

A. Purpose

1. To ensure that Frederick County Public Schools (FCPS) complies with the Maryland Public Information Act (MPIA) when responding to requests for public information.
2. To establish procedures for processing requests for the inspection or copying of school system public records.

B. Background

The MPIA, codified in Title 4 of the Maryland Code Annotated, General Provisions Article (GP), grants the public a broad right of access to public records while protecting legitimate governmental interests and the privacy rights of individual citizens.

C. Definitions

1. “Applicant” or “Requester” is defined to mean a person or governmental unit that asks to inspect a public record.
2. “Copy” is defined to mean any form of reproduction using a photocopying machine or other reproduction technology, including a paper copy, an electronic copy, a printout, or an image.
3. “Custodian” is defined as the official custodian or any other authorized individual who has physical custody and control of a public record.
4. “Indigent” is defined as an individual whose family household income is less than fifty percent (50%) of the median family income for the State as reported in the Federal Register.
5. “Metadata” is defined as 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.
6. “MPIA” or “Act” is defined to mean the Maryland Public Information Act.
7. “MPIA Representative” is defined to mean an FCPS employee who is designated as responsible for accepting requests for public records and responding to them.
8. “Official custodian” is defined as an officer or employee of the State or of a political subdivision who is responsible for keeping a public record, whether or not the officer or employee has physical custody and control of the public record.

9. "Person in interest" is defined as:
 - a. A person or governmental unit that is the subject of a public record or a designee of the person or governmental unit; or
 - b. If the person has a legal disability, the parent or legal representative of the person.

10. "Public Access Ombudsman" is defined to mean an individual designated by the State and who attempts to resolve disputes between applicants and custodians over requests for public records.

11. "Public record" is defined as the original or any copy of any documentary material that:
 - a. Is made by a unit or an instrumentality of the State or of a political subdivision or received by the unit or instrumentality in connection with the transaction of public business; and
 - b. Is in any form, including:
 - i. A card;
 - ii. A computerized record;
 - iii. Correspondence;
 - iv. A drawing;
 - v. Film or microfilm;
 - vi. A form;
 - vii. A map;
 - viii. A photograph or photostat;
 - ix. A recording; or
 - x. A tape.

12. "Reasonable fee" is defined as a fee bearing a reasonable relationship to the recovery of actual costs incurred by a governmental unit.

13. "Sociological information" is defined to include:
 - a. Information about an individual's person history, family including benefit and dependent designations, age, race, national origin, creed, color, sex, pregnancy, sexual orientation, ethnic background, ancestry, physiology, religion, academic achievement, gender identity or expression, genetic information, veteran status, or physical or mental ability;
 - b. Class or employment attendance information;
 - c. Identifying information from employment coaching and surveys;
 - d. Student education records of a deceased student;
 - e. Personal addresses, personal phone numbers, personal electronic mail addresses, and personal social media account information;
 - f. Date of birth;
 - g. Social security, visa, passport, driver's license, or other government issued identification numbers;
 - h. Applicant, student, employee, or other FCPS issued identification numbers;
 - i. Employee, student, or visitor identification system information, including identification photographs;

- j. Internet or other electronic network activity information, including browsing history, search history, wireless network location data, and information regarding an individual's interaction with an internet website, electronic application, or a security entry system; and
 - k. Other data that, if released, could pose a risk to safety or privacy.
14. "School system" or "FCPS" is defined to mean the Frederick County Public Schools and Board of Education of Frederick County.
15. "Superintendent" is defined to mean the Superintendent of the Frederick County Public School System.
16. "Working day" is defined to mean a day when the FCPS Central Office is open.

D. Procedures

1. This Regulation does not supersede the MPIA and any inconsistency, ambiguity, conflict or omission between this Regulation and the MPIA will be resolved in accordance with the MPIA.
2. **Who May Request Public Records.** Any person or government unit may request to inspect or copy FCPS public records.
3. **FCPS Public Records.** The MPIA attempts to balance the public's right to transparency in school system operations with laws that govern the availability of FCPS records.
 - a. **Records Covered**
 - i. Public records created or received by the Board, an FCPS school or office, or a school system official in connection with the transaction of FCPS business, and subject to the MPIA, will include any form of documentary material, including but not limited to paper documents, electronic documents, microfilm, drawings, maps, pictures and any other documentary material in any format, in which business information is created or maintained.
 - ii. Records covered under the MPIA are only those in existence at the time of the request.
 - iii. Requests to write, generate, or create documents/data, as well as answer direct questions not contained in a document, are not covered under the MPIA.
 - b. **Records Not Covered**
 - i. Requests for student records, including student transcripts are not covered by this regulation.
 - ii. Requests for records pertaining to a current FCPS student should be directed to an administrator of the student's current school.
 - iii. Requests for records pertaining to a former FCPS student should be directed to an administrator of the student's last school of attendance.
 - iv. Requests for copies of a former student's transcripts should be directed to the Office of Student Services.
 - c. **Exemptions**

- i. Certain FCPS public records must be withheld or redacted if confidential by law, such as, but not limited to:
 - 1. Those subject to attorney-client privilege under MPIA GP § 4-301(1);
 - 2. Those subject to state and federal statute under MPIA GP § 4-301(2)(i), (ii);
 - 3. Those subject to court orders and rules under MPIA GP § 4-301(2)(iii),(iv);
 - 4. Personnel records under MPIA GP § 4-311;
 - 5. Student records under both the Family Educational Rights and Privacy Act of 1974 (“FERPA”) and MPIA GP § 4-313;
 - 6. Medical information under MPIA GP § 4-329(b);
 - 7. Sociological information under MPIA GP § 4-330;
 - 8. Confidential commercial and financial information under MPIA GP § 4-335; and
 - 9. Individual finance records under MPIA GP § 4-336.
 - ii. Other records may be exempt from disclosure if determined by FCPS to be contrary to the public interest after careful consideration of the possible consequences of disclosure, such as:
 - 1. Interagency or intra-agency letter or memorandum that would not be available by law to a private party in litigation with FCPS under MPIA GP § 4-344;
 - 2. Ongoing research projects under MPIA GP § 4-346;
 - 3. The content of academic examinations under MPIA GP § 4-345;
 - 4. Investigative and intelligence materials, or security procedures, including those compiled for ongoing litigation under MPIA GP § 4-351; and
 - 5. Emergency procedures and response plans under MPIA GP § 4-352.
 - iii. In certain cases, a person in interest (typically the subject of the document or information) may have a greater right of access than citizens at larger to otherwise exempt documents.
 - iv. If a request is denied for access to FCPS public records, or information within a record redacted, requesters will be notified as to the specific statutory provisions for each exemption.
- d. General Public Records**
- i. FCPS will proactively disclose records that are frequently used and in the general welfare of the public which do not require a request under the MPIA or other formal procedures. This will be done through:
 - 1. The use of the school system’s public website which can be searched by topic or keyword and will contain information such as the school system policies and student handbooks, organizational structures and contact information, school calendars, academic and student services overviews, budget overviews, and topical news announcements; and
 - 2. The use of the Board’s public website which can be searched by meeting date or subject matter and will contain information such as official meeting minutes as well as reports to the Board to inform and support decisions made under its authority.
 - ii. All documents that may be viewed on these sites at the time of the request are designated as general public records.

- iii. **Requests for General Public Records.** Requests seeking records already publicly available online on FCPS's website will be responded to with the URL link directing to where the records can be accessed.
 - e. **Electronic Records**
 - i. Except as provided in D(4)(e)(iii) and (iv) of this section, FCPS will provide requesters 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 requester requests a copy of the public record in a searchable and analyzable electronic format; and
 - 3. FCPS 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 information that is exempt from disclosure under the MPIA.
 - ii. FCPS will provide a portion of the public record in a searchable and analyzable electronic format if:
 - 1. Requested by the requester, and
 - 2. FCPS is able to do so by using the existing functions of the database or software program that contains the searchable and analyzable data.
 - iii. FCPS is not required to:
 - 1. Create or reconstruct a public record in an electronic format if the public record is not available in an electronic format; or
 - 2. 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.
 - iv. FCPS may remove metadata from an electronic document before providing the electronic record to a requester by:
 - 1. Using a software program or function; or
 - 2. Converting the electronic record into a different searchable and analyzable format.
 - f. **Public Records Destroyed or Lost.** If FCPS knows that a requested public record has been destroyed or lost, the custodian shall promptly:
 - i. Notify the applicant that the public record is not available; and
 - ii. Explain the reasons why the public record cannot be produced.
4. **Initiating Requests**
- a. FCPS uses an electronic submission, tracking and review system for MPIA requests. A request submitted through the online system at [FCPS / Departments / Legal Services](https://www.fcps.org/departments/division_of_legal_services) (https://www.fcps.org/departments/division_of_legal_services) will materially assist FCPS in responding to MPIA requests, however emailed or mailed requests will also be accepted.
 - b. **Requester Guidelines**
 - i. All requests shall:
 - 1. Contain the requester's contact information; and
 - 2. Reasonably identify, by brief description, the public record(s) sought.
 - ii. FCPS cannot process requests without valid contact information.

- iii. Instructions for submitting an MPIA request to FCPS and an electronic request form can be found on the FCPS website at [FCPS / Departments / Legal Services](https://www.fcps.org/departments/division_of_legal_services) (https://www.fcps.org/departments/division_of_legal_services).
- iv. Requesters are also able to email requests to PIARequests@fcps.org or mail requests to:
 - Frederick County Public Schools**
 - Attention: Legal Services Division**
 - 191 S. East Street**
 - Frederick, Maryland 21701**
- v. MPIA requests submitted after 4:30 p.m. on a working day, or anytime on a non-working day, will not be considered received until the next working day.

5. FCPS Staff Guidelines

- a. As a general practice, FCPS will refer members of the public to [FCPS / Departments / Legal Services](https://www.fcps.org/departments/division_of_legal_services) (https://www.fcps.org/departments/division_of_legal_services) to file an MPIA request.
 - i. If an office or school receives a written request for public records under the MPIA via mail or email, the request should be forwarded to the MPIA Representative for processing within twenty-four (24) hours.
 - ii. Where an FCPS office or school receives a request for public records that does not specifically reference the MPIA, staff should:
 - 1. Acknowledge receipt of the request and indicate the request will be handled per the MPIA; and
 - 2. Within 24 hours, forward the request to the Legal Services Division via email at PIARequests@fcps.org.

6. Responding to Requests

- a. If FCPS grants a request for inspection, FCPS will produce the public record for inspection:
 - i. Immediately; or
 - ii. Within a reasonable time period, not to exceed thirty (30) days after the date of the request, if that period is needed to retrieve the public record and conduct any necessary review.
- b. If FCPS reasonably believes that it will take more than ten (10) working days to produce the public record, FCPS will indicate in writing or by electronic mail within ten (10) working days after the receipt of the request:
 - i. The amount of time that the custodian anticipates it will take to produce the public record;
 - ii. An estimate of the range of fees that may be charged to comply with the request for public records, if any; and
 - iii. The reason(s) why it will take more than ten (10) working days to produce the records.
- c. If FCPS decides to deny a request for inspection, FCPS will:
 - i. Deny the request promptly and not more than thirty (30) days after the request, except as otherwise provided by law; and
 - ii. Immediately notify the applicant of the denial.

- d. If a request is denied, FCPS will provide the requester, at the time of the denial or within ten (10) working days, a written statement that gives:
 - i. The reason(s) for the denial, including, for records denied under MPIA GP § 4-343, a brief explanation of:
 - 1. Why denial is necessary; that is, why disclosure of the public record would be contrary to the public interest; and
 - 2. Why redacting information would not address the reasons for the denial;
 - ii. The legal authority for the denial;
 - iii. Without disclosing the protected information, a brief description of the undisclosed records that will enable the applicant to assess the applicability of the legal authority for the denial; and
 - iv. Notice of the remedies available for review of the denial.
 - e. If a requested public record is not in the custody or control of the school system, FCPS, within ten (10) working days after receipt of the request, will notify the requester:
 - i. That the school system does not have custody or control of the requested public record; and
 - ii. If known:
 - 1. The name of the custodian of the public record; and
 - 2. The location or possible location of the public record.
 - f. Any time limit imposed by D(6)(a) through (d) of this section may be extended:
 - i. With the consent of the requester, for an additional period of up to thirty (30) days; and
 - ii. For the period of time during which a dispute is pending before the Public Access Ombudsman under MPIA GP § 4-1B-04, or before the State Public Information Act Compliance Board under MPIA GP § 4-1A-05.
- 7. Notice to and Consideration of Views of Person Potentially Affected by Disclosure**
- a. Unless prohibited by law, FCPS may provide notice of a request for inspection or copying of any public record of the school system to any person who, in the judgment of FCPS, could be adversely affected by the disclosure of that public record.
 - b. The requester or FCPS may contact the Public Access Ombudsman, under MPIA GP § 4-1B-04, to resolve a dispute relating to the requests for public records.
 - c. The requester or FCPS may, within thirty (30) days after receiving a final determination from the Public Access Ombudsman stating a dispute was not resolved, file a written complaint with the State Public Information Act Compliance Board under MPIA GP § 4-1A-05.
- 8. Disclosure Against Public Interest**
- a. **Denial Pending Court Order**
 - i. If, in the opinion of the Superintendent, disclosure of a public record of FCPS otherwise subject to disclosure under MPIA would do substantial injury to the public interest, the Superintendent may temporarily deny the request and seek a court order allowing continued nondisclosure.
 - ii. A temporary denial shall be in writing.
 - b. **Circuit Court Review**

- i. Within ten (10) working days after the denial, the Superintendent shall apply to the appropriate circuit court for an order permitting continued denial or restriction of access.
 - ii. Notice of the Superintendent's complaint shall be served on the requester in the manner provided for service of process by the Maryland Rules.

- 9. **Fees and Inspection of Records.** Under MPIA GP § 4-206, an official custodian may charge reasonable fees to process MPIA requests. The fees for a response will be calculated based on actual expenses incurred by FCPS to process the request.
 - a. **Search and Preparation Fees**
 - i. FCPS may charge a reasonable fee for time that employees spend:
 - 1. Searching for requested public records;
 - 2. Reviewing requested public records for potential disclosure; and
 - 3. Preparing public records for inspection or copying.
 - ii. Fee estimates will include time spent by all involved in the review and preparation of responsive documents, including the MPIA Representative and/or legal counsel.
 - iii. FCPS will calculate the fee based on the current hourly salary of employees as reported by the FCPS Payroll Department multiplied by the hours estimated.
 - iv. FCPS will not charge fees for the first two (2) hours employees spend to search for, review and prepare responsive documents. When multiple employee salaries are included in a fee estimate, costs will be calculated such that two (2) hours of the highest salary is deducted from the total estimate.
 - v. Prior to any response being produced, a cost estimate will be sent to the requester, who may elect to:
 - 1. Pay the fees in full before work will begin;
 - 2. Narrow the requested records; or
 - 3. Withdraw the MPIA request.
 - vi. After receipt of fees by FCPS, if it becomes apparent processing will take longer than estimated, FCPS will promptly stop work and notify the requester of additional costs.
 - vii. Upon completion of processing, if the request took less time than estimated, the difference will be refunded to the requester.
 - viii. If no response is received from the requester within thirty (30) days of sending a fee estimate, FCPS will administratively close the request. An administrative closure does not constitute a denial of a request, nor does it prevent a requester from making future requests. Upon receipt of communication from the requester indicating they wish to proceed with the instant request, FCPS will reopen the requester's file.
 - b. **Copy Fees**
 - i. The fee for each copy made by a standard printer or photocopying or scanning machine within the school system is twenty-five cents (\$0.25) per page.
 - ii. If the records are not susceptible to photocopying (i.e. punch cards, videos, magnetic tapes, blueprints or microfilm), the fee for copies will be based on the actual cost of reproduction.
 - iii. If a person requests that a copy of a public record be certified as a true copy, an additional fee of one dollar (\$1.00) per page, or as appropriate, per item.
 - iv. If the fee for copies or certified copies of any public record is specifically set by a law other than the MPIA or this regulation, FCPS will charge the prescribed fee.

- v. Before copying a public record of the school system, FCPS will estimate the cost of reproduction and require prepayment of the costs.
 - vi. FCPS will engage the requester in discussions regarding mutually agreeable options for the reproduction of records, including the need to produce copies at public or private facilities outside the school system to enhance cost and time efficiencies. When outside reproduction services are needed, FCPS will:
 - 1. Collect from the requester a fee to cover the actual cost of reproduction; or
 - 2. Direct the requester to pay the cost of reproduction directly to the facility making the copy.
 - vii. If the requester asks that copies of a public record be mailed or delivered to the requester or a third party, FCPS may charge the requester for the cost of postage or delivery.
 - viii. FCPS will make every reasonable attempt to send available documents electronically to reduce copy fees for requesters.
 - ix. No charge will be made if the total fee is one dollar (\$1.00) or less.
- c. **Waiver or Reduction of Fee**
- i. FCPS may waive or reduce any fee set under this section if the requester asks for a waiver and FCPS determines that:
 - 1. The waiver or reduction is in the public interest; or
 - 2. The requester is indigent and files an affidavit verifying the facts that support a claim of indigence.
 - ii. In determining whether a fee is in the public interest, FCPS will consider, among other relevant factors, the ability of the applicant to pay the fee.
- d. **Time and Place of Inspection**
- i. A requester may inspect releasable FCPS public records at a mutually agreeable time during the normal working hours of the school system.
 - ii. The inspection shall occur where the public record is located, unless FCPS, after taking into account the requester's expressed wish, determines that another place is more suitable and convenient.

E. Related Information

- 1. **Board Policy**
 - a. [Policy 421, Student Education Records](https://apps.fcps.org/legal/documents/421)
(https://apps.fcps.org/legal/documents/421)
 - b. [Policy 442, Student Data Privacy](https://apps.fcps.org/legal/documents/442)
(https://apps.fcps.org/legal/documents/442)
- 2. **Code of Federal Regulations (CFR)**
 - a. [34 CFR Part 99](https://fcps-md.info/FERPA_34_CFR_99)
(https://fcps-md.info/FERPA_34_CFR_99)
- 3. **Code of Maryland Regulations (COMAR)**
 - a. [COMAR 13A.08.02, Student Records](https://fcps-md.info/COMAR_13A-08-02)
(https://fcps-md.info/COMAR_13A-08-02)

4. **External Resources**

- a. [Maryland Attorney General Maryland Public Information Act Webpage](https://fcps-md.info/MD_AG_MPIA)
(https://fcps-md.info/MD_AG_MPIA)

5. **FCPS Regulations**

- a. [Regulation 209-02, Retention, Access, and Disclosure of FCPS Video Recordings](https://apps.fcps.org/legal/documents/209-02)
(<https://apps.fcps.org/legal/documents/209-02>)
- b. [Regulation 400-20, Student Records](https://apps.fcps.org/legal/documents/400-20)
(<https://apps.fcps.org/legal/documents/400-20>)
- c. [Regulation 400-96, Student Data Privacy](https://apps.fcps.org/legal/documents/400-96)
(<https://apps.fcps.org/legal/documents/400-96>)

6. **FCPS Resources**

- a. [FCPS / Departments / Legal Services](https://www.fcps.org/departments/division_of_legal_services)
(https://www.fcps.org/departments/division_of_legal_services)

7. **Federal Law**

- a. [Family Educational Rights and Privacy Act \(FERPA\), 20 USC § 1232\(g\)](https://fcps-md.info/FERPA_20_USC_1232g)
(https://fcps-md.info/FERPA_20_USC_1232g)

8. **Maryland Law**

- a. Maryland Public Information Act, Md. Code Ann., Gen. Prov. T. 4

F. Regulation History (Maintained by Legal Services)

<i>Responsible Office</i>	Division of Legal Services
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Review Dates	
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