




ADMINISTRATIVE PROCEDURES

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MARYLAND PUBLIC INFORMATION ACT (MPIA) PROCEDURES MANUAL

AUTHORITY

These Administrative Procedures have been issued under Administrative Practice 5-81, M-NCPPC Public Information Act Policy, and were approved by the Executive Director on (Date TBD).

APPLICATION

These Administrative Procedures apply to any request for Public Records received by Commission employees, the Planning Boards, Executive Director, Department Heads, and other appointed officials.

PURPOSE AND BACKGROUND

These Administrative Procedures provide the procedural instructions for all responses to Maryland Public Information Act requests. They explain the Commission employees' roles and processes for the timely response to Maryland Public Information Act requests in compliance with State law.

On July 1, 1985, the Commission's Executive Committee approved Administrative Practice 5-80, Public Information and Records Management. Subsequently, Practice 5-80 was modified to separate the requirements for records management from the requirements of the Maryland Public Information Act.

- November 2, 2022: Approved by the Executive Director to establish procedures for compliance with Administrative Practice 5-81, Maryland Public Information Act (MPIA) Policy.
- May 16, 2023: Amended by the Executive Director clarify procedures for correspondence via electronic mail and handling Readily Available Records, the methodology for MPIA fee calculations, handling appeals for denied records, and provide information on the Next Request automated software program which enables MPIA Coordinators to calculate fees and correspond with Applicants.

REFERENCES

- The Maryland Public Information Act, Md. Code. Ann., Title 4 of the General Provisions Article
- 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 5-81, Public Information Act Policy
- Administrative Practice 6-13, Electronic Communications Policy
- Administrative Procedures 20-01, Access to Electronic Data

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DEFINITIONS

“Acknowledgement Letter” means the initial correspondence sent to an Applicant acknowledging receipt of an Application under the Act.

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

“Applicant” means a person or governmental unit that asks to inspect or copy 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.

“Copy” means any form of reproduction using a photocopy machine or other reproduction technology, including a paper copy, an electronic copy, a printout, or an image.

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

“Denial Letter” means written communication from the MPIA Coordinator or Designee to the Applicant notifying the Applicant of the Denied Record. Samples are attached in Section 8.4 of this Manual.

“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: the Department of Human Resources Management, Corporate Policy and Management Operations, Montgomery County Department of Parks, Montgomery County Park Police Division, Montgomery Department of Planning, Prince George’s County Park Police Division, Prince George’s County Department of Parks and Recreation, Prince George’s County Department of Planning, the Department of Finance, the Office of the General Counsel, the Montgomery Planning Board Office, the Prince George’s 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.

DEFINITIONS (Continued)

“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.

“Electronic Data” means all electronic data created, sent, received, or stored using any Commission information system, including Commission-owned electronic devices and Commission-maintained cloud computing services.

“Electronic Data Search Form” means an Electronic Data search request form to be completed and submitted by an MPIA Coordinator to the applicable IT Coordinator to obtain the necessary assistance in compiling the necessary Commission records to fulfill an Application, a sample of which is attached to this Manual in Section 8.7.

“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.

“HR Coordinator” means the employee of the Commission working in the Human Resources Department who can provide hourly and or blended rates used to calculate Reasonable Fees for the production of Public Records pursuant to an Application.

“Indigent” means an individual whose family household income is less than 50% of the median family income for the State as reported in the Federal Register or as otherwise defined in General Provisions Article, § 4-206(a)(2).

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

“Legal” means the Commission’s legal department, the Office of the General Counsel.

“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.

DEFINITIONS (Continued)

“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 these Administrative Procedures 22-01, the 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.

“MPIA Coordinator” means the Department employee assigned to respond to Applications 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.

“Personal Information” means information that identifies an individual, including an individual’s (1) name; (2) address; (3) driver’s license number or any other identification number; (4) fingerprint; (5) medical or disability information; (6) photograph or computer-generated image; (7) Social Security or Taxpayer Identification number; (8) telephone number; and (9) voice print; but does not include: (i) driver’s status; (ii) driving offenses; (iii) five-digit zip code; or (iv) information on vehicular accidents.

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

“Personal Record” means a Public Record that names or, with reasonable certainty, otherwise identifies an individual by Personal Information.

DEFINITIONS (Continued)

“Political Subdivision” means: (1) a county; (2) a municipal corporation; (3) an unincorporated town; (4) a school district; or (5) a special district.

“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” 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.

“Response Letter” means a written response to an Applicant addressing the Application, including whether all, none, or any part of the Application has been approved for inspection or production. Samples are attached to this Manual in Sections 8.3 through 8.5.

“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.

“Reverse MPIA” means a court action filed to prevent the disclosure of Public Records, usually by a Person in Interest.

“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, within 10 days, followed by a petition to a court to authorize the continued denial of inspection of the Public Record.

“Ten Day Letter” means a written response to an Applicant explaining why the requested record(s) will take longer than ten (10) Working Days to produce with an estimate of the Reasonable Fee for production and the time it will take to produce the Responsive Record. A sample Ten Day Letter is attached to this Manual in Section 8.2.

“Working Day” means the Commission’s official business days, Monday through Friday, and does not include State, Federal, or Commission holidays.

PROCEDURES

1. THE WHO, WHAT, WHEN, WHERE AND WHY OF THE MARYLAND PUBLIC INFORMATION ACT.

1.1. Why is this a Law?

The Act is intended to allow all persons to have access to information about the affairs of the government and the acts of its public officials and employees. The federal corollary is the Freedom of Information Act (“FOIA”).¹

1.2. What is a Public Record?

In general, a Public Record is any document or record created or held by the agency related to the performance of its work. It can be in any format (e.g., electronic email, text message, or other digital file(s)), and is not limited to “paper”. Metadata may be removed from an electronic document before providing the record to an Applicant.

1.3. When Does the MPIA Apply?

The Act always applies to requests for Public Records. Anyone (e.g., citizens, corporations, government agencies, associations, public interest groups, and members of the media, etc.) has the right to inspect a Public Record. The Commission has a duty to allow inspection and/or copying of Public Records upon request, subject to specific conditions and limitations. Those conditions and limitations are covered below.

1.4. Who is a Custodian of Records?

A Custodian of Records is any staff member that holds a Public Record and is responsible for maintaining such records in accordance with guidelines established by the Commission for records management and retention. (See: Administrative Practice 5-80, Records Management.) There are different types of Custodians: (1) the Official Custodian; (2) the Designee; (3) the MPIA Coordinators; and (4) other Commission employees.

1.4.1. Official Custodian.

The Executive Director is the Commission’s Official Custodian.

1.4.2. **Designee.**

The Corporate Archives & Records Management Administrator is the Commission's Designee.

1.4.3. **MPIA Coordinators.**ⁱⁱ

A. While the Official Custodian is the public-facing point of contact for Applications, the MPIA Coordinators handle most of the day-to-day Applications for purposes of carrying out the official responsibilities of the Act. MPIA Coordinators are responsible for notifying the Designee of each Application, and gathering, reviewing, and providing

Responsive Records in the possession or control of their respective Departments. MPIA Coordinators are also required to keep the Designee apprised of any progress in providing a response.

1. The MPIA Coordinators also support the Official Custodian, and they are the designated staff that are responsible for responding to Applications received by their Departments in coordination with the Designee and Legal, as necessary.
2. Each Department must designate an MPIA Coordinator and at least one alternate. The names of these individuals must be provided to the Official Custodian and Designee, who must also be notified if there is a change in the MPIA Coordinator or the alternate.

1.4.4. **IT Coordinators.**

A. When the Commission, typically through an MPIA Coordinator, determines that an Electronic Data search is necessary to process an Application, the MPIA Coordinator, Official Custodian, or Designee may submit an Electronic Data Search Form to the applicable IT Coordinator. (See: Section 8.7.)

B. Each Commission information technology unit shall designate one or more staff members to function continuously as an IT Coordinator for their respective unit.

C. Each Commission information technology unit shall 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.

D. Each designation required by this sub-section shall be made in writing and delivered to:

1. The Official Custodian and Designee,
2. The individual(s) so designated,
3. The applicable MPIA Coordinator, and

1.4.4. IT Coordinators. (Continued)

4. Every supervisor within the individual's supervisory chain, up through the head of the applicable information technology unit.
- E. Each Commission information technology unit shall establish an electronic submission protocol for accepting the Electronic Data Search Request Form, including providing an electronic time stamp for the date and time of receipt and automatic confirmation of receipt of the Form to the submitter. A sample Electronic Data Search Request Form is outlined in Section 8.7.
- F. Submission of the Electronic Data Search Form as outlined in this Manual shall be deemed to be approved by the applicable Department Head for the purposes of compliance with the Commission's Administrative Procedures 20-01 (Access to Electronic Data).

1.4.5. Other Commission Employees.

Any Commission employee may be a Custodian, and as such, is responsible for protecting Public Records against misuse, mismanagement, misplacement, damage, undue destruction, or theft; and safeguarding Public Records and cooperating with the Official Custodian, Designee, Legal, and/or MPIA Coordinators. As a Custodian of Public Records, a Commission employee should safeguard the confidential nature of information in their possession, (i.e., restricted Public Records and potential Denied Records) and should contact Legal if there is uncertainty about the release of confidential information to the MPIA Coordinator.

1.5. Where Does the MPIA Coordinator Obtain the Requested Records?

The MPIA Coordinator should collect records from appropriate locations within their Department, Custodians, employees, and any other Department Custodian or employee within the Commission that has access to the records requested. Records can be found in many different forms and locations including but not limited to hard copy paper files, electronic materials in computer files, hard drives, and cloud storage. Records may be in the form of written or printed paper documents, photographs, films, drawings, microfilms, maps, police mugshots, and other formats.

Readily Available Records should be made easily accessible to the public whenever possible and practicable and a current version of the document(s) should be stored on the Commission's public-facing websites, information offices, kiosks, or other customer service locations as directed by the Official Custodian.

2. IMPORTANCE OF PROPER COMPLIANCE.

2.1. Why is this Procedure Important?

2.1.1. Applications Must be Handled Consistently.

While most Applications are simple, sometimes the Application can be complicated, or made in relation to a lawsuit filed (or to be filed) against the Commission. For these reasons, it is important to have a standard operating procedure.

2.1.2. **Exercising Care When Responding to Records Requests.**

Even if Responsive Records can be provided right away, it is important that the Responsive Records be reviewed by the MPIA Coordinator, before release, to ensure there are no handwritten notes, missing pages, etc. on the Public Records to be provided. By law, certain Public Records shall not be provided to the public because they are subject to Exemptions or Exceptions. What cannot and what should not be produced is discussed later in this Manual. If there is uncertainty, contact Legal for assistance.

2.1.3. **Exercising Care When Storing Records.**

A Custodian of Record should exercise care when compiling and storing documents pursuant to an Application for Public Records. The documents that may contain confidential information should be kept in a secure location (i.e. electronic or physical) until the information is deemed to be a Responsive Record subject to disclosure or a Denied Record subject to restriction from disclosure.

3. **WHAT TO DO WHEN THE COMMISSION RECEIVES AN MPIA REQUEST.**ⁱⁱⁱ

The following is a summary of the required steps in processing an Application. These steps should be used in conjunction with the remaining sections of this Manual:

- (1) If the requested record is Readily Available, provide the record to the requester immediately (or as soon as possible if, for example, the record must be copied, retrieved from another location, or the record requires a payment from the requester.) There is no need to obtain an Application number for these types of requests.
- (2) If the record is not Readily Available notify the requestor (in writing) acknowledging the request (See: sample Acknowledgement Letter using Form 8.1). Copy the Designee on the Acknowledgement Letter. The Designee will assign the Application a number for processing.
- (3) Contact relevant Staff regarding providing the requested information and submit an IT search request, if needed. If the requested information is for portions of or documents that should be Denied Records, contact Legal before submitting the request for information to Staff and the IT Coordinator.
- (4) Review provided records from Staff and IT, to ensure there are no records or any portions of a record for which disclosure should be denied.
- (5) If the record(s) can be retrieved within 10 Working Days, and there are no Denied Records, simply provide the record(s) within that time frame.
- (6) If the record(s) cannot be provided within 10 Working Days, prepare a Ten -Day Letter (Form 8.2) telling the Applicant when the record(s) can be expected (within the required 30-day period), along with an estimate of the fees for producing the record(s), if it will take more than 2 hours of Staff time.
- (7) If there will be a fee required, the Applicant must pay the fee before substantial research continues. However, keep in mind that the 30-day clock to produce the record(s) does not stop while awaiting the fee collection. Therefore, it is important to communicate with the Applicant often and determine if they intend to pay or not.

3. WHAT TO DO WHEN THE COMMISSION RECEIVES AN MPIA REQUEST. (Continued)

- (8) If it is estimated to take longer than 30 calendar days to produce the record(s), inform the Applicant and request the Applicant's permission for the extended time period.
- (9) Regardless of whether an extension is granted, continue using reasonable efforts to provide information and documents as they are ready, and if the fee has been paid. Remain in contact with the Applicant.
- (10) If there are Denied Records, include that information in the final production of documents to the Applicant with the applicable legal citations (See: Forms in Sections 8.3 through 8.5). Review by Legal should be obtained, if there will be Denied Records.

(Additional details on each step are covered in the following sections.)

3.1. **A Written Request Is Preferred but Is Not Legally Mandatory.**

3.1.1. **Handling Verbal Requests for Records.**

Although it is the Commission's preference that requests for Public Records be made in writing because it is much easier to understand the request and respond accordingly, by law, however, requests are not required to be in writing to be subject to the requirements of the Act. If an Applicant fails or refuses to put a request in writing, this cannot be used as a basis to deny the Application. Additionally, the MPIA Coordinator does not have to be the person to whom the request is made for the Act to apply.

3.1.2. **Handling Requests for Readily Available Records.**

If, alternatively, an Application is for records that comprise Readily Available Records, the MPIA Coordinator must provide the record as soon as practicable or may simply refer the Applicant to the location of the Responsive Record. (See: Section 3.7.2 for additional instructions for Readily Available Records.)

3.1.3. **Requests May Be Made to Any Staff Person.**

Applicants may submit requests to the Official Custodian, MPIA Coordinators identified on the Commission's website, or to other Commission employees. There is no requirement that the request be made to a specific Custodian.

3.2. **If a Request Is Received by a Non-Custodian.**

If an Application is received by or made to an employee who is not a Custodian, the non-Custodian must immediately send the Application to the Designee and the MPIA Coordinator. If the MPIA Coordinator is not available when the Application is received, the non-Custodian should forward the Application to the back-up MPIA Coordinator and the Department Head (if the back-up MPIA Coordinator is not known). The non-Custodian (a) should not wait to forward the Application to the Designee while trying to identify or contact the respective MPIA Coordinator and (b) must make sure that the MPIA Coordinator or Department Head acknowledges receipt and responsibility for the Application. The time clock for responding to an Application begins when the Commission receives the Application, and the clock runs even if the MPIA Coordinator does not yet have the Application. Therefore, it is important that every Commission employee forward the Application information immediately upon receipt.

3.2. If a Request Is Received by a Non-Custodian. (Continued)

If the receiving Department is not the correct departmental/business unit, the receiving Department's MPIA Coordinator must immediately forward the Application to the Designee and the appropriate MPIA Coordinator for handling. The appropriate Department's MPIA Coordinator is then responsible for handling the Application, including sending the Acknowledgement Letter, Ten-Day Letter, Response Letter, and other communications regarding the Application.

3.3. The Request Involves Records Created by or Held by Another Agency.

3.3.1. The Records Are Held by M-NCPPC.

When the Commission receives a request for records that were created by another agency, but the Commission has the records in its possession, MPIA Coordinators should, if reasonable, notify the Records Custodian of the respective agency. The Maryland Attorney General maintains an updated list of Records Custodians/MPIA representatives online which can be consulted for contact information. Any questions or concerns on this item may be directed to M-NCPPC's Records Custodian's Designee. This is not a requirement for compliance with the Act but is simply a courtesy to the other public agency.

3.3.2. The Records Are Not Held by M-NCPPC.

If the Commission does not have the records, the MPIA Coordinator must respond in writing to the Applicant advising that there are no Responsive Records to the Application and, if known, the actual custodian of the record and the location or possible location of the record. This communication should be sent within the first ten (10) Working Days after the Commission receives the Application; not the date that the MPIA Coordinator receives the Application. Once this communication is sent, the MPIA Coordinator or Designee may close out the MPIA request.

3.4. When the Request Is Broad or Unclear.

An Applicant may ask for information in very broad terms. When this happens, the MPIA Coordinator should ask the applicant to narrow down or clarify their request. It is the Applicant's responsibility to provide specific information concerning the record(s) of interest, such as project names, dates, type of documents, etc., and to utilize any standard request forms which may be provided. For example, the Applicant may not really want "all documents related to the adoption of the 2014 general plan", they may only be looking for a copy of the general plan and the resolution approving it. However, this requires communication with the Applicant—preferably in writing, but also by phone (with phone log), if writing is not possible or available. (Note: Communication in writing includes electronic mail which is an acceptable form of communication with the Applicant.)

3.5. Why the Applicant Is Asking for the Records.

The reason "why" the Applicant is seeking the records is wholly irrelevant to the Commission's duty to respond to the Application. Applicants are not required to provide a reason for their requests for Public Records, so the Commission should not request this information, except when a Fee Waiver is requested. There are times, however, when *who* the Applicant is, may be relevant. Different exceptions to production apply if the Applicant is the Person in Interest. A Person in Interest may be able to obtain more information than a non-Person in Interest. For example, a Commission employee may be able to access records that relate to their personnel file, when otherwise personnel records are not disclosable to members of the public.

3.6. Who Has Relevant Records, and Where Those Records Are Located.

The MPIA Coordinator determines who has relevant records, where those records are located, and gathers all Responsive Records. In cases where multiple people in a Department, and/or multiple Departments have Public Records that are responsive to an Application, the lead MPIA Coordinator should work with the Designee and the MPIA Coordinator(s) from the other Department(s) to provide all Responsive Records on behalf of the Commission.

3.7. The MPIA Coordinator Decides How Quickly the Records Can Be Produced.^{iv}

3.7.1. Running Against the Clock.

- A. In general, the Act requires that the Commission produce all Responsive Records, as soon as possible, upon the receipt of the Application, but no later than thirty (30) calendar days after receipt of the Application.
- B. The MPIA Coordinator has ten (10) Working Days from the date of the receipt of the Application to identify (i) the scope of the Public Records that are responsive to the Application, and (ii) the estimated or actual cost to produce the Responsive Records. This information should be incorporated into the Ten-Day Letter. (See: Ten Day Letter in Section 3.11, below.)

3.7.2. Decide Whether the Requested Documents Are Readily Available.

The Official Custodian should have previously identified documents that are “off the shelf” available, meaning that those Public Records constitute Readily Available Records. These “off the shelf” Readily Available Records should be made available immediately to any Applicant and need not trigger the official MPIA process. Once identified as “off the shelf”, those Readily Available Records should be uploaded and maintained on a Commission webpage that is freely accessible to the public. The purpose of this is twofold: (1) it makes the Readily Available Records freely accessible; and (2) it reduces the number of Applications to which the MPIA Coordinator must spend additional time to respond.^v If the requested record has not been uploaded to the Commission webpage, the MPIA Coordinator or Custodian in possession of the record should provide the record(s) to the Applicant immediately, or as soon as practicable.

3.7.3. Decide Whether Any Electronic Data Search Is Necessary.

If processing an Application requires assistance from an IT Coordinator(s), the MPIA Coordinator, Designee, or Official Custodian should complete the Electronic Data Search Form (See: Section 8.7 for the sample form) and work with the respective IT Coordinator(s) to compile the Public Records for production processing. The Electronic Data search parameters and the responsible IT Coordinator(s) are listed in the Electronic Data Search Process Matrix for MPIA Compliance outlined in Section 8.8.

3.7.4. Partial Fulfillment.

If the Response Letter includes a reference to Denied Records, the MPIA Coordinator should still promptly provide the allowable Responsive Records requested within thirty (30) calendar days. (See: Section 3.12, below, for handling records subject to denial.)

3.7.5. **What if the MPIA Coordinator Needs More Time?**

The time limit of thirty (30) calendar days to respond to an Application may be extended only with the consent of the Applicant and by no more than an additional thirty (30) calendar days.^{vi} Respond to the Applicant with Responsive Records as they are ready and continue in good faith and with reasonable efforts to produce the remaining Public Records, as soon as possible. Continue to communicate with the Applicant to make them aware of the status of the Application.

3.7.6. **Modification and Withdrawal.**

An Applicant may modify any part of an Application, or withdraw it entirely, at any time. In the event of any modification or withdrawal of an Application:

- A. The modification will constitute the Applicant's consent to adjust the period of time allowed as necessary for the Commission to fulfill the modified request.
- B. The estimate of Reasonable Fees covered below under Section 3.8 may be revised up or down, depending on the modified scope of an Application and the timing of modification.

3.8. **Calculating and Collection of Reasonable Fees.**^{vii}

Under the Act, the Commission may charge an Applicant a Reasonable Fee for the costs incurred in fulfilling the Application. Unless the Official Custodian grants a fee waiver, the Commission should recover its costs in the interest of safeguarding public funds. The collection, review, and production of Responsive Records in response to an Application can be very time intensive. The Commission is not required to absorb those costs, but subject to limitations, may require the Applicant to pay those costs to the Commission. Therefore, staff involved in responding to an Application shall track their time spent on each request. It is the Commission's policy to require advance payment of all or part of the Reasonable Fee before producing the Responsive Records.

3.8.1. **How to Calculate the Production Costs.**

- A. The Statutory Time Allowance comprises the first two (2) hours of Commission employee time dedicated to producing the responsive record for which there is no fee charged to the Applicant. Therefore, when calculating the total hours used to respond to an Applicant's request, the first two hours are deducted. Additionally, no fee for employee time can be charged when the time required to fulfill the Application totals two (2) hours or less.
- B. Response time in excess of two (2) hours is subject to the payment of a Reasonable Fee, calculated by taking the hourly rates of each of the employee(s) working on the Application, multiplied by the estimated number of hours it will take to respond to the Application.

Note: The Applicant should not generally be charged for multiple employees' review of the same material, but only one employee's time should be a part of the fee charged to the Applicant.

3.8.1. How to Calculate the Production Costs. (Continued)

If more than one Department works on an Application, to maintain the confidentiality of salary information, the lead MPIA Coordinator for the Department that received the Application for records shall:

1. Request each staff person involved in the records collection to provide an estimate of the time it will take to produce the record(s).
 2. The Lead MPIA Coordinator shall then provide that information (including staff persons names, titles, and estimated hours) to the Lead HR Coordinator for their department (Note: The HR Coordinator for the department that is responsible for the MPIA request is the “Lead HR Coordinator”.) using the form in Section 8.9(A).
 3. So that confidentiality is maintained, the Lead HR Coordinator is to collect the hourly rate of pay for each employee (either from the respective HR Coordinators for each employee or from Classification and Compensation.) and calculate the total costs for each employee using the form in Section 8.9(B). The Lead HR Coordinator shall also calculate the blended rate by dividing the total gross dollar for all employees by the total estimated hours for all employees.
 4. The Lead HR Coordinator shall provide only the blended rate to the lead MPIA Coordinator or Designee.
 5. The lead MPIA Coordinator will multiply the total hours expended by all staff on the MPIA request, minus two hours, times the blended rate, using the form in Section 8.9(C) to calculate an estimated and final Reasonable Fee to be charged to the Applicant and prepare a single response to the Applicant.
- C. The Commission may recover any costs for media used in the production of Responsive Records, but only the actual cost to the Commission. For example, if a USB drive is provided to the Applicant to produce the Responsive Records, then the Commission may recover the cost it paid to purchase the USB drive. The Commission, however, cannot charge for both electronic media and paper copies *unless* production includes both electronic media and paper copies. If the production is entirely electronic via email, there should not be a fee assessed for copying costs.
- D. The Commission prefers the use of a digital medium for the calculation of cost estimates. A software application called *Next Request* is available for use by individual employees available at: <https://mncppc-md.nextrequest.com>. For a detailed guide on how to calculate a cost estimate using the preferred digital medium, contact the Commission’s Designee. When there are multiple employees reviewing documents in response to a request for Public Records, please follow the process above in Section 3.8(B). Upon receipt of the blended rate, refer to Form 8.9(C), below, for the calculation of cost estimates. If there are questions, contact Legal or your HR Coordinator for assistance.

3.8.2. **When to Collect Money for the Fees.**

- A. MPIA Coordinators should endeavor to include the Reasonable Fee estimate in the Ten-Day Letter. If more than two (2) hours will be necessary to compile the Responsive Record, MPIA Coordinators must advise the Applicant, preferably in the Ten-Day Letter, that production will not occur unless the required Reasonable Fee is pre-paid. Prior to production, but at any time up to production, the MPIA Coordinator must collect the Reasonable Fee from the Applicant. Payments may be in the form of cash, check, money order, or cashier's check. While the Department of Finance will establish appropriate accounting codes and processing requirements for the collection of fees, the lead MPIA Coordinator shall be the front line of contact with the Application for collecting any Reasonable Fee. The MPIA Coordinator shall work with their respective Department to process the Reasonable Fee, in accordance with the Department's payment acceptance policies and capabilities. There should be no copying of currency. Cashier's or certified checks should be made payable to the "Maryland-National Capital Park and Planning Commission" and should be sent to the Finance Department, upon receipt.
- B. If an Applicant refuses to pay the Reasonable Fee, production shall be withheld. If an Applicant asks to pay less than the entire Reasonable Fee, that request should be treated as a Fee Waiver request and handled pursuant to Section 3.9, below.

3.9. **Fee Waiver Requests.**^{viii}

Frequently an Applicant will ask for a part or all the Reasonable Fee to be waived. There are two main considerations for whether a Fee Waiver request should be granted: (1) Public Interest; and (2) Indigency. The granting of Fee Waivers is an exceptional occurrence and only the Official Custodian has the authority to consider and approve a fee waiver request. An Applicant can ask for a Fee Waiver at any time, or reimbursement, if they believe that they have been overcharged. It is within the Official Custodian's discretion whether to refund part, or all, of the fees collected by the Commission regarding an Application.

3.9.1. **Fee Waiver Request Based on Indigency.**

If an Applicant submits a Fee Waiver request based on Indigency, the MPIA Coordinator should immediately take the following steps, in addition to any other response necessary under the Act:

- A. Have the Applicant complete the Affidavit of Indigency, as soon as practical, and preferably along with the initial Application. The MPIA Coordinator shall continue working on the Application throughout this process.
- B. Upon receipt of the completed Affidavit of Indigency, the MPIA Coordinator should forward the request for a Fee Waiver and the Affidavit, including a recommendation for approval, disapproval, or modification, to the Official Custodian for consideration.
- C. After the Official Custodian's decision or upon expiration of ten (10) Working Days, the MPIA Coordinator shall advise the Applicant of the outcome of their request in writing. This should be included in the Commission's Ten-Day Letter.

3.9.2. Fee Waiver Based on Public Interest.

Requests for Fee Waivers pursuant to the “public interest” exception follow the same process outlined above for an Affidavit of Indigency, except, Fee Waivers based on the public interest do not require an Affidavit of Indigency.

3.9.3. Fee Waiver Denied.

The MPIA Coordinator need not produce any Responsive Records if (1) the Official Custodian denied the Applicant’s Fee Waiver request *and* the Applicant refuses to pay; or, (2) the Applicant does not pay the required advanced estimated Reasonable Fee. However, that limitation should be clearly stated in writing (usually in the Ten-Day Letter). The MPIA Coordinator should contact Legal immediately for additional guidance.

3.10. Appeal of a Fee Waiver Request.

3.10.1. No Administrative Appeal.

There is no administrative appeal for the Official Custodian’s decision regarding a Fee Waiver request. However, the Applicant may seek a review of the decision by the Public Access Ombudsman and judicial review, in certain circumstances set forth in the Act.

3.10.2. Appeal to State Public Information Act Compliance Board.

In the event the Reasonable Fee payable by the Applicant to produce Public Records is more than \$350, the MPIA Coordinator or Designee must inform the Applicant of their right to file a complaint with the State Public Information Act Compliance Board. The Applicant may, within 90 days after the date the Reasonable Fee is imposed, file a written complaint with the State Public Information Act Compliance Board under the General Provisions Article, § 4-1A-05(a).

3.11. The Ten-Day Letter.^{ix}

If the production of the Responsive Record cannot occur within ten (10) Working Days after receipt of the Application by the Commission, MPIA Coordinators must send the Applicant a Ten-Day Letter. The Ten-Day Letter must advise the Applicant of the following:

- (1) How long it will take to produce the Responsive Records (not to exceed thirty (30) calendar days from the date of receipt of the Application by the Commission);
- (2) An estimate of the Reasonable Fees that may be charged, if more than two (2) hours will be needed to produce the Responsive Record;
- (3) Instructions for advance Reasonable Fee payment; and
- (4) The reason for requiring more than ten (10) Working Days to produce the Responsive Record. The MPIA Coordinator should sign the Ten-Day Letter and include the Designee as a “cc”. See: Form 8.2.

3.12. **Review of Responsive Records by the MPIA Coordinator.**^{x, xi}

The MPIA Coordinator should review all Responsive Records prior to disclosure, to ensure that no documents are Exempt Records, Mandatory Exception Records, Mandatory Exception Information, Discretionary Exception Records, or Temporary Denials, which the Act designates as protected from disclosure. If an MPIA Coordinator is uncertain about whether a specific document or documents should be released, they should contact Legal for assistance.

3.12.1. **Records Subject to Mandatory Denials Under the Act.**

The MPIA Coordinator must deny inspection of a Public Record, or any part of a Public Record, if it is:

- A. **An Exempt Record.** This 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.

Some examples of common types of Exempt Records are as follows:

1. Criminal records.
2. Juvenile and minor records.
3. Tax information.
4. Accountant-client privileged information.
5. Federal critical infrastructure and homeland security information.
6. Search warrants.
7. Sealed court records.
8. Attorney–client privileged information. This is a very common privilege and MPIA Coordinators should take care to understand the breadth of this privilege. At the beginning, the marking or non-marking of a document as “attorney-client privileged” does not, in and of itself, determine whether the document is indeed privileged. Instead, the MPIA Coordinator must look at the communication itself and ask the following questions:

Step 1. Is an attorney for the Commission included (even as a “cc”) on this document? If yes, it is likely privileged. If the document has nothing to do with a legal matter, then the privilege may not apply (e.g., an email about health/wellness). If no, go to step 2.

Step 2. What is the document about—is the attorney giving legal advice, is the client seeking legal advice, or is the client reiterating legal advice? If “yes” to any of these questions, then it is privileged and should not be produced.

3.12.1. Records Subject to Mandatory Denials Under the Act. (Continued)

Step 3. MPIA Coordinators should not release a document that falls within the privilege.

Step 4. Consult Legal for assistance.

9. Attorney Work Product. This is a very common exception and protects work that attorneys perform in the scope of their duties for the Commission. The MPIA Coordinator has no authority to waive this privilege, and if concerned about its applicability, should contact Legal. It would also include drafts of documents in which Legal has provided comments.
10. Executive Privilege only applies to the Governor, Chief Judge of the Court of Appeals, and presiding officers of the General Assembly.
11. Legislative Privilege only applies to the General Assembly and may apply to the County Council when acting in their legislative capacities.

B. A Mandatory Exception Record. This 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 (including, but not limited to, home address, home phone or cell, sick leave or balance, benefit choices)*, 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. Some examples of common types of Mandatory Exceptions Records are as follows:

1. Personnel Records—includes home address, home phone or cell number, applications, performance ratings, hiring, firing, promotion, dismissal, leave balance, sick leave, benefit choices, retirement records, and technical infractions. Note: Not included as personnel records are salaries, bonuses, and monetary performance awards, which must be provided.
2. Police Records—police officers have separate requirements and rules. Consult with Legal before disclosing any police-related records.

3.12.1. Records Subject to Mandatory Denials Under the Act. (Continued)

C. **Mandatory Exception Information.** This 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.

Some examples of common types of Mandatory Exceptions Information are as follows:

1. The home address, telephone, or cell number of public employees—may be redacted from documents that might otherwise be provided.
2. Trade secret(s)—include commercially valuable plan(s), formula(s), or device(s), known only to a few people and not susceptible to common knowledge.
3. Confidential commercial or financial information—includes information voluntarily provided to the government that would not customarily be provided to the general public or to competitors, such as drafts of plans, engineering data, etc.; but, it does not include plans that are officially filed and are necessary for issuance of an approval or other agency action, which must be provided.
4. An individual's personal finances—includes assets, liabilities, net worth, bank balances, etc.
5. Distribution Lists. The identifying address, email address, or telephone number of a person is protected from disclosure if it is on a list used to periodically send news about official activities of the governmental entity, or for informational or emergency alerts; this includes Commission email alert lists.
6. Health Insurance Portability and Accountability Act (HIPAA)/Md Code Ann., Title 4, Subtitle 3 of the Health-General Article. MPIA Coordinators should immediately stop and contact Legal if they are handling an Application that relates to a person's health information when the Applicant is not the Person in Interest. While most people are familiar with HIPAA, the State of Maryland has additional, more restrictive, prohibitions regarding health care information.^{xii}
7. Minors. Records relating to minors (i.e., person 18 years of age and under), including photo/video images where minors are included. When an MPIA Coordinator comes across an Application that includes information relating to a juvenile, a younger child, and/or the juvenile's or younger child's image, the MPIA Coordinator should contact Legal prior to production.^{xiii}

**Exceptions Apply, review the Act, and/or consult Legal.*

3.12.2. Records Subject to Discretionary Denials.

By law an MPIA Coordinator *may* deny inspection of a part of a Public Record if it is a:

- A. **Discretionary Exception Record.** This 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; 911 communications that depict victim.^{xiv}

The following is a partial list of common documents that the MPIA Coordinator has the discretion to deny access to, in part or in whole if their disclosure would be contrary to the public interest.

1. Interagency and Intra-Agency Letters, Memorandum, Emails—this includes emails, memos, and other documents in draft form or discussing drafts of recommendations between staff or staff and other agencies as part of their deliberations and decision-making process; protection required to allow free and frank discussions among staff and disclosure would inhibit creative debate and discussion.
2. Site-specific location of plants, animals, or property—this includes 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.
3. Emergency procedures and records related to buildings, facilities, and infrastructure.
4. Real-estate appraisal regarding a public acquisition.
5. Reports prepared by outside consultants in anticipation of litigation.
6. Investigatory records—some must be disclosed, and others may be withheld, especially as it relates to police officers, therefore, review consult Legal.

**Exceptions Apply, review the Act and/or consult Legal.^{xv}*

3.12.2. Records Subject to Discretionary Denials. (Continued)

- B. **Temporary Denial Record.** These are Public Records that would otherwise be required to be provided to the Applicant, but the Official Custodian has determined, in consultation with Legal, that doing so would cause substantial injury to the public interest if produced. To withhold the Public Record(s), the Executive Director must seek the approval of the full Commission to file a petition in Circuit Court. If this Petition is filed, the Commission can no longer claim that the documents are otherwise protected under one of the other Exemptions or Exceptions, so this should be used only in extreme circumstances.

3.12.3. When to Involve Legal.

- A. If there is a question about the applicability of an Exception or Exemption to the disclosure of a record(s) or part of a record(s) applies.
- B. When there is a potential lawsuit against the Commission or its employees. Additionally, Commission employees should take steps to preserve all relevant documents for future litigation.
- C. Temporary Denials.^{xvi} (See: §§3.12.2 B and 5.1)
- D. Reverse MPIAs. (See: §5.2)
- E. Applications that relate to Police Officers' Internal Affairs Files (not records created by police officers relating to their normal duties "Police Reports").

3.12.4. Restrictions on the Creation and Collection of Personal Records.

The Commission is prohibited from creating Personal Records (a Public Record that names or, with reasonable certainty, otherwise identifies an individual by Personal Information) absent a clearly established need.

4. PREPARING THE RESPONSE TO THE MPIA REQUEST.

4.1 In What Format Should the MPIA Coordinator Produce the Records?

The general file formats for production are PDF, paper copies, cloud storage, email, or external storage devices. To prevent providing metadata in a record, a Public Record generally should not be provided in its native format unless metadata has been removed using the appropriate tools. If the Public Record is a video file, it should be produced as electronic media. If a portion of a document needs to be redacted, **use Adobe Acrobat or other authorized electronic tools that are safe for redacting records. Do not use Microsoft Word to redact.** When using Adobe Acrobat for redaction, convert the file(s) to PDF, as needed. If an Applicant needs documents produced in an accessible format, the MPIA Coordinator should work with the Designee and the IT Coordinator to accommodate this request, without releasing otherwise confidential Metadata.

4.1.1. **Electronic Records.**

An Applicant may obtain a copy of an electronic Responsive Record in a "searchable and analyzable format" with all Metadata removed, if:

4.1.1. **Electronic Records. (Continued)**

- A. The Public Record is in a searchable and analyzable format;
- B. The Applicant requests a copy of the Responsive Record in a searchable and analyzable format; and
- C. The MPIA Coordinator can provide a copy of the Responsive Record, in whole or in part, in a searchable and analyzable format that does not disclose information that constitutes a Denied Record.

The MPIA Coordinator should work with the IT Coordinator in producing electronic records in response to a request for Public Records.

4.1.2. **What is Not Required with Regard to Electronic Records?**

The MPIA Coordinator or Custodian need not:

- A. Reconstruct a Public Record in an electronic format if the Custodian no longer has the Public Record available in an electronic format, or create a document that does not exist;
- B. Release an electronic Public Record in a format that would jeopardize or compromise the security or integrity of the original Public Record, or of any proprietary software in which the Public Record is maintained.

4.2. **Drafting the Response Letter.**

Once all responsive Public Records have been gathered, redacted as necessary, and all Metadata has been removed, the MPIA Coordinator should draft the Response Letter and include the Responsive Records. That letter may grant all or part of the request or deny all or part of the Application. If a significant amount of the production is redacted or Records are denied, the MPIA Coordinator must describe the Denied Records and the reasons for denial, in a format similar to that in the sample letters at the end of this Manual in Section 8.3 through 8.4.2.

4.3. **What Happens if the MPIA Coordinator Made an Error in the Production?**^{xvii}

4.3.1. **Unlawful Disclosure of Public Records.**^{xviii}

The employee and/or the Commission may be liable for actual damages if a court finds by clear and convincing evidence that Public Records that should not have been disclosed were disclosed willfully and knowingly in violation of the law, the Public Record produced identifies an individual, and that information is willingly and knowingly used in violation of the law.

4.3.2. **Prohibited Act; Criminal Penalties.**^{xix}

A person may not willfully and knowingly violate the Act; fail to petition a court after issuing a Temporary Denial; or, through undue means gain access to a copy of a Personal Record, if that record comprises a Denied Record. This crime is a misdemeanor and carries a penalty of up to a \$1,000.00 fine.

4.4. What the Applicant Can Do if Unhappy with the Response Letter.

The Applicant may seek review of the MPIA Coordinator's decision in four different ways: (1) by the Official Custodian; (2) by the Public Access Ombudsman; (3) by the State Public Information Act Compliance Board; or, (4) in a Court of Law.^{xx}

4.4.1. Official Custodian.

An Applicant may request an administrative review by the Official Custodian (Executive Director) of any denial issued by the Designee or MPIA Coordinator (other than the Official Custodian). Any requests for administrative review must be in writing and accompanied by a complete explanation of the reasons given for the denial; and why the denial of records should be overturned.

The MPIA Coordinator must provide a copy of the denial letter together with the legal citation and opinion of counsel in support of the denial of the requested record. The Official Custodian renders a decision either (a) in support of the denial, (b) modifying the denial (e.g., permitting a partial denial with some records allowed to be disclosed), or (c) permitting the full disclosure of the denied records. The Official Custodian issues a written decision citing the pertinent statutory and/or regulatory basis for the decision within 30 calendar days of the requests for administrative review.

4.4.2. Public Access Ombudsman.

If an Applicant files a complaint with the Public Access Ombudsman challenging a Denied Record or the applicability of an Exception or Exemption, the MPIA Coordinator must demonstrate to the Ombudsman, with assistance from Legal, that the denial or exemption is clearly applicable to the requested Public Record; and, if the Public Record is denied pursuant to specific provisions within the Act, that the harm from the disclosure of the Public Record is greater than the public interest in having access to the information.^{xxi}

The Official Custodian may contact the Public Access Ombudsman on behalf of the Commission, to resolve a dispute relating to an Application.

In accordance with the Act, the Ombudsman shall make "reasonable attempts to resolve disputes" between Applicants and the MPIA Coordinators, regardless of which party brings the dispute to the Ombudsman. The Ombudsman will issue a determination within 90 days as to whether the dispute was resolved, not resolved, or partially resolved. Any unresolved issues can be appealed to the Public Information Act Compliance Board within 30 days. The Ombudsman has no authority to compel disclosure or otherwise disclose information about the dispute, without the consent of the Official Custodian.

If any employee is contacted by the Ombudsman's office or the Applicant's lawyer, the employee, including the MPIA Coordinator, should contact Legal and the Designee immediately. Details about the Ombudsman's Office and the applicable procedures can be found at www.oag.state.md.us.

4.4.3. **State Public Information Act Compliance Board.**

The State Public Information Act Compliance Board is charged with resolving complaints filed alleging that a Custodian has incorrectly denied public records inspection, violated the time limits established for providing public records for inspection and/or charged an excessive fee. If a complaint is filed with the Board, the employee receiving the complaint should immediately contact Legal and the Designee.

After deciding, the Board will issue a written opinion stating its findings. If it finds that a violation occurred with regard to denial, it may order the public records be provided to the Applicant for inspection. If the State Public Information Act Compliance Board is charged with resolving complaints filed alleging that an MPIA Coordinator has charged an excessive fee, the Board will issue a written opinion stating its findings and may change the fee to an amount they determine proper; they may also order a refund. The Board may also decide in favor of the M-NCPPC if it determines that the complaint is unfounded, frivolous, vexatious or in bad faith.

4.4.4. **Court of Law, Judicial Review.**

Whenever an Applicant is aggrieved by a decision not to produce the requested Public Records, the Applicant may file a complaint with a Circuit Court where the Applicant resides, has a business, or where the Public Record is physically located. If this occurs, the employee receiving the complaint should contact Legal and the Designee immediately, as there are important legal deadlines that must be met. If the Court rules that the production should have occurred, then the Court may assess actual damages, counsel fees, or other litigation costs against the Commission, and may order the production of the requested Denied Record. If the Court determines that the MPIA Coordinator acted arbitrarily or capriciously in denying access to the requested Public Record, the Court must report this to the MPIA Coordinator's appointing authority, i.e., the Department Head. The respective Department Head may be required to take appropriate disciplinary actions against the MPIA Coordinator.

5. OTHER CONSIDERATIONS.

5.1. **Temporary Denials of a Record Inspection Request.**^{xxii}

When an MPIA Coordinator believes that production of the requested Public Record(s) would cause "substantial injury to the public interest" the MPIA Coordinator may make a preliminary determination to temporarily deny inspection. However, before issuing a Temporary Denial, the Designee and the MPIA Coordinator should consult with Legal and make a recommendation to the Official Custodian. Consultation with Legal is critical because within ten (10) Working Days of issuing the temporary denial, Legal, on behalf of the Commission, and with full Commission approval, must file with the appropriate Circuit Court a petition for continued denial of inspection. A temporary denial is extremely rare. **The Official Custodian, with approval from the full Commission, has the authority to make a Temporary Denial of an Application.**

5.2. **Reverse MPIA's.**

A Reverse MPIA is a lawsuit that is filed to prevent the production of the requested Public Records. While rare, it is generally filed by the person to whom the Public Records relate, and not the Commission. For example, an MPIA Coordinator receives an Application that relates to a police officer. While the requested Public Record may be disclosable under the MPIA Coordinator's discretionary authority, the MPIA Coordinator may alert the officer or the Fraternal Order of Police

5.2. **Reverse MPIA's. (Continued)**

(FOP) regarding the Application, and the officer or the FOP may go to court and ask that the Public Record not be produced.

5.3. **Limitation on Collection of Data and Records.**^{xxiii}

Personal Information records (not to be confused with personnel records): (1) may not be created by the Commission unless appropriate and relevant to the clearly established need of the Commission; (2) must be accurate; and (3) cannot be obtained through fraudulent means. The State, a political subdivision, or a unit of the State may keep only the information about a person under the following circumstances:

5.3.1. **When Personal Information is Needed by the State, the Political Subdivision, or the Unit of Local Government.**

The information retained must be needed to accomplish a governmental purpose that is authorized or required to be accomplished under:

- A. A statute or any other legislative mandate;
- B. An executive order of the Governor;
- C. An executive order of the chief executive of a local jurisdiction; or
- D. A judicial rule.

5.3.2. **When Personal Information is Relevant to Accomplishment of the Purpose.**

When collecting Personal Information (for example, registering for a class through a web portal) the Commission must provide a disclaimer explaining the reason for the request, the consequences for failure to provide the Personal Information, the person's right to inspect/amend/correct their Personal Information record, whether the Personal Information will be available for inspection by others, or will be shared with others. To that end, *the Commission is responsible for posting on its website its privacy policies on the collection of Personal Information* in accordance with the statute and other applicable laws.

5.4. **Request for Changes to Documents.**^{xxiv}

In the event the Commission receives a request to correct or change a Public Record by a Person in Interest, then the following applies: (1) All requests must be made in writing by the Person in Interest and must describe the change requested and the reason(s) for the change. (2) Within thirty (30) calendar days of receipt of the request, the Designee must take the following action(s): (a) make or refuse to make the change; or (b) advise the Person in Interest of the refusal and the reason for the refusal. (3) The Person in Interest may then seek administrative and judicial review. In the event the Person in Interest seeks administrative or judicial review, the Designee must immediately notify Legal.

6. DEPARTMENTAL/BUSINESS UNIT GUIDE.

The following Code Sections are from the General Provisions Article of the Maryland Annotated Code and are intended to advise the MPIA Coordinators on which statutes or other laws they *may commonly deal with* in determining whether to produce Public Records. It is not intended to be a comprehensive listing and the section titles cannot be relied upon as complete guidance as to whether and under what circumstances a request may be denied. **MPIA Coordinators must review relevant sections of the Act in its entirety** and consult Legal with questions or interpretation issues. In addition, the Maryland Attorney General's Office publishes the Maryland Public Information Act Manual (17th ed., July 2022) with helpful explanations available on their website at:

https://www.marylandattorneygeneral.gov/OpenGov%20Documents/PIA_manual_printable.pdf.

Contact Legal as soon as possible with any questions about whether an exception applies.

6.1. **Park Police.**

§ 4-315 Traffic Accident Reports; Criminal Charging Documents; Traffic Citations; § 4-316 Arrest Warrants and Charging Documents; § 4-321 Recorded Images from Traffic Control Signal Monitoring System; § 4-322 Surveillance Images; § 4-325 Firearm and Handgun Records; § 4-326 Inspection of Captured License Plate Data; § 4-327 Shielded Criminal and Police Records; § 4-329 Medical or Psychological Information; § 4-339 Alarm or Security Systems; § 4-344 Interagency or Intra-agency Letters or Memoranda; § 4-345 Examination Information; § 4-351 Investigation; Intelligence Information; Security Procedures; § 4-352 Information Related to Emergency Management; § 4-356 9-1-1 Communications Record; Protection of Juveniles/Records Containing Juveniles; Protected Health Care Information.

6.2. **Planning.**

§ 4-344 Interagency or Intra-agency Letters or Memoranda; § 4-346 State or Local Research Projects; § 4-350 Site-Specific Locations of Certain Plants, Animals, or Property.

6.3. **Parks/Recreation.**

§ 4-307 Welfare Records; § 4-322 Surveillance Images; § 4-325 Firearm and Handgun Records; § 4-340 Senior Citizen Activities Centers; § 4-344 Interagency or Intra-agency Letters or Memoranda; § 4-350 Site-Specific Locations of Certain Plants, Animals, or Property; Protection of Juveniles/Records Containing Juveniles; Protected Health Care Information.

6.4. **Executive Office Building (EOB)/Central Administrative Services (CAS)/Department of Human Resources Management (DHRM).**

§ 4-306 Hospital Records; § 4-310 Letters of Reference; § 4-311 Personnel Records; § 4-312 Retirement Records; § 4-327 Shielded Criminal and Police Records; § 4-329 Medical or Psychological Information; § 4-330 Sociological Information; § 4-331 Information About Public Employees; § 4-332 Information About Notaries Public; § 4-333 Licensing Records; § 4-334 Social Security Numbers; § 4-338 Security of Information Systems; § 4-339 Alarm or Security Systems; § 4-341 Inspection of Distribution Lists and Requests to be Added to Distribution Lists; § 4-344 Interagency or Intra-agency Letters or Memoranda; § 4-345 Examination Information; § 4-349 Real Estate Appraisals.

6.5. **Risk Management & Safety Office.**

§ 4-315 Traffic Accident Reports, Criminal Charging Documents, Traffic Citations; § 4-320 Motor Vehicle Administration; § 4-321 Recorded Images from Traffic Control Signal Monitoring System.

6. DEPARTMENTAL/BUSINESS UNIT GUIDE (Continued)

6.6. **Department of Finance.**

§ 4-335 Trade Secrets, Confidential Information; § 4-336 Financial Information; § 4-337 Collusive or Anticompetitive Activities; § 4-348 Confidential Information Owned by Specific State Entities.

7. ADDITIONAL GUIDANCE.

7.1. **Signing the Letters.**

The MPIA Coordinator or the Designee is the person responsible for signing the letters to the Applicant, including the initial Acknowledgment, Ten-Day Letter, Denials, and other communications. If these letters are sent in an email format, and not through formal correspondence, the MPIA Coordinator or Designee must include an electronic signature to include their full name, title, department, division or office, and business telephone number. Legal may review the response for legal sufficiency but does not sign on behalf of or instead of the Designee or MPIA Coordinator.

7.2. **Applying the Different Exemptions or Exceptions.**

Contact Legal if there is any question about whether an exemption or exception applies or exists.

7.3. **Contact from Public Access Ombudsman.**

If the MPIA Coordinator receives any correspondence or communication from the Public Access Ombudsman, contact Legal and the Designee immediately and prior to responding to the inquiry.

7.4. **Late Found/Identified Responsive Records.**

If the MPIA Coordinator subsequently becomes aware of additional Public Records that are Responsive Records, but was not included with the initial production, the MPIA Coordinator should prepare a supplemental response in accordance with any applicable exclusions and produce the additional Responsive Records as soon as possible and practicable.

7.5. **When to Contact Legal.**

Contact Legal any time there is a question or interpretation issue.

8. MODEL CORRESPONDENCE/FORMS.

8.1. Initial Acknowledgement Letter.

[COMMISSION LETTERHEAD]

[DATE]

[NAME]

[ADDRESS 1]

[ADDRESS 2]

RE:Request for [SUBJECT OF REQUESTED DOCUMENT(S)]

Commission Case No. [__]

Dear Mr./Ms./Mrs. [NAME]:

The Maryland-National Capital Park and Planning Commission (Commission) received your Maryland Public Information Act request on [DATE] and has assigned case number [_____] for your reference.

To the extent available, the Commission will provide the Responsive Records as promptly as possible.

Depending on the scope of the request, the request may take more than 10 Working Days to complete and a reasonable fee may be required. If so, the Commission will send a notice to you with the time and fee estimate.

If you have any questions, please contact me at [PHONE NUMBER] or [EMAIL].

Sincerely,

[NAME]

[TITLE]

cc:Commission MPIA Office/Designee (PIArep@mncppc.org)

8.2. **Ten-Day Letter.**

[COMMISSION LETTERHEAD]

[DATE]

[NAME]

[ADDRESS 1]

[ADDRESS 2]

RE: Request for [SUBJECT OF REQUESTED DOCUMENT(S)]

Commission Case No. []

Dear Mr./Ms./Mrs. [NAME]:

On [MPIA request receipt date], the Maryland-National Capital Park and Planning Commission (Commission) received your request under the Public Information Act, Md. Code Ann., Gen. Prov (GP) §§ 4-101, *et seq.*, seeking records regarding the above-described subject matter, in which you requested the following:

[1. Repeat the requests here]

[2. Repeat the requests here]

[3. Repeat the requests here]

I write to advise you that it will take the Commission more than 10 Working Days to produce the records; to give you the date by which the Commission expects to be able to do that; to explain why more time is needed; and to provide an estimate of the costs of producing the records.

Your request for Item No(s). [] above involves [broad coverage throughout the Commission's Departments and necessitates the input from and collaboration between multiple parties across the Commission to prepare an adequate response.][*other applicable reasons for the delay.*]

The Commission is working to retrieve the records and expects to be able to respond to your request within [] days from the receipt of the below-explained fee. It is not yet known whether all the records are subject to inspection, but if any are to be withheld, the response will explain the reason for the withholding.

The Commission expects that the response will take approximately ___ staff hours to produce, generating an estimated fee of \$_____, not including the first two hours available at no charge to you. There will be additional copying charges for individual hard copies of the documents requested based on the Commission's copying charges, which are not included in the foregoing fee estimate.

If you wish to continue with your request, you must remit payment in the amount of \$____ payable by a money order, cashier's or certified check made payable to "Maryland-National Capital Park and Planning Commission." Upon receipt of the check the Commission will complete the compilation of the request. Once the requested record is collected and reviewed

you will receive a final fee notice, which must be paid before the records are released or inspected. The final fee billing will reconcile the differences between the estimated and actual cost to complete your request.

If you decide to withdraw your request after receipt of this correspondence, please do so in writing. If the Commission does not receive a response to this correspondence, or payment, from you by [*DATE*], this MPIA request will be closed.

Pursuant to GP § 4-1A-01 et seq., you have the option to file a complaint with the Public Information Act Compliance Board concerning the amount of the fee charged.

If you have any questions, please contact me at [*PHONE NUMBER*] or [*EMAIL*].

Sincerely,

[*NAME*]

[*TITLE*]

cc:Commission MPIA Office (*PIArep@mncppc.org*)

8.3. **Agency Advises, No Responsive Records.**

[COMMISSION LETTERHEAD]

[DATE]

[NAME]

[ADDRESS 1]

[ADDRESS 2]

RE: Request for [SUBJECT OF REQUESTED DOCUMENT(S)]

Commission Case No. []

Dear Mr./Ms./Mrs. [NAME]:

On [MPIA request receipt date], the Maryland-National Capital Park and Planning Commission (Commission) received your request under the Public Information Act, Md. Code Ann., Gen. Prov (GP) §§ 4-101, *et seq.*, seeking records regarding the above-described subject matter, in which you requested the following:

[1. Repeat the requests here]

[2. Repeat the requests here]

[3. Repeat the requests here]

I write to advise you that the Commission has no documents which are responsive to your request. *[If we know that another agency may have them, we should state this.]*

If you have any questions, please contact me at [PHONE NUMBER] or [EMAIL].

Sincerely,

[NAME]

[TITLE]

cc: Commission MPIA Office (PIArep@mncppc.org)

8.4. Denial Letters.

8.4.1 Partial Denial/Partial Production.

[COMMISSION LETTERHEAD]

[DATE]

[NAME]

[ADDRESS]

RE:Request for [SUBJECT OF REQUESTED DOCUMENT(S)] Commission Case No. []

Dear Mr./Ms./Mrs. [NAME]:

On [MPIA request receipt date], the Maryland-National Capital Park and Planning Commission (Commission) received your request under the Public Information Act, Md. Code Ann., Gen. Prov (GP) §§ 4-101, *et seq.*, seeking records regarding the above-described subject matter, in which you requested the following:

[1. Repeat the requests here]

[2. Repeat the requests here]

We have collected those records in our custody that are responsive to your request. You may inspect or receive copies of all the records we have compiled with ____ exceptions.

First, [*example of potential denial attorney-client privilege – there were 13 emails between the Office of General Counsel and Planning Staff that are confidential legal memoranda which are subject to the attorney-client privilege and are protected from disclosure by GP §4-301 as privileged or confidential records.*]

Second, [*example of interagency or intra-agency memoranda – there were 10 emails between staff of the Planning Department and/or with other agencies that involved the deliberative process and qualify as inter agency or intra-agency memoranda exempt from disclosure under GP § 4-344. Disclosure of these materials would be contrary to the public interest because it would discourage full and frank discussions among staff.*]

You have the option to file a complaint with the Public Information Act Compliance Board [if relevant - concerning the fee charged, pursuant to GP § 4-1A-01 *et seq.*] or refer any concerns about this decision to the Public Access Ombudsman pursuant to GP § 4-1B-01 *et seq.* Pursuant to GP § 4-362, you are entitled to seek judicial review of this decision.

If you have any questions, please contact me at [PHONE NUMBER] or [EMAIL].

Sincerely,

[NAME]

[TITLE]

cc:Commission MPIA Office (PIArep@mncppc.org)

8.4.2. Full Denial.

[COMMISSION LETTERHEAD]

[DATE]

[NAME]

[ADDRESS 1]

[ADDRESS 2]

RE: Request for [SUBJECT OF REQUESTED DOCUMENT(S)] Commission Case No. []

Dear Mr./Ms. [NAME]:

On [MPIA request receipt date], the Maryland-National Capital Park and Planning Commission (Commission) received your request under the Public Information Act, Md. Code Ann., Gen. Prov (GP) §§ 4-101, *et seq.*, seeking records regarding the above-described subject matter, in which you requested the following:

- [1. Repeat the requests here]
- [2. Repeat the requests here]
- [3. Repeat the requests here]

We have collected those records in our custody that are responsive to your request. We find that none of the records may be released for your inspection due to the following reason(s).

First, [*example of potential denial attorney-client privilege – there were 13 emails between the Office of General Counsel and Planning Staff that are confidential legal memoranda which are subject to the attorney-client privilege and are protected from disclosure by GP §4-301 as privileged or confidential records.*]

Second, [*example of interagency or intra-agency memoranda – there were 10 emails between staff of the Planning Department and/or with other agencies that involved the deliberative process and qualify as inter agency or intra-agency memoranda exempt from disclosure under GP § 4-344. Disclosure of these materials would be contrary to the public interest because it would discourage full and frank discussions among staff.*]

You have the option to file a complaint with the Public Information Act Compliance Board or refer any concerns about this decision to the Public Access Ombudsman pursuant to GP § 4-1B-01 *et seq.* Pursuant to GP § 4-362, you are entitled to seek judicial review of this decision.

If you have any questions, please contact me at [PHONE NUMBER] or [EMAIL].

Sincerely,

[NAME]

[TITLE]

cc: Commission MPIA Office (PIArep@mncppc.org)

8.5. Completion of Response Letters.

8.5.1. Response Letter.

[COMMISSION LETTERHEAD]

[DATE]

[NAME]

[ADDRESS]

RE:Request for [SUBJECT OF REQUESTED DOCUMENT(S)]
Commission Case No. []

Dear Mr./Ms./Mrs. [NAME]:

On [MPIA request receipt date], the Maryland-National Capital Park and Planning Commission (Commission) received your request under the Public Information Act, Md. Code Ann., Gen. Prov (GP) §§ 4-101, *et seq.*, seeking records regarding the above-described subject matter, in which you requested the following:

[1. Repeat the requests here]

[2. Repeat the requests here]

[3. Repeat the requests here]

All documents responsive to your request are being made available to you with this correspondence. No documents were withheld.

If you have any questions, please contact me at [PHONE NUMBER] or [EMAIL].

Sincerely,

[NAME]

[TITLE]

cc:Commission MPIA Office (PIArep@mncppc.org)

8.5.2. With Additional Fees/Reconciliation of Fees Letter.

[COMMISSION LETTERHEAD]

[DATE]

[NAME]

[ADDRESS]

RE:Request for [SUBJECT OF REQUESTED DOCUMENT(S)] Commission Case No. []

Dear Mr./Ms./Mrs. [NAME]:

On [MPIA request receipt date], the Maryland-National Capital Park and Planning Commission (Commission) received your request under the Public Information Act, Md. Code Ann., Gen. Prov (GP) §§ 4-101, *et seq.*, seeking records regarding the above-described subject matter, in which you requested the following:

[1. Repeat the requests here]

[2. Repeat the requests here]

All documents responsive to your request are being made available to you with this correspondence. No documents were withheld.

Maryland law provides that reasonable fees may be charged for costs incurred to respond to a Public Information Act request. All charges to collect the information requested must be reasonably related to the actual cost incurred. Pursuant to Md. Code, General Provisions, § 4-206(c), the first two hours are available at no charge to you.

Earlier we provided a cost estimate of \$_____, not including the first two hours. Our final reconciliation of the request shows a total staff time incurred of ____ hours with cost to the Commission for \$_____.

We previously received a payment of \$_____ for this MPIA request. Since the total cost is greater than the initial payment, there is an additional payment due of \$_____ to cover the Commission costs to fulfill your MPIA request. The requested documents will be released upon my receipt of \$_____.

You have the option to file a complaint with the Public Information Act Compliance Board concerning the fee charged, pursuant to GP § 4-1A-01 *et seq.*, or refer any concerns about this decision to the Public Access Ombudsman pursuant to GP § 4-1B-01 *et seq.* Pursuant to GP § 4-362, you are entitled to seek judicial review of this decision.

If you have any questions, please contact me at [PHONE NUMBER] or [EMAIL].

Sincerely,

[NAME]

[TITLE]

cc:Commission MPIA Office (PIArep@mncppc.org)

8.5.3. **With Refund.**

[COMMISSION LETTERHEAD]

[DATE]

[NAME]

[ADDRESS]

RE:Request for [SUBJECT OF REQUESTED DOCUMENT(S)] Commission Case No. []

Dear Mr./Ms./Mrs. [NAME]:

On [MPIA request receipt date], the Maryland-National Capital Park and Planning Commission (Commission) received your request under the Public Information Act, Md. Code Ann., Gen. Prov (GP) §§ 4-101, *et seq.*, seeking records regarding the above-described subject matter, in which you requested the following:

- [1. Repeat the requests here]
- [2. Repeat the requests here]

All documents responsive to your request are being made available to you with this correspondence. No documents were withheld.

Maryland law provides that reasonable fees may be charged for costs incurred to respond to a Public Information Act request. All charges to collect the information requested must be reasonably related to the actual cost incurred. Pursuant to Md. Code, General Provisions, § 4-206(c), the first two hours are available at no charge to you.

Earlier we provided a cost estimate of \$_____, not including the first two hours. Our final reconciliation of the request shows a total staff time incurred of ____ hours with cost to the Commission for \$_____.

We previously received a payment of \$_____ for this MPIA request. Since the total cost is less than the initial payment, there is no additional payment due and the requested documents are released to you along with a refund of \$_____.

You have the option to file a complaint with the Public Information Act Compliance Board concerning the fee charged, pursuant to GP § 4-1A-01 *et seq.*, or refer any concerns about this decision to the Public Access Ombudsman pursuant to GP § 4-1B-01 *et seq.* Pursuant to GP § 4-362, you are entitled to seek judicial review of this decision.

If you have any questions, please contact me at [PHONE NUMBER] or [EMAIL].

Sincerely,
[NAME]
[TITLE]

cc:Commission MPIA Office (PIArep@mncppc.org)

8.6. **Affidavit of Indigency.**

AFFIDAVIT OF INDIGENCY

(Md. Code, Ann., General Provisions, § 4-206)

I, _____, have submitted a request for Public Records under the Public Information Act (Md. Code, Ann., Gen. Prov. §§ 4-101 – 4-601) and wish to request a waiver of any fee that would otherwise be required in order to process my request. I am unable to pay the necessary fee because I am indigent.

I respectfully submit that:

1. There are [_____] family members living in my household, including myself. (*Do not include renters or temporary guests.*)
2. The total gross household income _____ (before taxes) is \$ *(total income earned by all persons in the household)* per ___ WEEK / ___ MONTH / ___ YEAR (*check appropriate reporting period*).
3. The gross household income (before taxes) is from the following sources (*list amounts before taxes*) ___ WEEK / ___ MONTH / ___ YEAR:
 - Wages \$ _
 - Commissions/Bonuses \$ _
 - Social Security/SSI \$ _
 - Retirement Income \$ _
 - Unemployment Insurance \$ _
 - Temporary Cash Assistance \$ _
 - Alimony/Spousal Support \$ _
 - Rent received from tenants \$ _
 - Any Other Income (*Do not include food stamps/SNAP*) \$ _

I affirm under the penalties of perjury that what I have said above is true to the best of my knowledge, information, and belief.

Party Signature Telephone

Party Name Email

Address Date

City, State, Zip

8.7. **Electronic Data Search Form.**

The Maryland Public Information Act (MPIA) Request
Electronic Data Search Form

The Commission’s IT offices require the following information to process an MPIA electronic search request. This form is for internal use and should be completed by the respective MPIA Coordinator or Designee. Please complete this form and send it to the applicable IT Division.

MPIA Request ID: _____ Date Requested: __/__/____
 MPIA Coordinator Name: _____

Media Type: <i>Please provide the type/format of record(s) being requested.</i> <i>(i.e., Email, document, phone record, text message, etc.)</i>	
Physical Location (if applicable): <i>(laptop, cell phone, etc.)</i>	
Request text: <i>Provide the text of the request, IT coordinator can better assist in determining search criteria.</i>	
Search Period: <i>Provide the start and end date of search records.</i>	
Participant Domain(s): <i>(i.e., @mncppc.org, etc.)</i>	
Participant(s): <i>(i.e., Email addresses)</i>	
Keyword(s): <i>Please include each combination on a new line and include connectors such as AND/OR. IT Coordinator may assist with determination as needed.</i>	
Additional information: <i>Any other criteria you would like to add.</i>	

8.8. Electronic Data Search Process Matrix.

Electronic Data Search Process Matrix for MPIA Compliance

The IT Coordinator for the Department MPIA Coordinator handling an Application will handle any necessary Electronic Data search associated with the Application as set forth below.

Electronic Data Search Parameter	Responsible IT Coordinator
<p>Application seeking documents pertaining to Bi-County Corporate Management Operations or Commission-wide material. Bi-County Corporate Management Operations includes the following Departments:</p> <ol style="list-style-type: none"> 1. Office of the Executive Director 2. Department of Human Resources & Management 3. Finance Department 4. Legal Department 5. Office of the Chief Information Officer 6. Office of the Inspector General 7. Merit System Board 8. EOB Service Desk 	CAS IT Coordinator
<p>Application seeking documents pertaining to Montgomery County Department of Parks and Planning, and Montgomery County Planning Board</p>	MC IT Coordinator
<p>Application seeking documents pertaining to Prince George’s County Planning Department and the Planning Board</p>	PG Planning IT Coordinator
<p>Application seeking documents pertaining to Prince George’s County Departments of Parks & Recreation</p>	PG Parks & Rec. IT Coordinator
<p>Application seeking documents pertaining to Commission’s Park Police, Montgomery County Division</p>	MC IT Coordinator
<p>Application seeking documents pertaining to Commission’s Park Police, Prince George’s County Division</p>	PG Parks & Rec. IT Coordinator
<p><i>Official Custodian or Designee may always specify the IT Coordinator that will provide support for any Application.</i></p>	

8.9 Sample MPIA Fee Calculation Table.

(For Use by MPIA Coordinators and HR Coordinators Only)

This form may be used to calculate the estimated and final total fee to be charged to an Applicant for requested records. The Lead HR Coordinator calculates a blended hourly rate when multiple employees are involved in the production of Responsive Records. The Lead MPIA Coordinator completes Part A and transmits this information to the Lead HR Coordinator. The Lead MPIA Coordinator uses the blended hourly rate provided by the Lead HR Coordinator to calculate the fee to be invoiced to the Applicant. (Note: The HR Coordinator for the department that is responsible for the MPIA request is the “Lead HR Coordinator”.)

Use the following steps to calculate a blended rate for an MPIA request when more than one staff member is involved in producing requested records:

PART A: For Use by Lead MIA Coordinator

Step 1. The Lead MPIA Coordinator for the MPIA request will collect all staff names, titles and hours spent on an MPIA request from each department and enter that information in Columns A and B on the form below (i.e., Form 8.9(A)).

Step 2. The Lead MPIA Coordinator will submit Part A (Columns A and B) of the form to the Lead HR Coordinator.

PART B: For Use by Lead HR Coordinator Only

Step 3. The Lead HR Coordinator will obtain the hourly rates for each employee from the respective departmental HR Coordinators, as necessary.

Step 4. The respective departmental HR Coordinators will provide the hourly rates (so that confidentiality is maintained) to the Lead HR Coordinator ONLY.

Step 5. The Lead HR Coordinator will use the form below to: (1) insert the hourly rates for each employee in Column C, (2) multiply hours worked for each employee, in each row, in Column B times the hourly rate for each employee in Column C and (3) enter the total dollar amount attributed to each employee, in each row, in Column D; (4) Sum the total dollar amount at the end of Column D (Gross Dollars) and (5) Calculate the blended rate by dividing the total Gross Dollar amount in Column D by the Total Hours in the last row of Column B. (6) Send the **BLENDED RATE ONLY**, NOT THE FORM ITSELF, via email, to the Lead MPIA Coordinator.

PART C: For Use by Lead MIA Coordinator

Step 6. The Lead MPIA Coordinator will multiply the total hours expended by all staff on the MPIA request, minus two hours (Column B) times the blended rate (Column C), to calculate an estimated and final fee in (Column D).

Step 7. The Lead MPIA Coordinator sends the estimate and final invoice to the applicant, as appropriate.

8.9(A) Sample MPIA Fee Calculation Table. (Continued)

PART A

For Use by Lead MPIA Coordinator. Once completed, forwards to Lead HR Coordinator.

A.	B.	C.	D.
Staff Assigned [Sample] <i>First & last name, job title and department.</i>	Time [Sample] <i>To be Completed by Lead MPIA Coordinator and provided to the Lead HR Coordinator.</i>	Hourly Rates <i>To be Completed and used by Lead HR Coordinator]. It is left blank for the MPIA Coordinator.</i>	Total Cost <i>To be Completed and used by Lead HR Coordinator. It is left blank for the MPIA Coordinator.</i>
John Dow Deputy Director DPR	1 hour	LEFT BLANK	LEFT BLANK
Mary Jones Architect MC Planning	1.5 hours	LEFT BLANK	LEFT BLANK
Robert Johnson Planner II Pr. Geo Planning	4 hours	LEFT BLANK	LEFT BLANK
Sidney Barton Admin. Asst. MC Parks	5 hours	LEFT BLANK	LEFT BLANK
Total Hours and Blended Rate	11.5 hrs.	LEFT BLANK	LEFT BLANK

8.9(B) Sample MPIA Fee Calculation Table. (Continued)

PART B

FORM IS NOT SHARED!

For Use by Lead HR Coordinator ONLY to determine Blended Rate.

A.	B.	C.	D.
Staff [Sample]	Hours Worked Time [Sample]	Hourly Rate [Sample] <i>Provided by dept. HR to Lead HR Coordinator.</i>	Total Cost [Sample] <i>Calculated by Lead HR Coordinator.</i>
John Dow Deputy Director DPR	1	\$85.20	\$85.20
Mary Jones Architect MC Planning	1.5	\$63.19	\$94.79
Robert Johnson Planner II Pr. Geo Planning	4	\$57.04	\$228.16
Sidney Barton Admin. Asst. MC Parks	5	\$42.98	\$214.90
Total	11.5		\$623.05
			Column D. \$623.05 (Gross)/ divided by Column B. 11.5 hrs. =
BLENDING HOURLY RATE =			\$54.18

8.9(C) Sample MPIA Fee Calculation Table. (Continued)

PART C

For Use by Lead MPIA Coordinator Calculate the Fee and Invoice the Applicant.

A.	B.	C.	D.
Final Fee [Sample]	Labor Hours Expended [Sample] <i>Deduction of first two hours and calculation of final fee.</i>	Blended Hourly Rate [Sample] <i>After Receipt of Blended Rate from Lead HR Coordinator.</i>	Calculation of fees [Sample] <i>To be Completed and Used by Lead MPIA Coordinator to Invoice the Applicant.</i>
Total Labor Hours [sample]	11.5		
2 Free hours deducted	-2		9.5 hrs. x \$54.18 = \$514.71 (Invoiced Fee)
Net Labor Hrs. x Blended Rate	9.5	\$54.18	\$514.69

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- ⁱ Md. Code, General Provisions §4-203.
 - ⁱⁱ Md. Code, General Provisions §4-503.
 - ⁱⁱⁱ Md. Code, General Provisions §4-202.
 - ^{iv} Md. Code, General Provisions §4-203.
 - ^v Md. Code, General Provisions §4-201 -202.
 - ^{vi} Md. Code, General Provisions §4-203.
 - ^{vii} Md. Code, General Provisions §4-206.
 - ^{viii} Md. Code, General Provisions §4-206.
 - ^{ix} Md. Code, General Provisions §4-203.
 - ^x Md. Code, General Provisions §4-201.
 - ^{xi} Md. Code, General Provisions §4-201.
 - ^{xii} Md. Code, Health Gen. §§4-301, et seq.
 - ^{xiii} Md. Code, Courts & Judicial Proceedings §3-8A-27.
 - ^{xiv} Md. Code, General Provisions §4-343.
 - ^{xv} Md. Code, General Provisions §§4-343-357.
 - ^{xvi} Md. Code, General Provisions §4-358.
 - ^{xvii} Md. Code, General Provisions §§4-401 – 402.
 - ^{xviii} Md. Code, General Provisions §4-401.
 - ^{xix} Md. Code, General Provisions §4-402.
 - ^{xx} Md. Code, General Provisions Subtitle 4-1a, 4-1b, §4-301, and §4-362.
 - ^{xxi} Md. Code, General Provisions §§4-343 – 4-357.
 - ^{xxii} Md. Code, General Provisions §4-358.
 - ^{xxiii} Md. Code, General Provisions §4-102.
 - ^{xxiv} Md. Code, General Provisions, §4-502.



Appendix 1

MPIA REVIEW AND RESPONSE PROCESS OVERVIEW

The following is a summary of the required steps for processing an MPIA Application pursuant to the Commission Administrative Practice 5-81, Maryland Public Information Act Policy and should be used in conjunction with Administrative Procedures 22-01, MPIA Manual for Handling Requests for Public Records. The flow chart on page 2 provides a high-level illustration of the response process.

1. Upon receipt of a request for a Public Record, the employee having custody of the record determines whether the requested record is Readily Available. If yes, it is provided to the requester immediately or as soon as practical and there is no need to open a case .
2. If the record is not Readily Available, immediately refer the request to the respective Departmental MPIA Coordinator who notifies the requestor (in writing) acknowledging the request. (See: Sample Acknowledgement Letter using Form 8.1 in the Procedures Manual). The Official Custodian's Designee (Designee) must be copied on the Acknowledgement Letter. The Designee will assign the Application a number. Processing and notification may also be accomplished via the electronic MPIA management system.
3. The MPIA Coordinator contacts relevant staff regarding providing the requested information. If the request is for an electronic record, the MPIA Coordinator submits an Electronic Data Search Form to IT to search for the requested record(s), if needed.
4. The MPIA Coordinator reviews provided records from staff and IT to ensure there are no records or any portions of a record for which disclosure should be denied. Legal review should be obtained, if needed.
5. If the record can be retrieved within 10 working days and there are no Fully or Partially Denied Records, the MPIA Coordinator simply provides the records within that time frame.
6. If the record cannot be provided within 10 working days, the MPIA Coordinator prepares a Ten-Day Letter (Form 8.2) telling the Applicant when the documents can be expected (within the required 30-day period), along with an estimate of the fees for producing the documents, if it will take more than 2 hours of Staff time and/or there are significant reproduction costs (e.g., copying, hardware, delivery).
7. If payment of a fee is required, the Applicant must pay before substantial research continues. However, keep in mind that the 30-day clock to produce the documents does not stop while awaiting the fee collection. Therefore, it is important to communicate with the Applicant often and determine if they intend to pay or not.
8. If it is estimated to take longer than 30 calendar days to produce the record(s), inform the Applicant and request the Applicant's permission for the extended time period.
9. Regardless of whether an extension is granted, continue using reasonable efforts to provide information and documents as they are ready, and if the fee has been paid. Remain in contact with the Applicant.
10. If there are Fully or Partially Denied Records, include that information in the final production of documents with the applicable legal citations (Forms in Sections 8.3 – 8.4.2.) Legal review should be obtained for Denied Records, if needed.

Additional details on each step are covered in the Administrative Procedures Manual. Questions/Comments: call or email the Official Custodian's Designee at (301) 929-7814, piarep@mncppc.org.

M-NCPPC MPIA Review & Response Process

Responding to a Request for Agency Records

When Disclosure of Records is Denied

