

<b>FREDERICK COUNTY PUBLIC SCHOOLS</b>	<b>Reg. No. 200-42</b>
<b>Subject:</b> <b>PUBLIC INFORMATION ACT REQUESTS</b>	<b>Issued:</b> <b>1/2/92</b>
<b>Preparing Office:</b> <b>Office of the Superintendent</b>	<b>Amended:</b> <b>5/22/18</b>

- I. Policy
- II. Procedures
  - A. General

These regulations set out procedures for filing requests with the Frederick County Public Schools and the Board of Education of Frederick County for the inspection and copying of records under the Public Information Act, Title 4, General Provisions Article, *Annotated Code of Maryland*. This regulation is issued to inform the public and school system employees about the Public Information Act. It also establishes procedures for processing requests to inspect or copy records. This regulation does not supersede the Public Information Act and any inconsistency, ambiguity, conflict or omission between this regulation and the Act will be resolved in accordance with the Act.

B. Definitions

1. "Act" means the Public Information Act, Title 4, General Provisions Article, *Annotated Code of Maryland*.
2. "Applicant" means a person or governmental unit that asks to inspect a public record.
3. "Custodian" means the official custodian or any other authorized employee of the school system who has physical custody and control of the public record.
4. "Governmental entity" means a unit or an instrumentality of the State or of a political subdivision.
5. "Indigent" means an individual's family household income is less than 50% of the median family income for the State as reported in the Federal Register.
6. "Metadata" means information, 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. "Metadata" does not include:
  - a. a spreadsheet formula;
  - b. a database field;
  - c. an externally or internally linked file; or
  - d. a reference to an external file or a hyperlink.

7. "Person in interest" means a person or governmental unit that is the subject of a public record; or, if the person has a legal disability, the parent or legal representative of the person.
8. "Public Access Ombudsman" attempts to resolve disputes between applicants and custodians over requests for public records including:
  - a. the custodian's application of an exemption;
  - b. redactions of information in the public record;
  - c. the failure of the custodian to produce a public record in a timely manner or to disclose all records relevant to the request;
  - d. overly broad requests for public records;
  - e. the amount of time a custodian needs, given available staff and resources, to produce public records;
  - f. a request for or denial of a fee waiver under § 4-206(e) of Title 4; and
  - g. repetitive or redundant requests from an applicant.
9. "Public record" means the original or any copy of any documentary material that is made by or received by the school system in connection with the transaction of public business and is in any form, including:
  - a. a card;
  - b. a computerized record;
  - c. correspondence;
  - d. a drawing;
  - e. film or microfilm;
  - f. a form;
  - g. a map;
  - h. a photograph or photostat;
  - i. a recording; or
  - j. a tape.

A "public record" includes a document that lists the salary of an employee of the school system.
10. "Reasonable fee" means a fee bearing a reasonable relationship to the recovery of actual costs incurred by a governmental unit.
11. "School system" means the Frederick County Public Schools and Board of Education of Frederick County.
12. State Public Information Act Compliance Board (the "State Compliance Board") reviews and resolves complaints alleging that a custodian charged an unreasonable fee of more than \$350.
13. "Superintendent" means the local superintendent of schools of Frederick County.

14. "Working day" means a day during which the school system is open in accordance with the approved calendar.

C. Who May Request.

Any person may request to inspect or copy public records of the school system. All Public Information Act requests received in the school system should be forwarded to the Office of Legal Services for response as the official custodian responsible for keeping a public record of the school system, whether or not the officer or employee has physical custody and control of the public record.

D. Written Request for Public Records

A person or governmental unit that wishes to inspect a public record, or receive copies of a public record, shall submit a written or electronic request and direct it to the Office of Legal Services at <http://www.fcps.org/centraloffice/Legal-Services>

E. Right of Access to Records.

1. Except as otherwise provided by law, a custodian shall permit a person or governmental unit to inspect any public record at any reasonable time.
2. There is no obligation to create records to satisfy a public information request.

F. Contents of Written Request

A written request shall contain the applicant's name and address, shall be signed by the applicant and shall reasonably identify by brief description the record sought.

G. Timelines for a Response to a Written Request

1. In general, the custodian shall grant or deny the application promptly, but not more than 30 days after receiving the application.
2. A custodian who approves the application shall produce the public record immediately or within a reasonable period that is needed to retrieve the public record, but not more than 30 days after receipt of the application.
3. If the custodian reasonably believes that it will take more than 10 working days to produce the public record, the custodian shall indicate in writing or by electronic mail within 10 working days after receipt of the request:
  - a. the amount of time that the custodian anticipates it will take to produce the public record;
  - b. an estimate of the range of fees that may be charged to comply with the request for public records; and
  - c. the reason for the delay.
4. A custodian who denies the application shall:

Within 10 working days, give the applicant a written statement that gives:

- a. the reasons for the denial, and if inspection is denied, a brief explanation of why the denial is necessary; and an explanation of why redacting information would not address the reasons for the denial;
  - b. the legal authority for the denial;
  - c. without disclosing the protected information, a brief description of the undisclosed record that will enable the applicant to assess the applicability of the legal authority for the denial; and
  - d. notice of the remedies under Title 4 for review of the denial and allow inspection of any part of the record that is subject to inspection.
5. With the consent of the applicant, any time limit imposed by this regulation may be extended for an additional period not to exceed 30 days.

H. Public Record in Electronic Format

The custodian of a public record shall provide an applicant with a copy of the public record in a searchable and analyzable electronic format if:

1. The public record is in a searchable and analyzable electronic format;
2. The applicant requests a copy of the public record in a searchable and analyzable electronic format; and
3. The custodian is able to provide a copy of the public record, in whole or in part, in a searchable and analyzable electronic format that does not disclose (i) confidential or protected information for which the custodian is required to deny inspection; (ii) information for which a custodian has chosen to deny inspection; or (iii) information that could impact privacy rights of others.
4. A custodian may remove metadata from an electronic document before providing the electronic document to an applicant by:
  - a. using a software program or function; or
  - b. converting the electronic document into a different searchable and analyzable format.
5. The law does not:
  - a. require the custodian to reconstruct a public record in an electronic format if the custodian no longer has the public record available in an electronic format;
  - b. allow a custodian to make a public record available only in an electronic format;
  - c. require a custodian to create, compile, or program a new public record; or
  - d. require a custodian to release an electronic record in a format that would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which the record is maintained.

I. Required Denials - In General

1. A custodian shall deny inspection of a public record, or any part of a public record, if:
  - a. by law, the public record is privileged or confidential; or
  - b. the inspection would be contrary to:
    - (1) a state statute;
    - (2) a federal statute or a regulation that is issued under the statute and has the force of law;
    - (3) the rules adopted by the Court of Appeals; or
    - (4) an order of a court of record.

J. Required Denials – Specific Records

1. Unless otherwise provided by law, a custodian shall deny inspection of a public record, as provided in the Act. Subtitle 3, Part II reprints a partial listing of the denials which are required by the Act.
2. Letter of reference - A custodian shall deny inspection of a letter of reference.
3. Retirement records.
  - a. Subject to paragraphs 'b' through 'e' of this subsection, a custodian shall deny inspection of a retirement record for an individual.
  - b. A custodian shall allow inspection:
    - (1) by the person in interest;
    - (2) by the appointing authority of the individual;
    - (3) after the death of the individual, by a beneficiary, personal representative or other person who satisfies the administrators of the retirement and pension systems that the person has a valid claim to the benefits of the individual;
    - (4) by any law enforcement agency to obtain the home address of a retired employee of the agency when contact with the retired employee is documented to be necessary for official agency business; and
    - (5) by the employees of a county unit that by county law is required to audit the retirement records for current or former employees of the county.
  - c. However, the information obtained during the inspection is confidential, and the county unit and its employees may not disclose any information that would identify a person in interest.
  - d. On request, a custodian shall state whether the individual receives a retirement or pension allowance.
  - e. A custodian shall allow release of information as provided in the State Personnel and Pension Article of the *Annotated Code of Maryland*.
4. Personnel records.
  - a. Subject to paragraph 'b' of this subsection, a custodian shall deny inspection of a personnel record of an individual, including an application, performance rating or scholastic achievement information.

- b. A custodian shall allow inspection by:
  - (1) the person in interest; or
  - (2) an elected or appointed official who supervises the work of the individual.

5. Student records

- a. Unless under an exception below, a custodian shall deny inspection of a school record about the home address, home telephone number, biography, family, physiology, religion, academic achievement, or physical or mental ability of a student.
- b. A custodian shall allow inspection by:
  - (1) the person in interest; or
  - (2) an elected or appointed official who supervises the student.
- c. Requests for student records must be answered in accordance with the federal Family Educational Rights and Privacy Act (Buckley Amendment) and similar state laws. These laws and their prohibitions on disclosure are incorporated into the Act as detailed in this regulation.
- d. A custodian may allow inspection of the home address or home telephone number of a student of a public school by:
  - (1) an organization of parents, teachers, students or former students, or any combination of those groups, of the school;
  - (2) an organization or a force of the military;
  - (3) a person engaged by a school or board of education to confirm a home address or home telephone number;
  - (4) a representative of a community college in the state; or
  - (5) the Maryland Higher Education Commission.

The Maryland Higher Education Commission or a person, an organization or a community college that obtains information under this section may not:

- Use this information for a commercial purpose; or
- Disclose this information to another person, organization or community college

When a custodian allows inspection under this section, the custodian shall notify the Maryland Higher Education Commission, person, organization or community college of the prohibitions under this section regarding use and disclosure of this information.

K. Required Denials - Specific Information

1. Medical and psychological information

A custodian shall deny inspection of the part of a public record that contains medical or psychological information about an individual.

2. Sociological information

A custodian shall deny inspection of the part of a public record that contains sociological information.

3. Commercial information

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

- a. A trade secret;
- b. Confidential commercial information;
- c. Confidential financial information; or
- d. Confidential geological or geophysical information.

4. Public employees

Subject to the State Personnel and Pensions Article of the *Annotated Code of Maryland*, a custodian shall deny inspection of the part of a public record that contains the home address or telephone number of an employee of a unit or instrumentality of the state or of a political subdivision unless the:

- a. Employee gives permission for the inspection; or
- b. Unit or instrumentality that employs the individual determines that inspection is needed to protect the public interest.

5. Information systems

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

6. Physical addresses, e-mail addresses, and telephone numbers

A custodian shall deny inspection of a distribution list and a request to be added to a distribution list that identifies a physical address, an e-mail address, or a telephone number of an individual that is used by a governmental entity or an elected official for the sole purpose of:

- a. Periodically sending news about the official activities of the governmental entity or elected official; or
- b. Sending informational notices or emergency alerts.

L. Permissible Denials

- 1. Unless otherwise provided by law, if a custodian believes that inspection of a part of a public record by the applicant would be contrary to the public interest, the custodian may deny inspection by the applicant of that part, as provided in the Act.
- 2. Interagency and intra-agency documents – A custodian may deny inspection of any part of an interagency or intra-agency letter or memorandum containing confidential opinions, deliberations, advice or recommendations from one employee to another for the purpose of assisting the latter in a decision-making function.

3. Examinations

- a. Subject to paragraph 'b' of this subsection, a custodian may deny inspection of test questions, scoring keys, and other examination information that relates to the administration of licenses, employment or academic matters.
- b. After a written promotional examination has been given and graded, a custodian shall allow a person in interest to inspect the examination and the results of the examination, but may not allow the person in interest to copy or otherwise to reproduce the examination.

4. Real property

- a. Subject to paragraph 'b' of this subsection or other law, until the State or a political subdivision acquires title to property, a custodian may deny inspection of a public record that contains a real estate appraisal of the property.
- b. A custodian may not deny inspection to the owner of the property.

5. Investigations

- a. Subject to paragraph 'b' of this subsection, a custodian may deny inspection of:
  - (1) Records of investigations conducted by the Attorney General, a State's Attorney, a city or county attorney, a police department or a sheriff;
  - (2) An investigative file compiled for any other law enforcement, judicial, correctional or prosecution purpose; or
  - (3) Records that contain intelligence information or security procedures of the Attorney General, a State's Attorney, a city or county attorney, a police department, a local correctional facility or a sheriff.
- b. A custodian may deny inspection by a person in interest only to the extent that the inspection would:
  - (1) Interfere with a valid and proper law enforcement proceeding;
  - (2) Deprive another person of a right to a fair trial or an impartial adjudication;
  - (3) Constitute an unwarranted invasion of personal privacy;
  - (4) Disclose an investigative technique or procedure;
  - (5) Disclose the identity of a confidential source;
  - (6) Prejudice an investigation; or
  - (7) Endanger the life or physical safety of an individual.

M. Judicial Review

Complaint.

- 1. Subject to paragraph 3 of this subsection, whenever a person or governmental unit is denied inspection of a public record or is not provided with a copy, printout, or photograph of a public record as requested, the person or governmental unit may file a complaint with the circuit court.
- 2. Subject to paragraph 3 of this subsection, a complainant or custodian may appeal to the circuit court a decision issued by the State Public Information Act Compliance Board as provided under § 4-1A-10 of Title 4.



3. A complaint or an appeal under this subsection shall be filed with the circuit court for the county where:
  - i. The complainant resides or has a principal place of business; or
  - ii. The public record is located.

N. Fees

1. The custodian may charge an applicant a reasonable fee for the search for, preparation of, and reproduction of a public record and actual costs for search for, preparation of, and reproduction of a public record in standard format including media and mechanical processing costs. Staff and attorney review costs included in the calculation of actual costs incurred shall be prorated for each individual's salary and actual time attributed to the search and preparation of a public record.
2. The official custodian may not charge any search or preparation fee for the first two (2) hours of official or employee time that is needed to respond to a request for information.
3. The fee schedule for copying and certifying copies of records is as follows:
  - a. **Copies** – The fee for each copy is twenty-five (25) cents per page if the reproduction is made by a photocopying machine within the school system. If records are not susceptible to photocopying, the fee for copies will be based on the actual cost of reproduction.
  - b. **Certification of Copies** – If a person requests that a copy of a record be certified as a true copy, an additional fee of \$1.00 per page or, if appropriate, per item shall be charged.
  - c. **Minimum Fee Charged** – A charge will not be made if the total amount of the fee would be \$1.00 or less.
4. If the custodian is unable to copy a record within the school system, the custodian shall make arrangements for the prompt reproduction of the record at public or private facilities outside the school system. The custodian shall either collect from the applicant a fee to cover the actual cost of reproduction or direct the applicant to pay the cost of reproduction directly to the facility making the copy.
5. Before searching for and reproducing a record, the custodian may estimate the cost of the search and reproduction and either obtain the agreement of the applicant to pay the cost or demand prepayment of the estimated fee or a portion of it.
6. Upon request, the custodian may waive a fee under this section if the applicant asks for a waiver and the applicant is indigent and files an affidavit of indigency or after consideration of the ability of the applicant to pay the fee and other relevant factors, the custodian determines that the waiver would be in the public interest.

O. Time of Inspection

With reasonable advance notice, an applicant may inspect any public record that he is entitled to inspect during the normal working hours of the school system. The inspection shall take place in the presence of the custodian or the custodian's designee.

Approved:

*original signed by*

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Theresa R. Alban  
Superintendent