




# PRACTICE

No. 5-81

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## MARYLAND PUBLIC INFORMATION ACT (MPIA) POLICY

- AUTHORITY** Pursuant to Md. Code Ann., Title 4 of the General Provisions Article this Administrative Practice was approved by the Executive Committee on November 2, 2022.
- APPLICATION** This Administrative Practice applies to any request for Public Records received by Commission employees, the Planning Boards, Executive Director, Department Heads, and other appointed officials.
- PURPOSE/  
BACKGROUND** On July 1, 1985, the Commission’s Executive Committee approved Administrative Practice 5-80, Public Information and Records Management. Since its inception the Practice has been amended as follows:
- July 6, 2022: The Executive Committee approved amendments to Practice 5-80 changing the name to “Records Management,” and separating the requirements for records retention from the requirements of the Maryland Public Information Act.
  - November 2, 2022: the Executive Committee approved Practice 5-81, Maryland Public Information Act Policy to create a separate Practice for responding to requests from the public for the Commission’s Public Records.
- REFERENCES**
- Maryland Public Information Act, Md Code Ann., Title 4 of the General Provisions Article
  - Maryland Public Information Act Manual (as amended), prepared by the Maryland Office of the Attorney General
  - Administrative Practice 2-28, Employment Records
  - Administrative Practice 5-60, Open Meetings
  - Administrative Practice 5-61, Lobbying Disclosure
  - Administrative Practice 5-70, Financial Disclosure
  - Administrative Practice 5-80, Records Management
  - Administrative Practice 6-13, Electronic Communications Policy
  - Administrative Procedures 22-01, M-NCPPC Procedures Manual for Handling Requests for Public Records Pursuant to the Maryland Public Information Act
  - M-NCPPC Administrative Procedures 20-01, Access to Electronic Data Records
  - Retention Schedule 1229 approved by the Hall of Records Commission, State of Maryland, August 21, 1990

## DEFINITIONS

“**Act**” means the Maryland Public Information Act as codified at Md. Code Ann., Title 4 of the General Provisions Article

“**Applicant**” means a person or governmental unit that asks to inspect a Public Record.

“**Application**” means a written or oral request for records within the custody or control of the Commission.

“**Commission**” means the Maryland-National Capital Park and Planning Commission.

“**Custodian**” means any authorized person who has physical custody and control of the Public Record, including the Official Custodian, Designee, the MPIA Coordinator, or another person having physical custody or control of a Public Record.

“**Denied Record**” means a record that the Custodian did not provide to the Applicant pursuant to one of the Exemptions or Exceptions of the Act.

“**Department**” means a business unit or division within the Commission, including but not limited to the following: Department of Human Resources Management, Corporate Policy and Management Operations, Montgomery County Department of Parks, Montgomery County Park Police Division, Montgomery County Planning Department, Prince George’s County Park Police Division, Prince George’s County Department of Parks and Recreation, Prince George’s County Planning Department, the Department of Finance, the Office of the General Counsel, Montgomery County Planning Board Office, Prince George’s County Planning Board Office, the Merit System Protection Board, the Office of the Inspector General, the Office of the Chief Information Officer, and any of the IT business units.

“**Department Head**” means the director of a Department.

“**Designee**” means the Commission’s Corporate Archives and Records Management Administrator or another employee that the Official Custodian has delegated authority to manage and coordinate all duties under the Act on behalf of the Commission.

“**Discretionary Exception Records**” means Public Records or parts thereof, that the Custodian may deny inspection of, pursuant to §§ 4-434 through 4-356 of the Act, because the Custodian believes providing them would be contrary to the public interest. These include: interagency or intra-agency letters or memoranda; examination information; state or local research project; inventions owned by state public institutions of higher education; confidential information owned by State entities; real estate appraisals; site-specific locations of certain plants, animals, or property; investigation, intelligence or security information; emergency management information; Maryland Port Administration, University of Maryland Global Campus records and public institution of higher education records; and, 911 communications that depict the victim.

## Definitions (Continued)

**“Exempt Record”** means any Public Record or part of a Public Record, for which § 4-301 of the Act requires the Custodian to deny inspection because: i) by law the Public Record is privileged or confidential; or ii) the inspection would be contrary to a State statute, a federal statute or regulation; or, iii) the inspection would be contrary to the rules adopted by the Court of Appeals or any court order.

**“IT Coordinator”** means the information technology unit staff designated to provide support for a Department to comply with the Act.

**“Mandatory Exception Information”** means information that may be a part of a Public Record for which the Custodian must deny inspection as defined in §§ 4-328 through 4-341 of the Act. This specific information includes: medical, psychological, or sociological information; information about public employees or notaries; licensing records; social security number; trade secrets and confidential information; financial information; collusive or anti-competitive activity; security of information systems, alarm or security system; senior citizen activities centers; distribution list issued by a governmental entity or elected official.

**“Mandatory Exception Record”** means any Public Record as described in §§ 4-304 through 4-327 of the Act which a Custodian must deny inspection unless required to provide it by some other law. These include: adoption, hospital, and welfare records; library and gifts of library, archival, or museum materials; letters of reference, personnel, and retirement records; student records; higher education investment contracts and school safety plans, policies, and guidelines; traffic accident reports, criminal charging documents and traffic citations; arrest warrants and charging documents; Department of Natural Resources, Maryland Transit Administration, Maryland Transportation Authority and Motor Vehicle Administration records; images from traffic control signal monitoring system and surveillance images; risk-based capital records; renewable energy credit records; firearm and handgun records; captured plate data; and shielded records. All these records are defined in the Act.

**“Manual”** means the Administrative Procedures 22-01, the M-NCPPC MPIA Procedures Manual.

**“Metadata”** means information that does not constitute a Public Record, and constitutes information that is generally not visible when an electronic document is printed, describing the history, tracking, or management of the electronic document, including information about data in the electronic document that describes how, when, and by whom the data is collected, created, accessed, or modified and how the data is formatted; but does not include: (1) a spreadsheet formula; (2) a database field; (3) an externally or internally linked file; or (4) a reference to an external file or a hyperlink.

## Definitions (Continued)

“**MPIA Coordinator**” means the Department employee assigned to respond to the Application received by or related to the respective Department.

“**Official Custodian**” means the Executive Director of the Commission or Designee as the designated custodian of record for the Commission who is officially responsible for keeping the Public Record and ensuring proper management and response to the Applications in accordance with the Act.

“**Practice**” means the Administrative Practice 5-81, M-NCPPC Public Information Act Policy.

“**Public Access Ombudsman**” means the State employee appointed by the Maryland Attorney General to resolve disputes between applicants and custodians.

“**Public Record(s)**” means the original or any copy of any documentary material that: (1) is made or received by the Commission in connection with the transaction of its public business, including the salary of Commission employees; and (2) is in any form, including, for example: a card; a computerized or electronic record; correspondence; a text message, a drawing; film or microfilm; a form; a map; a photograph or photostat; a video or audio recording; or a tape; but does not include (a) a digital photographic image or signature of an individual, or (b) the actual stored data of the image or signature, recorded by the Motor Vehicle Administration.

“**Readily Available Record**” means Public Records designated by the Official Custodian, or Designee, that are immediately accessible to the public without search by the MPIA Coordinator or Designee and for which the Official Custodian maintains a list of the types and categories of such records.

“**Reasonable Fee**” means a fee bearing a reasonable relationship to the recovery of actual costs incurred by the Commission to produce the Responsive Record, minus the cost for Statutory Time Allowance, that must be collected by the Commission before the release of the Responsive Record.

“**Responsive Record**” means documents or data that are responsive to an Application that the Act requires the Commission (1) to timely provide to the Applicant; and (2) do not constitute Denied Records.

“**State Public Information Act Compliance Board**” means the five-member board appointed by the Governor that receives, reviews, and resolves disputes between applicants and custodians relating to requests for Public Records.

“**Statutory Time Allowance**” means the first two hours the Commission spends to search and prepare the Responsive Record for release that are not charged to the Applicant as part of the Reasonable Fee.

## Definitions (Continued)

**“Temporary Denials”** means a Public Record that would not be exempt from disclosure under normal circumstances, but which is denied temporarily by the Official Custodian because it has been determined that inspection of the Public Record would cause substantial injury to the public interest. A Temporary Denial shall be, issued within 10 days, followed by a petition to a court to authorize the continued denial of inspection of the Public Record.

## POLICY

The Commission honors the public’s right to access Public Records under the Act while protecting individual rights to privacy, and the public interest, by keeping information confidential, as authorized or required under the Act and other laws relating to public disclosure.

Any person may make an Application to inspect or copy Public Records in the Commission’s custody, and the Commission will provide such access as required by law for a Reasonable Fee as defined in this Practice and within the statutory timeframe to respond as required by the Act. Except as otherwise provided in this Practice, a Custodian shall make Public Records available for inspection by an Applicant upon request. An Application includes any communication sent to the Commission via electronic mail, by letter, or verbal request as well as requests received by Commission employees which are transmitted to the Custodian. The Commission may ask that any verbal Application be made in writing, if such writing will assist the Custodian in preparing the Commission’s response. All Commission staff are responsible for protecting Public Records against misuse, mismanagement, misplacement, damage, undue destruction, or theft.

### I. Duties and Responsibilities

#### A. Executive Director as the Official Custodian of Records

1. The Executive Director is the Commission’s Official Custodian for any purpose prescribed under the Act, this Practice, or the Manual and is responsible for ensuring compliance with the Act throughout the Commission.
2. The Executive Director, as the Official Custodian, may delegate certain responsibilities, except for those specifically prohibited from delegation as covered below. The following responsibilities are only delegated to the Official Custodian:
  - a. **Readily Available Record** – Designating specific types of Public Records that are immediately available and maintaining a list of such records.
  - b. **Authority to Recommend Legal Action** – Recommending whether to seek court action to protect Public Records and Denied Records, as appropriate, from disclosure.
  - c. **Waiver of Fee** – Reviewing and deciding upon requests for fee waivers as covered below under “Waiver of Fees.”

## **I. Duties & Responsibilities: A. Executive Director as the Official Custodian (Continued)**

- d. **Establishment of Reasonable Fee** – Establishing “Reasonable Fee” schedules.
- e. **Temporary Denial** – Temporarily denying inspection of Public Records as covered under “Temporary Denial of a Records Inspection Request” in the Manual and seeking the full Commission’s authorization to file a petition in Circuit Court.

### **B. Department Heads**

1. Each Department Head shall ensure compliance with the Act, this Practice, and the Manual within their respective Department pursuant to the directives of the Official Custodian.
2. Each Department Head shall designate one or more staff members to function continuously as MPIA Coordinator(s) for their respective Department.
3. Each Department Head shall designate a temporary and alternate MPIA Coordinator, as necessary, to maintain uninterrupted coverage during a brief or extended absence of the personnel otherwise assigned to discharge those responsibilities.
4. Each designation required by this section shall be made in writing and delivered to:
  - a. The Official Custodian and Designee,
  - b. The individual(s) so designated, and
  - c. Every supervisor within the individual’s supervisory chain, leading up to the Department Head.
5. Each Department Head shall ensure that MPIA Coordinators undergo appropriate periodic training to ensure that Public Records which are protected from disclosure are properly handled.
6. Each Department Head shall ensure that Public Records management systems are in place within their respective Departments for each division’s work program, so that Public Records are maintained in accordance with the Act, the Commission’s Document Retention Schedule, this Practice, and any accompanying Manual.
7. Each Department Head shall ensure that units under their control (a) have appropriate procedures in place to respond to Applications within the statutory time limits and (b) are otherwise compliant with the requirements for processing the Applications, including but not limited to, the application of Reasonable Fees and Fee Waivers.

### **C. Official Designee**

The Official Designee is responsible for carrying out those functions that are delegated by the Official Custodian to ensure compliance with the Act, and more specifically, as follows:

1. As the Official Custodian’s Designee, ensure that Applications are handled in compliance with the Act, this Practice, and the accompanying Manual.

## **I. Duties & Responsibilities: C. Official Designee (Continued)**

2. Coordinate responses to Applications submitted to Department MPIA Coordinators, as appropriate, and when necessary, helping to facilitate responses to Applications.
3. Maintain an updated list of MPIA Coordinator's name, business address, telephone, and email address for use internally by Commission employees.
4. Maintain and update the list of records that are Readily Available to the Public and coordinate with others to ensure that, where possible, documents are provided on the Commission's websites.
5. Provide updates of any change in the Official Custodian to the Office of the Attorney General.

### **D. MPIA Coordinators**

The designated MPIA Coordinator(s), and any temporary or alternate MPIA Coordinator(s), is responsible for undertaking the functions assigned by this Practice and the Manual, and more specifically, as follows:

1. Review all Applications for their respective Department's Public Records and provide timely responses to Applications, in compliance with the Act, this Practice, and the Manual.
2. Employ appropriate measures to protect restricted Public Records from disclosure, in compliance with the Act, this Practice, and the Manual.
3. Communicate with the Applicant at all stages of the Application, including production of the Responsive Record.
4. Coordinate and cooperate with the Designee, Legal, and other Custodians (as appropriate), when responding to Applications.
5. Maintain the confidentiality of information received, until the information is deemed to be a Responsive Record subject to disclosure, or a Denied Record subject to restriction from disclosure.

### **E. IT Coordinators**

1. Respond, in a timely manner, to requests for electronic data searches made by the Official Custodian, Designee, or MPIA Coordinators, in response to Applications for their respective Department's Public Records, and provide responses in compliance with the Act, this Practice, and the Manual.
2. Each Commission information technology unit will designate one or more staff members to function continuously as an IT Coordinator for their respective unit. IT Coordinators, under the direction of their respective managers, may assign additional IT staff with specialized knowledge of involved systems, to assist on the request, as needed.

## **I. Duties & Responsibilities: E. IT Coordinators (Continued)**

3. Each Commission information technology unit will designate a temporary and alternate IT Coordinator, as necessary, to maintain uninterrupted coverage during a brief or extended absence of the personnel otherwise assigned to discharge those responsibilities.
4. The designated IT Coordinator(s), and any temporary or alternate IT Coordinator(s), is responsible for producing and providing requested electronic and digital records to their respective MPIA Coordinator or the Designee, and for supporting MPIA Coordinators and the Designee on any technical aspects of processing the requested digital records, as needed. The IT Coordinator is also responsible for maintaining the confidentiality of the electronic and digital records that are produced and provided to the MPIA Coordinator or the Designee.
5. When contacting the IT Coordinator, the MPIA Coordinator should identify themselves as the official designee of the Department Head for handling requests for Public Records and provide a case number to the IT Coordinator, so that the application for the agency's records can be tracked and documented.

### **F. Legal**

The Office of the General Counsel (also referred to as "Legal") is responsible for assisting the Custodian of the Public Record, as appropriate, to ensure compliance with the Act and more specifically as follows:

1. Advise the Official Custodian, Designee, MPIA Coordinator(s), and others, as appropriate, on the Act and matters involving interpreting statutory requirements to ensure compliance with the Act.
2. Advise staff on legal questions such as language in transmittal letters for Denied Record(s), Temporary Denials, and challenges involving the Public Access Ombudsman, State Public Information Act Compliance Board, and judicial appeals.

### **G. Other Commission Staff**

1. Assist Department MPIA Coordinator(s), as and when requested,
2. Protect Public Records against misuse, mismanagement, misplacement, damage, undue destruction, or theft.
3. Participate in periodic training on ensuring compliance with requirements of the Maryland Public Information Act.

## **II. Access to Records**

Anyone (e.g., private individuals, corporations, government agencies, associations, public interest groups, universities, and members of the media) has the right to inspect Public Records. The Manual shall prescribe a process for inspecting Public Records.



## Policy (Continued)

### III. Request for Records

#### A. Responding to Requests for Records

Any person may request to inspect or copy Public Records, except as otherwise provided by this Practice or the Manual. The Commission prefers that each Application be made in writing, to mitigate the risk of miscommunication and avoid potential disruption or delay.

#### B. Exemption from Inspection of Certain Public Records

The Act provides for access to most Public Records, however, certain Public Records are Exempt or have Exceptions that prohibit disclosure and must be withheld by application of law or at the Commission's authorized discretion. If an Applicant is denied access to any Public Record, they must be notified of the specific statutory provision(s) for each Exemption or Exception and any appeal rights. The Applicant must also be notified if files that do not exist are maintained by another agency, or have been lost, or destroyed in accordance with the Commission's Records Retention and Disposition Schedule.

#### C. Readily Available Records

The Official Custodian shall:

1. Designate the types of Public Records that are Readily Available;
2. Maintain a current list of the types of records that have been designated as "Readily Available Records"; and
3. Publish the list of Readily Available Records in a conspicuous place on the Commission's website(s).

### IV. Responding to Requests

The Act covers Public Records that exist at the time of the Application. Custodians are not required to create a record(s) that does not exist. However, if a record(s) does exist, then the Commission is required to assemble existing data into a report or a list(s) if the:

- A. Commission possesses the data being sought;
- B. Requested Public Record(s) exists in a searchable and analyzable format; and
- C. Custodian can do so using existing resources and doing so is in the normal course of the Custodian's duties. Custodians should consult Legal if they have questions regarding searchable data records requests.
- D. MPIA Coordinators are the point of contact for receiving, handling and coordinating the official response to each Application directed to their respective Department. This coordination includes determining the proper handling of the Application and coordinating, as appropriate and applicable, with the Custodians, IT Coordinators, Legal, and/or the Official Custodian or Designee. MPIA Coordinators are also required to keep the Designee apprised of each Application so that a number can be assigned to track processing.

## **Policy IV. Responding to Requests (Continued)**

- E. If the MPIA Coordinator is in possession of the Public Record, that person, as Custodian, has the responsibility of producing the requested Public Record and appropriately handling the response to the Applicant. This includes determining whether the Application requires any special handling such as legal review, including Exempt Records or those subject to an Exception, redacting information subject to an Exception, assembling the Responsive Record, and removing Metadata from electronic Responsive Records.
- F. When the requested record(s) is electronic or digital, the MPIA Coordinator will coordinate the production, redaction, assemblage, etc. of the record(s) with the designated departmental IT Coordinator, following the procedures in the MPIA Procedures Manual accompanying this Administrative Practice.
- G. Due to the nature of an Application, the Official Custodian or Designee may elect to assume responsibility for responding to any Application. The Official Custodian or Designee shall notify the appropriate MPIA Coordinator(s) affected by the election to respond directly but may require the assistance and coordination of the affected MPIA Coordinator(s) in producing the Responsive Record.

### **V. Denials**

The Official Custodian, Designee, or MPIA Coordinator(s) shall determine, with advice from Legal, as needed, whether the Commission will deny any Application for disclosure of a Public Record. The denial response should be reviewed by Legal, to ensure that the appropriate statutory references and requirements are included in the written response.

If disclosure is denied, the denial would fall under one of the following, which are defined above and discussed more fully in the Procedures Manual:

- (1) Exempt Records;
- (2) Mandatory Exception Records;
- (3) Mandatory Exception Information;
- (4) Discretionary Exception Records; and
- (5) Temporary Denials.

### **VI. Production of Responsive Record(s)**

#### **A. Right to Copies**

Any Applicant may request to receive copies, printouts, or photographs for a Reasonable Fee. In the rare situation that copies cannot be made at the site, the custodian should make arrangements to have copies made elsewhere such as another department or office or as a last resort at a commercial copy center/location. If there will be duplication costs the Applicant must be informed that such costs will be included as part of the Reasonable Fee that must be paid in advance.

## **Policy VI. Production of Responsive Records (Continued)**

### **B. Format**

Except for records stored in electronic format, the Act has not generally addressed the format in which Responsive Records should be provided. To further the Act's general purposes, the Commission should accede to the Applicant's choice of format, unless doing so imposes a significant, unrecoverable cost, or other burden on the Commission.

## **VII. Fees**

### **A. Fee Policy**

As allowed under the Act and to further the Commission's purpose of managing public resources prudently, the Commission shall impose Reasonable Fees with respect to each Application, subject to the Statutory Time Allowance and any approved Fee Waivers.

### **B. Multiple Applications on the Same Subject**

1. At the discretion of the Commission, multiple Applications from the same or a related entity may be aggregated, for purposes of conducting the search and/or determining the applicable Reasonable Fee, where the actions of the Applicant raise concerns that an Applicant (or group of Applicants) is attempting to separate requests into a series of Applications to avoid the assessment of a Reasonable Fee.
2. The Commission has determined that combining multiple Applications, either in whole or in part, where deemed appropriate, promotes administrative efficiency in the handling of Applications.
3. The Commission shall not aggregate multiple Applications in unrelated subjects from one Applicant.
4. The Applicant will be informed of the aggregation and the expected Reasonable Fee, prior to the execution of the search for the requested record(s).

### **C. Fee Schedule**

A Reasonable Fee shall be charged that is appropriate to recover the Commission's costs for employee time, materials, third-party charges, and any other costs incurred to search, compile, review, redact text or remove Metadata, duplicate, deliver, or otherwise prepare Responsive Records before disclosure to the Applicant.

### **D. Advance Payment Requirement**

Before the Commission begins or completes fulfilling an Application, the Applicant will be required to:

1. Prepay the estimated Reasonable Fee as determined according to this Practice and the MPIA Procedures Manual; and/or
2. Enter into an enforceable agreement that obligates the Applicant to pay fees imposed under this Practice and the MPIA Procedures Manual.

**Policy VII. Fees (Continued)**

E. **Waiver of Fees**

Only the Official Custodian is authorized to waive any fee required under this Practice or the MPIA Procedures Manual. The Official Custodian may waive all or part of any Reasonable Fee so imposed. The MPIA Procedures Manual shall prescribe Commission forms for submitting any request for a Fee Waiver, as well as a supporting affidavit to support a Fee Waiver request made by an Applicant.

**VIOLATIONS**

Employees who violate any portion of this Practice or the accompanying Manual may be subject to disciplinary action. Disciplinary actions for employees shall be handled in accordance with the Merit System Rules and Regulations; applicable Collective Bargaining Agreements; or Administrative Practice 2-16, "Seasonal/Intermittent, Temporary, and Term Employment."

Title 4 of the General Provisions Article §§ 4-401 and 4-402 also provide that a person who *willfully and knowingly* violates the Act may be subject to criminal penalty.

**PROCEDURES**

The Executive Director shall issue Administrative Procedures for implementation of this Practice.