



95.0 Public Access to Records

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Public Access to Records

A. Definitions

"Applicant" means a person or governmental unit that asks to inspect a Public Record.

"Custodian" means: the Official Custodian; or any other authorized individual who has physical custody and control of a Public Record. For purposes of this order, an office associate assigned to the Records Unit is The Custodian.

"Official Custodian" means an officer or employee of the Sheriff's Office who, whether or not the officer or employee has physical custody and control of a Public Record, is responsible for keeping the Public Record. For purposes of this order, the Official Custodian of the Sheriff's Office is the Chief Deputy.

"Person In Interest" means:

- A. a person or governmental unit that is the subject of a Public Record or a designee of the person or governmental unit;
- B. if the person has a legal disability, the parent or legal representative of the person.

"Personal Information" means information that identifies an individual including an individual's address, driver's license number or any other identification number, medical or disability information, name, photograph or computer-generated image, Social Security number, or telephone number.

"Personal Information" does not include an individual's driver's status, driving offenses, 5-digit zip code, or information on vehicular accidents.

"Public Record" means the original or any copy of any documentary material that:

- A. is made or received by the Sheriff's Office in connection with the transaction of public business; and
- B. is in any form, including:
 - 1) a card;
 - 2) a computerized record;
 - 3) correspondence;
 - 4) a drawing;
 - 5) film or microfilm;
 - 6) a form;
 - 7) a map;
 - 8) a photograph or photostat;
 - 9) a recording; or
 - 10) a tape.

"Public Record" includes a document that lists the salary of an employee of the Sheriff's Office.

For purposes of this Order, "Public Record" does **not** include information from CJIS, Delta+, or other computerized systems for which access is restricted or prohibited by Federal or State law.

"Technical infraction" means a minor rule violation by a sworn police officer solely related to the enforcement of administrative rules that:

- (1) does not involve an interaction between a member of the public and the individual;
- (2) does not relate to the individual's investigative, enforcement, training, supervision, or reporting responsibilities; and
- (3) is not otherwise a matter of public concern. GP Art. 4-101(l)

B. Policy

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

2. To carry out the right set forth in the preceding subsection, unless an unwarranted invasion of the privacy of a Person In Interest would result, this order shall be construed in favor of permitting inspection of a Public Record, with the least cost and least delay to the person or governmental unit that requests the inspection.
3. Except as otherwise provided by law, The Custodian shall permit a person or governmental unit to inspect any Public Record at any reasonable time.
4. Inspection or copying of a Public Record will be denied only to the extent provided under this order or by law.
5. To protect Public Records and to prevent unnecessary interference with official business, the Sheriff's Office has adopted this policy that, subject to the Public Information Act, governs timely production and inspection of a Public Record.
6. The Official Custodian shall consider whether to:
 - a. Designate specific types of Public Records of the Sheriff's Office that are to be made available to any Applicant immediately upon request; and
 - b. Maintain a current list of the types of Public Records that have been designated as available to any Applicant immediately upon request.

95.1 Application and Procedure to Inspect a Public Record

1. A person or governmental unit that wishes to inspect a Public Record shall submit a written application to the Custodian. If possible, requests should be submitted on Sheriff's Office form P-1 "Request for Public Record." If submitted in some other written format, a Sheriff's Office employee may complete a form P-1 for internal processing use. The written application together with all correspondence submitted by the Applicant shall be retained for future reference by the Sheriff. GP Art. 4-202(a).
2. A person or governmental unit need not submit a written application to the Custodian if:
 - a. The person or governmental unit seeks to inspect a Public Record listed by an Official Custodian as available immediately upon request, or

- b. The Official Custodian waives the requirement for a written application. GP Art. § 4-202(b).
- 3. If the Custodian is unable to determine whether the Public Record should be released, approval for the release or denial shall be obtained from the Chief Deputy, Sheriff, or the Sheriff's Office Legal Advisor. The rules in this section shall guide all members of the Sheriff's Office regarding the release or denial of public records.
- 4. If the Sheriff's Office is not the Custodian of the Public Record, within 10 working days after receiving the application, the Sheriff's Office shall give the Applicant:
 - a. Notice of that fact; and
 - b. If known:
 - 1) The name of the Custodian; and
 - 2) The location or possible location of the Public Record. GP Art. § 4-202(c).
- 5. When an Applicant requests to inspect a Public Record and The Custodian determines that the record does not exist, the Custodian shall notify the Applicant of this determination:
 - a. Immediately, if the Custodian has reached this determination upon initial review of the application; or
 - b. If the Custodian has reached this determination after a search for potentially responsive Public Records, promptly after the search is completed, but not to exceed 30 days after receiving the application. GP Art. §4-202(d).
- 6. If the requested records are in the possession of the Sheriff's Office, the Custodian shall grant or deny the application promptly, but not to exceed 30 days after receiving the application. GP Art. §4-203(a).
- 7. If the Custodian reasonably believes that it will take more than 10 working days to produce the public record, the Custodian shall inform the Applicant in writing or email 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, together with any deposit that may be required in order to retrieve, review and produce the record, which shall be determined based upon the Schedule of Fees, itemized in section F below;
 - c) the reason for the delay. GP Art. §4-203(b).
- 8. Records will not be released until any applicable fees are paid in full.
- 9. The Custodian who denies the application shall, within 10 working days, give the Applicant a written statement that gives:
 - a) the reasons for the denial;
 - b) if inspection of the entire record is denied as against public interest:
 - 1) a brief explanation of why the denial is necessary; and
 - 2) an explanation of why redacting information would not address the reasons for the denial;
 - c) the legal authority for the denial (if needed, the Custodian may consult the Sheriff's legal advisor);
 - d) 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;
 - e) notice of the remedies under the PIA for review of the denial; and
 - f) allow inspection of any part of the record that is subject to inspection. GP Art. §2-203(c).
- 10. With the consent of the Applicant, any time limit imposed under the PIA may be extended for not more than 30 days. Additionally, if the Applicant seeks resolution of a dispute by engaging the services of the Maryland PIA Ombudsman, the time limit shall be extended pending resolution of that dispute. GP Art. §2-203(d).
- 11. Except to the extent that the grant of an application is related to the status of the Applicant as a Person In Interest and except as required by other law or regulation, the Custodian may not condition the grant of an application on:

- a. The identity of the Applicant;
 - b. Any organizational or other affiliation of the Applicant; or
 - c. A disclosure by the Applicant of the purpose for an application. GP Art. §2-204(a).
12. The Official Custodian may consider the identity of the Applicant, any organizational or other affiliation of the Applicant, or the purpose for the application if:
- a. The Applicant chooses to provide this information for the Custodian to consider in making a determination of whether the Applicant is a Person In Interest, or whether certain disclosures are contrary to the public interest;
 - b. The Applicant has requested a waiver of fees pursuant to this order; or
 - c. The identity of the Applicant, any organizational or other affiliation of the Applicant, or the purpose for the application is material to the determination of the Official Custodian as to waiver of fees due to indigency, public interest or similar relevant factors. GP Art. §4-204(b).
13. Consistent with the foregoing, The Custodian may request the identity of an Applicant for the purpose of contacting the Applicant. GP Art. §4-204(c).

95.2 Denials.

The following rules each constitute a basis for denial of inspection of public records:

- 1. Attorneys. If the Applicant is an attorney who is not an attorney of record of a person named in the record or is a person employed by, retained by or associated with such an attorney, who is requesting inspection of records for purpose of soliciting or marketing legal services, the Custodian shall **deny** inspection of the following records:
 - a. police reports of traffic accidents,
 - b. criminal charging documents prior to service on the defendant named in the document, and,
 - c. traffic citations filed in the Maryland Automated Traffic System. GP Art. §4-315.

2. Personnel Records. The following rules shall apply to Personnel Records:
 - a. Subject to paragraph (b) of this subsection, The Custodian shall deny inspection of a Personnel Record of an individual, including an application, performance rating, or scholastic achievement information.
 - b. The Custodian shall permit inspection of a Personnel Record by:
 - 1) The Person In Interest; or
 - 2) an elected or appointed official who supervises the work of the individual.
 - c. “Personnel Record” means those documents that directly pertain to employment and an employee's ability to perform a job. *Baltimore City Police Dept. v. State*, 158 Md. App. 274 (2005). A record relating to an administrative or criminal investigation of misconduct by a police officer, including an internal affairs investigatory record, a hearing record, and records relating to a disciplinary decision, *is not* a personnel record; except that a record of a Technical Infraction *is* a personnel record. GP Art. § 4-311. However, records of either type of investigation may constitute an *Investigatory Record* under section 9 below.
3. Arrest Warrants. Applicants wishing to inspect arrest warrants shall be referred to the issuing court. See, Maryland Rule 4-212(d), and GP Art. §4-316.
4. Medical, Psychological, or Personal Information. Except to a Person in Interest, The Custodian shall deny inspection of the part of a Public Record that contains:
 - a. medical or psychological information about an individual, other than an autopsy report of a medical examiner or
 - b. personal information about an individual with or perceived to have a disability.

Requests to inspect autopsy reports will be referred to the Office of the Chief Medical Examiner. GP Art. §4-329.

5. Sociological Information.
 - a. For purposes of this section, “Sociological Information shall mean “Sociological information” as:
 - i. Social Security number;

- ii. Personal address;
 - iii. Personal phone number;
 - iv. Personal email address;
 - v. Date of birth; and
 - vi. Driver's license number.
 - b. The Custodian shall not disclose Sociological Information to a requestor, except in the following instances:
 - i. The requestor is the individual named in the record;
 - ii. The requestor is the attorney of record of the individual named in the record;
 - iii. The requestor is the insurance company of record of the individual named in the record;
 - iv. The requestor is a public employee in performance of his or her public duties;
 - v. When required by a duly issued subpoena;
 - vi. When the Sheriff or Chief Deputy determines that disclosure is in the public's best interest; or
 - vii. When otherwise required by law.
6. Home Address or Telephone Number of Employee. The Custodian shall deny inspection of the part of a Public Record that contains the home address or telephone number of an employee of the Sheriff's Office unless:
- a. The employee gives permission for the inspection; or
 - b. The Official Custodian determines that inspection is needed to protect the public interest. GP Art. §4-331.
7. Salaries. Requests for salaries of Sheriff's Office employees will be referred to the Washington County Division of Human Resources.
8. Security of Information System. The Custodian shall deny inspection of the part of a Public Record that contains information about the security of an information system. GP Art. §4-338.
9. Unless otherwise provided by law, if The 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. However, in making the "public interest" determination, the Custodian must identify one of the justifications identified in the subsections contained below in this section. GP Art. §4-343.
10. Investigatory Records. **Incident reports of an investigatory nature will be reviewed by the Criminal Investigation supervisor prior to public release.** The Custodian may deny inspection of an open investigation record, except that if the Applicant is a Person In Interest, an open

investigation record may only be denied to the extent that the inspection could:

- a. Interfere with a valid and proper law enforcement proceeding;
- b. Deprive another person of a right to a fair trial or an impartial adjudication;
- c. Constitute an unwarranted invasion of personal privacy;
- d. Disclose the identity of a confidential source;
- e. Disclose an investigative technique or procedure;
- f. Prejudice an investigation; or
- g. Endanger the life or physical safety of an individual.

If the Applicant is a Person In Interest, The Custodian must point out to the Applicant precisely which of the seven enumerated grounds justifies the withholding of part or all of an investigatory record, explain precisely why it would do so. *Blythe v. State*, 161 Md. App. 492, 531 (2005).

As to **closed** investigatory records, disclosure of the record is less likely to be “contrary to the public interest. However, the seven factors listed above may also be considered as part of the “public interest” determination in deciding whether to deny access to a person who is not a Person In Interest.

GP Art. §4-351(b); *City of Frederick v. Randall Family, LLC*, 154 Md. App. 543, 562-67 (2004); *Prince George’s County v. Washington Post Co.*, 149 Md. App. 289, 333 (2003); *National Archives and Records Administration v. Favish*, 541 U.S. 157 (2004).

- 11. Inter- or Intra-Agency Correspondence. The Custodian may deny inspection of any part of an interagency or intra-agency letter or memorandum that would not be available by law to a private party in litigation with the Sheriff’s Office. GP Art. §4-344.
- 12. Test Questions. The Custodian may deny inspection of test questions, scoring keys and other examination information that relates to employment; EXCEPT, however, after a written promotional examination has been given and graded, The Custodian shall permit a Person In Interest to inspect the examination and the results of the examination, but may not permit the Person In Interest to copy or otherwise to reproduce the examination. GP Art. §4-345.

13. Research Project. The Custodian may deny inspection of a Public Record that contains the specific details of a research project that the Sheriff's Office is conducting, EXCEPT, however, The Custodian may not deny inspection of the part of a Public Record that gives only the name, title, expenditures, and date when the final project summary will be available. GP Art. §4-346.
14. Building Security. Subject to paragraphs (e), (f), and (g) of this subsection, The Custodian may deny inspection of:
 - a. Response procedures or plans prepared to prevent or respond to emergency situations, the disclosure of which would reveal vulnerability assessments, specific tactics, specific emergency procedures, or specific security procedures;
 - b. Building plans, blueprints, schematic drawings, diagrams, operational manuals, or other records of airports and other mass transit facilities, bridges, tunnels, emergency response facilities or structures, buildings where hazardous materials are stored, arenas, stadiums, waste and water systems, and any other building, structure, or facility, the disclosure of which would reveal the building's, structure's or facility's internal layout, specific location, life, safety, and support systems, structural elements, surveillance techniques, alarm or security systems or technologies, operational and transportation plans or protocols, or personnel deployments; or
 - c. Records of any other building, structure, or facility, the disclosure of which would reveal the building's, structure's, or facility's life, safety, and support systems, surveillance techniques, alarm or security systems or technologies, operational and evacuation plans or protocols, or personnel deployments; or
 - d. Records prepared to prevent or respond to emergency situations identifying or describing the name, location, pharmaceutical cache, contents, capacity, equipment, physical features, or capabilities of individual medical facilities, storage facilities, or laboratories.
 - e. The Custodian may deny inspection of a part of a Public Record under paragraph A of this subsection only to the extent that the inspection would:
 - 1) Jeopardize the security of any building, structure, or facility;

- 2) Facilitate the planning of a terrorist attack; or
 - 3) Endanger the life or physical safety of an individual.
 - f. The Custodian may deny inspection of a Public Record that relates to a County Government owned building, structure, or facility that has been subjected to a catastrophic event, including a fire, explosion, or natural disaster.
 - e. The Custodian may deny inspection of a Public Record that relates to an inspection of or issuance of a citation concerning a building, structure, or facility owned by the County Government.
- GP Art. §4-352

- 15. Covert/Undercover Information. Administrative reports maintained by the Sheriff's Office are generally available to the public, however, some administrative records may not be made available for public disclosure. For example, the identification numbers/license plate numbers of Sheriff's Office vehicles shall not be revealed because it could permit identification of vehicles used in covert or undercover operations.

All requests of this nature shall be denied and brought to the attention of the Chief Deputy or Sheriff.

95.3 Temporary Denial for Otherwise Authorized Inspections and Procedure for Judicial Review

- 1. Whenever the Public Information Act authorizes inspection of a Public Record, but the Official Custodian believes that inspection would cause substantial injury to the public interest, the Official Custodian may deny inspection temporarily.
- 2. Within 10 working days after the denial, the Official Custodian shall petition a court to order permitting the continued denial of inspection.
- 3. The petition shall be filed with the Circuit Court for Washington County, Maryland, pursuant to GP Art. §4-359

95.4 Copies of Requested Public Records and Schedule of Fees

- 1. "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.

2. Except as otherwise provided in this subsection, an Applicant who is authorized to inspect a Public Record may have:

- a. A copy, printout, or photograph of the Public Record; or
- b. If the Custodian does not have facilities to reproduce the Public Record, access to the Public Record to make the copy, printout, or photograph.

3. Except as provided in paragraph (2) of this subsection, the Custodian shall provide an Applicant with a copy of the public record in a searchable and analyzable electronic format if:

- (i) the public record is in a searchable and analyzable electronic format;
- (ii) the applicant requests a copy of the public record in a searchable and analyzable electronic format; and
- (ii) 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 confidential or protected information for which the custodian is required to deny inspection in accordance with this Order; or information for which The Custodian has chosen to deny inspection as contrary to the public interest in accordance with this Order.

4. The Custodian will remove metadata from an electronic document before providing the electronic document to an Applicant by:

- (i) using a software program or function; or
- (ii) converting the electronic document into a different searchable and analyzable format.

5. The Custodian is NOT required to:

- (i) reconstruct a public record in an electronic format if the Custodian does not have the public record available in an electronic format;
- (ii) make a public record available only in an electronic format;
- (iii) create, compile, or program a new public record; or
- (iv) 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.

6. The copy, printout, or photograph shall be made:
 - a. While the Public Record is in the custody of the Custodian; and
 - b. Whenever practicable, where the Public Record is kept.
7. Schedule of Fees
 - a. Photocopies of forms, reports, etc. (up to 8 ½ x 14 inches)
\$5.00 for first page and \$1.00 for every page thereafter
 - b. Photocopies of forms, reports, etc. (over 8 ½ x 14 inches)
Actual cost of photocopying from outside source or \$5.00 for first page and \$1.00 per page thereafter, whichever is more.
 - c. Copies of photographs
Actual cost of copies made by outside source
 - d. Employee hours—
Search for, review, and preparation of a public record prepared, on request of the applicant, in a customized format shall be charged as follows: There is no fee for the first two (2) hours that are needed to search for a public record and prepare it for inspection. After the first two hours, the staff and attorney review costs included in the calculation of fees shall be prorated for each individual's salary and actual time attributable to the search for and preparation of a public record. If more than one staff member has been involved in the production of records, the two (2) free hours shall be allocated first to the time of the staff member with the higher salary.
 - e. Copies of radio transmission
Refer to ECC guidelines and rates
 - f. All other charges for copies not listed above will be decided on a case-by-case basis by the official custodian and will be based on the actual cost of providing the copy(s).
GP Art. §§ 4-205, 4-206.

95.5 Remedies For Denial

1. Whenever a person or governmental unit is denied inspection of a Public Record, the person or governmental unit may file a complaint for judicial determination in the Circuit Court, pursuant to GP Art. § 4-362.
2. In the alternative, an Applicant may refer the dispute to the Public Access Ombudsman, pursuant to GP Art. § 4-1B-01, et seq.
3. An Applicant who disputes the reasonableness of a fee which is in excess of \$350.00 may file a complaint with the Public Access Compliance Board pursuant to GP Art. § 4-1A-05.

95.6 Waiver of Fees

1. The Official Custodian may waive a fee described in this Order if:
 - a. the applicant asks for a waiver; and
 - i. the applicant is indigent and files an affidavit of indigency; or
 - ii. after consideration of the ability of the applicant to pay the fee and other relevant factors, the Official Custodian determines that the waiver would be in the public interest.
2. All decisions regarding waiver of fees will be made by the Sheriff or the Chief Deputy. GP Article § 4-206

95.7 Personal Records

1. In this section, "personal record" means a Public Record that names or, with reasonable certainty, otherwise identifies an individual by an identifying factor such as:
 - a. An address;
 - b. A description;
 - c. A finger or voice print;
 - d. A number; or
 - e. A picture.
2. Personal records may not be created unless the need for the information has been clearly established by the Sheriff's Office.
3. Personal Information collected for personal records:
 - a. Shall be appropriate and relevant to the purposes for which it is collected;
 - b. Shall be accurate and current to the greatest extent practicable; and
 - c. May not be obtained by fraudulent means.

95.8 Corrections to Personal Records

1. A Person In Interest may request the Sheriff's Office to correct inaccurate or incomplete information in a Public Record that it keeps and the Person In Interest is authorized to inspect.
2. A request under this section shall:

- a. Be in writing;
 - b. Describe the requested change precisely; and
 - c. State the reasons for the change: and
 - d. Be directed to the Official Custodian.
3. Within 30 days after receiving a request under this section, the Official Custodian shall:
 - a. Make or refuse to make the requested change; and
 - b. Give the Person In Interest written notice of the action taken.
4. A notice of refusal shall contain the Official Custodians' reasons for the refusal.
5. If the Official Custodian finally refuses a request under this section, the Person In Interest may submit to the Official Custodian a concise statement that, in 5 pages or less, states the reasons for the request and for disagreement with the refusal.
6. Whenever the Sheriff's Office provides the disputed information to a third party, a copy of the statement submitted by the Person In Interest shall be provided to the third party. GP Art §§ 4-501, 4-502.