controls on access; and
- (iv) for each set of personal records that has been disposed of or changed significantly since the unit or instrumentality last submitted a report, the information required under item (iii) of this paragraph.

(4) A unit or instrumentality that has 2 or more sets of personal records may combine the personal records in the report only if the character of the personal records is highly similar.

(5) The Secretary of General Services shall adopt regulations that govern the form and method of reporting under this subsection.

(6) The annual report shall be available for public inspection.

(e) The official custodian may permit inspection of personal records for which inspection otherwise is not authorized by a person who is engaged in a research project if:

- (1) the researcher submits to the official custodian a written request that:
 - (i) describes the purpose of the research project;
 - (ii) describes the intent, if any, to publish the findings;
 - (iii) describes the nature of the requested personal records;
 - (iv) describes the safeguards that the researcher would take to protect the identity of the persons in interest; and

(v) states that persons in interest will not be contacted unless the official custodian approves and monitors the contact;

(2) the official custodian is satisfied that the proposed safeguards will prevent the disclosure of the identity of persons in interest; and

(3) the researcher makes an agreement with the unit or instrumentality that:

(i) defines the scope of the research project;

(ii) sets out the safeguards for protecting the identity of the persons in interest; and

(iii) states that a breach of any condition of the agreement is a breach of contract.

§ 10-625. *Corrections of public record*

(a) A person in interest may request a unit of the State government to correct inaccurate or incomplete information in a public record that:

(1) the unit keeps; and

(2) the person in interest is authorized to inspect.

(b) A request under this section shall:

(1) be in writing;

(2) describe the requested change precisely; and

(3) state the reasons for the change.

(c)

(1) Within 30 days after receiving a request under this section, a unit shall:

(i) make or refuse to make the requested change; and

(ii) give the person in interest written notice of the action taken.

(2) A notice of refusal shall contain the unit's reasons for the refusal.

(d)

(1) If the unit finally refuses a request under this section, the person in interest may submit to the unit a concise statement that, in 5 pages or less, states the reasons for the request and for disagreement with the refusal.

(2) Whenever the unit provides the disputed information to a third party, the unit shall provide to that party a copy of the statement submitted to the unit by the person in interest.

(e) If a unit is subject to Subtitle 2 of this title, a person or governmental unit may seek administrative and judicial review in accordance with that subtitle of:

(1) a decision of the unit to deny:

(i) a request to change a public record; or

(ii) a right to submit a statement of disagreement; or

(2) the failure of the unit to provide the statement to a third party.

§ 10-626. *Unlawful disclosure of personal records*

(a) A person, including an officer or employee of a governmental unit, is liable to an individual for actual damages that the court considers appropriate if the court finds by clear and convincing evidence that:

(1)

(i) the person willfully and knowingly permits inspection or use of a public record in violation of this Part III of this subtitle; and

(ii) the public record names or, with reasonable certainty, otherwise identifies the individual by an identifying factor such as:

1. an address;

2. a description;

3. a finger or voice print;

4. a number; or

5. a picture; or

(2) the person willfully and knowingly obtains, discloses, or uses personal information in violation of § 10-616(p) of this subtitle.

(b) If the court determines that the complainant has substantially prevailed, the court may assess against a defendant reasonable counsel fees and other litigation costs that the complainant reasonably incurred.

§ 10-627. *Prohibited acts; criminal penalties*

(a) A person may not:

(1) willfully or knowingly violate any provision of this Part III of this subtitle;

(2) fail to petition a court after temporarily denying inspection of a public record; or

(3) by false pretenses, bribery, or theft, gain access to or obtain a copy of a personal record whose disclosure to the person is prohibited by this Part III of this subtitle.

(b) A person who violates any provision of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$1,000.

§ 10-628. *Immunity for certain disclosures*

A custodian is not civilly or criminally liable for transferring or disclosing the contents of a public record to the Attorney General under § 5-313 of the State Personnel and Pensions Article.

§ 10-629. *Reserved*

§ 10-630. *Citation of part*

This Part III of this subtitle may be cited as the Public Information Act.

Open Meetings

State Government

Title 10. Governmental Procedures

Subtitle 5. Meetings

§ 10-501. *Legislative policy*

(a) It is essential to the maintenance of a democratic society that, except in special and appropriate circumstances:

(1) public business be performed in an open and public manner; and

(2) citizens be allowed to observe:

(i) the performance of public officials; and

(ii) the deliberations and decisions that the making of public policy involves.

(b)

(1) The ability of the public, its representatives, and the media to attend, report on, and broadcast meetings of public bodies and to witness the phases of the deliberation, policy formation, and decision making of public bodies ensures the accountability of government to the citizens of the State.

(2) The conduct of public business in open meetings increases the faith of the public in government and enhances the effectiveness of the public in fulfilling its role in a democratic society.

(c) Except in special and appropriate circumstances when meetings of public bodies may be closed under this subtitle, it is the public policy of the State that

the public be provided with adequate notice of the time and location of meetings of public bodies, which shall be held in places reasonably accessible to individuals who would like to attend these meetings.

§ 10-502. *Definitions*

(a) In this subtitle the following words have the meanings indicated.

(b)

(1) “Administrative function” means the administration of:

- (i) a law of the State;
- (ii) a law of a political subdivision of the State; or
- (iii) a rule, regulation, or bylaw of a public body.

(2) “Administrative function does not include:

- (i) an advisory function;
- (ii) a judicial function;
- (iii) a legislative function;
- (iv) a quasi-judicial function; or

(v) a quasi-legislative function. (c) “Advisory function” means the study of a matter of public concern or the making of recommendations on the matter, under a delegation of responsibility by:

(1) law;

(2) the governor or an official who is subject to the policy direction of the governor;

(3) the chief executive officer of a political subdivision of the State or an official who is subject to the policy direction of the chief executive officer; or

(4) formal action by or for a public body that exercises an administrative, judicial, legislative, quasi-judicial, or quasi-legislative function.

(d) “Board” means the State Open Meetings Law Compliance Board.

(e)

(1) “Judicial function” means the exercise of any power of the Judicial Branch of the State government.

(2) “Judicial function” includes the exercise of:

(i) a power for which Article IV, § 1 of the Maryland Constitution provides;

- (ii) a function of a grand jury;
- (iii) a function of a petit jury;
- (iv) a function of the Commission on Judicial Disabilities; and
- (v) a function of a judicial nominating commission.

(3) “Judicial function” does not include the exercise of rulemaking power by a court.

(f) “Legislative function” means the process or act of:

(1) approving, disapproving, enacting, amending, or repealing a law or other measure to set public policy;

- (2) approving or disapproving an appointment;
- (3) proposing or ratifying a constitution or constitutional amendment; or
- (4) proposing or ratifying a charter or charter amendment.

(g) “Meet” means to convene a quorum of a public body for the consideration or transaction of public business.

(h)

(1) “Public body” means an entity that:

- (i) consists of at least 2 individuals; and
- (ii) is created by:

- 1. the Maryland Constitution;
- 2. a State statute;
- 3. a county or municipal charter;
- 4. an ordinance;
- 5. a rule, resolution, or bylaw;
- 6. an executive order of the Governor; or

7. an executive order of the chief executive authority of a political subdivision of the State.

(2) “Public body” includes:

(i) any multimember board, commission, or committee appointed by the Governor or the chief executive authority of a political subdivision of the State, or appointed by an official who is subject to the policy direction of the Governor or chief executive authority of the political subdivision, if the entity includes in its membership at least 2 individuals not employed by the State or the political subdivision; and

(ii) any multimember board, commission, or committee that:

1. is appointed by:

A. an entity in the Executive branch of State government, the members of which are appointed by the Governor, and that otherwise meets the definition of a public body under this subsection; or

B. an official who is subject to the policy direction of an entity described in item A of this item; and

2. includes in its membership at least 2 individuals who are not members of the appointing entity or employed by the State; and

(iii) The Maryland School for the Blind.

(3) “Public body” does not include:

- (i) any single member entity;
- (ii) any judicial nominating commission;
- (iii) any grand jury;
- (iv) any petit jury;

(v) the Appalachian States Low Level Radioactive Waste Commission established in § 7-302 of the Environment Article;

(vi) except when a court is exercising rulemaking power, any court established in accordance with Article IV of the Maryland Constitution;

(vii) the Governor’s cabinet, the Governor’s Executive Council as provided in Title 8, Subtitle 1 of this article, or any committee of the Executive Council;

(viii) a local government’s counterpart to the Governor’s cabinet, Executive Council, or any committee of the counterpart of the Executive Council;

(ix) except as provided in paragraph (1) of this subsection, a subcommittee of a public body as defined under paragraph (2)(i) of this subsection;

(x) the governing body of a hospital as defined in § 19-301(g) of the Health-General Article; and

(xi) a self-insurance pool that is established in accordance with Title 19, Subtitle 6 of the Insurance Article or § 9-404 of the Labor and Employment Article by:

- 1. a public entity, as defined in § 19-602 of the Insurance Article; or
- 2. a county or municipal corporation, as defined in § 9-404 of the Labor and Employment Article.

(i) “Quasi-judicial function” means a determination of:

- (1) a contested case to which Subtitle 2 of this title applies;
- (2) a proceeding before an administrative agency for which Title 7, Chapter 200 of the Maryland Rules would govern judicial review; or
- (3) a complaint by the Board in accordance with this subtitle.

(j) “Quasi-legislative function” means the process or act of:

(1) adopting, disapproving, amending, or repealing a rule, regulation, or bylaw that has the force of law, including a rule of a court;

(2) approving, disapproving, or amending a budget; or

(3) approving, disapproving, or amending a contract.

(k) “Quorum” means:

(1) a majority of the members of a public body; or

(2) any different number that law requires.

§ 10-502.1. State Open Meetings Law Compliance Board

There is a State Open Meetings Law Compliance Board.

§ 10-502.2. Membership

(a)

(1) The Board consists of 3 members, at least one of whom shall be an attorney admitted to the Maryland Bar, appointed by the Governor with the advice and consent of the Senate.

(2) From among the members of the Board, the Governor shall appoint a chairman.

(b)

(1) The term of a member is 3 years.

(2) The terms of members are staggered as required by the terms provided for members of the Board on July 1, 1991.

(3) At the end of a term, a member continues to serve until a successor is appointed.

(4) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed.

(5) A member may not serve for more than 2 consecutive 3-year terms.

§ 10-502.3. Quorum; meetings; compensation

(a) A majority of the full authorized membership of the Board is a quorum.

(b) The Board shall meet at a time and place to be determined by the Board.

(c) Each member of the Board:

(1) may not receive compensation; and

(2) is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(d) The Office of the Attorney General shall provide staff for the Board.

§ 10-502.4. Duties

(a) The Board shall receive, review, and resolve complaints from any person alleging a violation of the provisions of this subtitle and issue a written opinion as to whether a violation has occurred.

(b) The Board shall receive and review any complaint alleging a prospective violation of the provisions of this subtitle as provided under § 10-502.6 of this subtitle.

(c) The Board shall study ongoing compliance with the provisions of this subtitle by public bodies and make recommendations to the General Assembly for improvements in this subtitle.

(d) The Board, in conjunction with the Office of the Attorney General and other interested organizations or persons, shall develop and conduct educational programs on the requirements of the open meetings law for the staffs and attorneys of:

(1) public bodies;

(2) the Maryland Municipal League; and

(3) the Maryland Association of Counties.

(e)

(1) On or before October 1 of each year, the Board shall submit an annual report to the Governor and the General Assembly in accordance with § 2-1246 of this article.

(2) The report shall include a description of:

(i) the activities of the Board;

(ii) the opinions of the Board in any cases brought before it;

(iii) the number and nature of complaints filed with the Board, including a discussion of complaints concerning the reasonableness of the notice provided for meetings; and

(iv) any recommendations for improvements to the provisions of this subtitle.

§ 10-502.5. Complaint

(a) Any person may file a written complaint with the Board seeking a written opinion from the Board on the application of the provisions of this subtitle to the action of a public body covered by this subtitle.

(b) The complaint shall:

(1) be signed by the person making the complaint; and

(2) identify the public body, specify the action of the public body, the date of the action, and the circumstances of the action.

(c)

(1) On receipt of the written complaint, and except as provided in paragraph (3) of this subsection, the Board shall promptly send the complaint to the public body identified in the complaint and request that a response to the complaint be sent to the Board.

(2)

(i) The public body shall file a written response to the complaint within 30 days of its receipt of the complaint.

(ii) On request of the Board, the public body shall include with its written response to the complaint a copy of:

1. a notice provided under § 10-506 of this subtitle;

2. a written statement made under § 10-508(d)(2)(ii) of this subtitle; and

3. minutes and any tape recording made by the public body under § 10-509 of this subtitle.

(iii) The Board shall maintain the confidentiality of minutes and any tape recording submitted by a public body that are sealed in accordance with § 10-509(c)(3)(ii) of this subtitle.

(3) (i) If the public body identified in the complaint no longer exists, the Board shall promptly send the complaint to the official or entity that appointed the public body;

(ii) The official or entity that appointed the public body shall, to the extent feasible, comply with the requirements of paragraph (2) of this subsection.

(4) If after 45 days, a written response is not received, the Board shall decide the case on the facts before it.

(d) The Board shall:

(1) review the complaint and any response; and

(2) if the information in the complaint and response is sufficient to permit a determination, issue a written opinion as to whether a violation of the provisions of this subtitle has occurred or will occur not later than 30 days after receiving the response.

(e)

(1) If the Board is unable to reach a determination based on the written submissions before it, the Board may schedule an informal conference to hear from the complainant, the public body, or any other person with relevant infor-

mation about the subject of the complaint.

(2) An informal conference scheduled by the Board is not a “contested case” within the meaning of § 10-202(d) of this title.

(3) The Board shall issue a written opinion not later than 30 days following the informal conference.

(f)

(1) If the Board is unable to render an opinion on a complaint within the time periods specified in subsection (d) or (e) of this section, the Board shall:

(i) state in writing the reason for its inability; and

(ii) issue an opinion as soon as possible but not later than 90 days after the filing of the complaint.

(2) An opinion of the Board may state that the Board is unable to resolve the complaint.

(g) The Board shall send a copy of the written opinion to the complainant and to the affected public body.

(h)

(1) On a periodic basis, the Board may send to any public body in the State any written opinion that will provide the public body with guidance on compliance with the provisions of this subtitle.

(2) On request, a copy of a written opinion shall be provided to any person.

(i)

(1) The opinions of the Board are advisory only.

(2) The Board may not require or compel any specific actions by a public body.

(j) A written opinion issued by the Board may not be introduced as evidence in a proceeding conducted in accordance with § 10-510 of this subtitle.

§ 10-502.6. *Complaint – Prospective violation*

(a) On receipt of an oral or written complaint by any person that a meeting required to be open under the provisions of this subtitle will be closed in violation of this subtitle, the Board acting through its chairman, a designated Board member, or any authorized staff person available to the Board may contact the public body to determine the nature of the meeting that will be held and the reason for the expected closure of the meeting.

(b) When at least 2 members of the Board conclude that a violation of this subtitle may occur if the closed meeting is held, the person acting for the Board under subsection (a) of this section immediately shall inform the public body of the potential violation and any lawful means that are available for conducting its meeting to achieve the purposes of the public body.

(c) The person acting for the Board shall inform the person who filed the complaint under subsection (a) of this section of the result of any effort to achieve compliance with this subtitle under subsection (b) of this section.

(d) The person acting for the Board shall file a written report with the Board describing the complaint, the effort to achieve compliance, and the results of the effort.

(e) The filing of a complaint under subsection (a) of this section and action by a person acting for the Board under subsections (b), (c), and (d) of this section may not prevent or bar the Board from considering and acting on a written complaint filed in accordance with § 10-502.5 of this subtitle.

§ 10-503. *Scope of subtitle; administrative function meetings*

(a) Except as provided in subsections (b) and (c) of this section, this subtitle does not apply to:

(1) a public body when it is carrying out:

(i) an administrative function;

(ii) a judicial function; or

(iii) a quasi-judicial function; or

(2) a chance encounter, social gathering, or other occasion that is not intended to circumvent this subtitle.

(b) The provisions of this subtitle apply to a public body when it is meeting to consider:

(1) granting a license or permit; or

(2) a special exception, variance, conditional use, zoning classification, the enforcement of any zoning law or regulation, or any other zoning matter.

(c) If a public body recesses an open session to carry out an administrative function in a meeting that is not open to the public, the minutes for the public body’s next meeting shall include:

(1) a statement of the date, time, place, and persons present at the administrative function meeting; and

(2) a phrase or sentence identifying the subject matter discussed at the administrative function meeting.

§ 10-504. *Conflict of laws*

Whenever this subtitle and another law that relates to meetings of public bodies conflict, this subtitle applies unless the other law is more stringent.

§ 10-505. *Open sessions generally required*

Except as otherwise expressly provided in this subtitle, a public body shall meet in open session.

§ 10-506. *Notice of open session*

(a) Before meeting in a closed or open session, a public body shall give reasonable advance notice of the session.

(b) Whenever reasonable, a notice under this section shall:

(1) be in writing;

(2) include the date, time, and place of the session; and

(3) if appropriate, include a statement that a part or all of a meeting may be conducted in closed session.

(c) A public body may give the notice under this section as follows:

(1) if the public body is a unit of the State government, by publication in the Maryland Register;

(2) by delivery to representatives of the news media who regularly report on sessions of the public body or the activities of the government of which the public body is a part;

(3) if the public body previously has given public notice that this method will be used:

(i) by posting or depositing the notice at a convenient public location at or near the place of the session; or

(ii) by posting the notice on an Internet website ordinarily used by the public body to provide information to the public; or

(4) by any other reasonable method.

(d) A public body shall keep a copy of a notice provided under this section for at least 1 year after the date of the session.

§ 10-507. *Attendance at open session*

(a) Whenever a public body meets in open session, the general public is entitled to attend.

(b) A public body shall adopt and enforce reasonable rules regarding the conduct of persons attending its meetings and the videotaping, televising, photographing, broadcasting, or recording of its meetings.

(c)

(1) If the presiding officer determines that the behavior of an individual is

disrupting an open session, the public body may have the individual removed.

(2) Unless the public body or its members or agents acted maliciously, the public body, members, and agents are not liable for having an individual removed under this subsection.

§ 10-507.1. Interpreters

(a) This section applies only to the Executive and Legislative branches of State government.

(b)

(1) On request and to the extent feasible, a unit that holds a public hearing shall provide a qualified interpreter to assist deaf persons to understand the proceeding.

(2) The request must be submitted in writing or by telecommunication at least 5 days before the proceeding begins.

(3) Whether providing an interpreter is feasible shall be determined, in each instance, by the unit involved.

§ 10-508. Closed sessions permitted

(a) Subject to the provisions of subsection (d) of this section, a public body may meet in closed session or adjourn an open session to a closed session only to:

(1) discuss:

(i) the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of appointees, employees, or officials over whom it has jurisdiction; or

(ii) any other personnel matter that affects 1 or more specific individuals;

(2) protect the privacy or reputation of individuals with respect to a matter that is not related to public business;

(3) consider the acquisition of real property for a public purpose and matters directly related thereto;

(4) consider a matter that concerns the proposal for a business or industrial organization to locate, expand, or remain in the State;

(5) consider the investment of public funds;

(6) consider the marketing of public securities;

(7) consult with counsel to obtain legal advice;

(8) consult with staff, consultants, or other individuals about pending or potential litigation;

(9) conduct collective bargaining negotiations or consider matters that relate to the negotiations;

(10) discuss public security, if the public body determines that public discussion would constitute a risk to the public or to public security, including:

(i) the deployment of fire and police services and staff; and

(ii) the development and implementation of emergency plans;

(11) prepare, administer, or grade a scholastic, licensing, or qualifying examination;

(12) conduct or discuss an investigative proceeding on actual or possible criminal conduct;

(13) comply with a specific constitutional, statutory, or judicially imposed requirement that prevents public disclosures about a particular proceeding or matter; or

(14) before a contract is awarded or bids are opened, discuss a matter directly related to a negotiating strategy or the contents of a bid or proposal, if public discussion or disclosure would adversely impact the ability of the public body to participate in the competitive bidding or proposal process.

(b) A public body that meets in closed session under this section may not discuss or act on any matter not permitted under subsection (a) of this section.

(c) The exceptions in subsection (a) of this section shall be strictly construed in favor of open meetings of public bodies.

(d)

(1) Unless a majority of the members of a public body present and voting vote in favor of closing the session, the public body may not meet in closed session.

(2) Before a public body meets in closed session, the presiding officer shall:

(i) conduct a recorded vote on the closing of the session; and

(ii) make a written statement of the reason for closing the meeting, including a citation of the authority under this section, and a listing of the topics to be discussed.

(3) If a person objects to the closing of a session, the public body shall send a copy of the written statement required under paragraph (2) of this subsection to the Board.

(4) The written statement shall be a matter of public record.

(5) A public body shall keep a copy of the written statement made under paragraph (2)(ii) of this subsection for at least 1 year after the date of the session.

§ 10-509. Minutes; tape recordings

(a) This section does not:

(1) require any change in the form or content of the Journal of the Senate of Maryland or Journal of the House of Delegates of Maryland; or

(2) limit the matters that a public body may include in its minutes.

(b) As soon as practicable after a public body meets, it shall have written minutes of its session prepared.

(c)

(1) The minutes shall reflect:

(i) each item that the public body considered;

(ii) the action that the public body took on each item; and

(iii) each vote that was recorded.

(2) If a public body meets in closed session, the minutes for its next open session shall include:

(i) a statement of the time, place, and purpose of the closed session;

(ii) a record of the vote of each member as to closing the session;

(iii) a citation of the authority under this subtitle for closing the session; and

(iv) a listing of the topics of discussion, persons present, and each action taken during the session.

(3)

(i) A session may be tape recorded by a public body.

(ii) Except as otherwise provided in paragraph (4) of this subsection, the minutes and any tape recording of a closed session shall be sealed and may not be open to public inspection.

(4) The minutes and any tape recording shall be unsealed and open to inspection as follows:

(i) for a meeting closed under § 10-508(a)(5) of this subtitle, when the public body invests the funds;

(ii) for a meeting closed under § 10-508(a)(6) of this subtitle, when the public securities being discussed have been marketed; or

(iii) on request of a person or on the public body's own initiative, if a majority of the members of the public body present and voting vote in favor of unsealing the minutes and any tape recording.

(d) Except as provided in subsection (c) of this section, minutes of a public body are public records and shall be open to public inspection during ordinary business hours.

(e) A public body shall keep a copy of the minutes of each session and any tape recording made under subsection (c)(3)(i) of this section for at least 1 year after the date of the session.

(c) In an action under this section, it is presumed that the public body did not violate any provision of this subtitle, and the complainant has the burden of proving the violation.

§ 10-510. Enforcement

(a)

(1) This section does not apply to the action of:

(i) appropriating public funds;

(ii) levying a tax; or

(iii) providing for the issuance of bonds, notes, or other evidences of public obligation.

(2) This section does not authorize a court to void an action of a public body because of any violation of this subtitle by another public body.

(3) This section does not affect or prevent the use of any other available remedies.

(b)

(1) If a public body fails to comply with § 10-505, § 10-506, § 10-507, § 10-508, or § 10-509(c) of this subtitle any person may file with a circuit court that has venue a petition that asks the court to:

(i) determine the applicability of those sections;

(ii) require the public body to comply with those sections; or

(iii) void the action of the public body.

(2) If a violation of § 10-506, § 10-508, or § 10-509(c) of this subtitle is alleged, the person shall file the petition within 45 days after the date of the alleged violation.

(3) If a violation of § 10-505 or § 10-507 of this subtitle is alleged, the person shall file the petition within 45 days after the public body includes in the minutes of an open session the information specified in § 10-509(c)(2) of this subtitle.

(4) If a written complaint is filed with the Board in accordance with § 10-502.5 of this subtitle, the time between the filing of the complaint and the mailing of the written opinion to the complainant and the affected public body under § 10-502.5(g) of this subtitle may not be included in determining if a claim against a public body is barred by the statute of limitations set forth in paragraphs (2) and (3) of this subsection.

(d) A court may:

(1) consolidate a proceeding under this section with another proceeding under this section or an appeal from the action of the public body;

(2) issue an injunction;

(3) determine the applicability of this subtitle to the discussions or decisions of public bodies;

(4) if the court finds that a public body willfully failed to comply with § 10-505, § 10-506, § 10-507, or § 10-509(c) of this subtitle and that no other remedy is adequate, declare void the final action of the public body;

(5) as part of its judgment:

(i) assess against any party reasonable counsel fees and other litigation expenses that the party who prevails in the action incurred; and

(ii) require a reasonable bond to ensure the payment of the assessment; and

(6) grant any other appropriate relief.

(e)

(1) A person may file a petition under this section without seeking an opinion from the State Open Meetings Law Compliance Board.

(2) The failure of a person to file a complaint with the Board is not a ground for the court to either stay or dismiss a petition.

§ 10-511. Penalty

A member of a public body who willfully participates in a meeting of the body with knowledge that the meeting is being held in violation of the provisions of this subtitle is subject to a civil penalty not to exceed \$100.

§ 10-512. Short title

This subtitle may be cited as the "Open Meetings Act".

