

~PUBLIC INFORMATION ACT REQUESTS~

POLICY STATEMENT: To set forth procedures under the Public Information Act for filing and processing requests to the City of Cumberland, Maryland, for the inspection and copying of public records of the City (Authority: State Government Article, §§10-611 through 10-628, Annotated Code of Maryland).

I. POLICY

It is the policy of the City of Cumberland to facilitate access to the public records of the City, when law allows access, by minimizing costs and time delays to applicants.

II. DEFINITIONS

- A. "Act or PIA" - The Public Information Act, State Government Article, §§10-611 through 10-628, Annotated Code of Maryland.
- B. "Applicant" - A person or governmental unit that asks to inspect a public record (§10-611(b) of the Act).
- C. "City" - The City of Cumberland.
- D. "City Clerk" - The City Clerk of the City of Cumberland.
- E. "Department or Office" - A unit of city government under the jurisdiction of the Mayor and City Council.
- F. "Custodian" -
 - (a) the official custodian; or
 - (b) any other authorized individual who has physical custody and control of a public record (§10-611(c) of the Act).
- G. "Official Custodian" - the person who is responsible for the maintenance, care, and keeping of the public records of the City, whether or not such person has physical custody and control of a public record (See §10-611(d) of the Act).

- H. "Personal Information" - A public record 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.
- I. "Public record" - All papers, correspondence, forms, books, photographs, Photostats, films, microfilm, sound recordings, maps, drawings, or other written documents, regardless of physical form or characteristics. "Public records" includes all copies made or received by the City in connection with the transaction of public business and includes the salaries of all employees of the City. This does not require the department to create documents to respond to a request nor does it create access to information per se, unless there is a public record containing that information.
- J. "Working day" - A day other than Saturday, Sunday or a City holiday.

III. City Clerk as Official Custodian

Unless otherwise provided by law, the City Clerk is the official custodian of the public records of the City of Cumberland, and has been designated by the City to oversee the public information process.

IV. Who May Request Public Records

Any person may request to inspect or copy public records of the City of Cumberland.

V. Necessity for Written Request

The custodian shall make public records available for inspection and/or copying by an applicant only upon receipt of a written application. The applicant may use the forms provided by the City for that purpose. Forms shall be available in all City departments and on the City's web site. The City Clerk as the "Official

Custodian" shall maintain each public information request for a period of three (3) years and shall assign each public information request a unique request number.

VI. Contents of Written Request

A written request shall:

Contain the date of the request and applicant's name, address, and telephone number; and

Be signed by the applicant; and

Reasonably identify, by brief description, the public record sought.

VII. Filing Requests.

A request to inspect or copy a public record of the City shall be addressed to the custodian of the record. The custodian is that manager, or department head or team leader, whose department or service area physically has custody of the record. If the custodian is unknown, the request shall be addressed to the City Clerk.

VIII. Response to Request.

If the custodian decides to grant a request for inspection, the custodian shall produce the public record for inspection, or shall produce a copy of the record:

(1) Immediately, if the record is part of the current, routine information readily accessible in any of its departments. Each department shall notify the custodian of all documents easily accessible in that department that can be provided upon request; or

(2) Within a reasonable time period, not to exceed 30 days after the date of receipt of the request where such period of time is needed to retrieve the public record and conduct any necessary review.

If the custodian decides to deny a request for inspection:

(1) The custodian shall do so within 30 days after the request; and

immediately notify the applicant of the denial.

If a request is denied, the custodian shall provide the applicant, at the time of the denial or within 10 working days, a written statement that gives:

(1) The reasons for the denial; and

(2) The legal authority for the denial; and

(3) Notice of the remedies available for review of the denial.

If a requested public record is not in the custody or control of the person to whom application is made, that person shall, within 10 working days after receipt of the request, notify the City Clerk:

(1) That the person does not have custody or control of the requested public record; and

(2) If the person knows:

(a) The name of the custodian of the public record; and

(b) The location or possible location of the public record.

If a requested public record is not in the custody or control of the City to whom the application is made, the custodian shall, within 10 working days after receipt of the request, notify the applicant:

(1) That the city does not have custody or control of the requested public record; and

(2) If the person knows:

(a) The name of the custodian of the public record; and

(b) The location or possible location of the public record.

With the consent of the applicant, any time limit imposed by §VIII.A through D above, may be extended for an additional period of up to 30 days.

A copy of all requests/responses shall be provided to the City Clerk who will assign an identifying number to the request/response and maintain the information on file for a period of three years.

IX. Required Denials; Non-Disclosure by Law

Certain public records shall not be open to inspection or copying by the public. These required denials and exceptions to them are described in the Act at §§10-615 through 617. The City shall deny inspection of the following types of documents:

- (1) Documents which are privileged or confidential by law (§10-615(1));
- (2) Documents which are not subject to disclosure by state statute, federal statute or regulation, rules adopted by the Maryland Court of Appeals, or an Order of a court of record (§10-615(2));
- (3) Adoption records (§10-616(b));
- (4) Welfare records (§10-616(c));
- (5) Letter of reference (§10-616(d));
- (6) Circulation records of a library (§10-616(e));
- (7) Records which are a result of a gift to the City and the gift was conditioned on limited access (§10-616(f));
- (8) Retirement Records, except by the person in interest; the appointing authority of the individual; 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; or by any law enforcement agency in order to obtain the home address of a retired employee of the agency when contact with a retired employee is documented to be necessary for official agency business (§10-616(g));

(9) Certain police records and criminal charging documents requested by or on behalf of attorneys, not the attorney of record, for the purpose of soliciting or marketing legal services (§10-616(h));

(10) Personnel Records (except salary/wage information of City employees) except by the person in interest; or an elected or appointed official who supervises the work of the individual (§10-616(i));

(11) Hospital Records (§10-616(j));

(12) Student Records, except by a person in interest; or an elected or appointed official who supervises the student (§10-616(k));

(13) Medical and psychological information, except a person in interest to the extent permitted by §4-302 of the Health-General Article of the Annotated Code of Maryland (§10-617(b) & (c));

(14) Confidential business information include trade secrets, confidential financial information, confidential commercial information, or confidential geological and geophysical information (§10-617(d)). Note: Confidentiality of documents is a legal determination and is not necessarily determined by the person in interest.

(15) Home address and phone numbers of City employees, unless the employee gives permission for the disclosure or the City determines that the public interest is served by the disclosure (§10-617(e));

(16) Financial information of individuals (except salaries of City employees), unless the applicant is a person in interest (§10-617(f));

(17) Computer systems security information (§10-617(g));

(18) Occupational or professional licensing information, except public access shall be permitted for the following information (1) the name of the licensee; (2) the business address of the licensee or if the business address is not available, the home address; (3) the business telephone number of the licensee; (4) the educational and occupational background of the licensee; (5) the professional qualifications of the licensee; (6) any orders and findings that result from formal disciplinary actions; and (7) any evidence that has been provided to the custodian to meet the requirements of a statute as to financial responsibility. The person in interest shall have full access to occupational or professional licensing information (§10-617(i));

X. Permissible Denials.

The custodian shall forward all items described below to the City Administrator. The City Administrator may deny access to inspection and copying of certain documents. These documents are described in the Act at §10-618. The City Administrator may deny inspection of the following types of documents if releasing them would be contrary to the public interest:

(1) Interagency or intra-agency documents which would not be available by law to a party in litigation with the unit (§10-618(b));

(2) Test questions, scoring keys and other examination information that relates to the administration of licenses, employment or academic matters except a "person in interest" shall be allowed to inspect the examination after it has been given and graded. The "person in interest" will not be allowed to copy or otherwise reproduce the examination (§10-618(c));

(3) Documents which contain specific details of an on-going research project that an institution of the State or of a political subdivision is conducting, except documents that provide only the name, title, expenditures, and date when the final project summary will be available shall be available for inspection and copying (§10-618(d));

(4) Real estate appraisals for property not yet acquired by the City, except the appraisal shall be provided to the owner of the property (§10-618(e));

(5) Records of investigations conducted by the Attorney General, State's Attorney, City or County Attorney, a police department, or a sheriff; an investigatory file compiled for any other law enforcement, judicial, correctional, or prosecution purpose; and 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 State or local correctional facility, or a sheriff (§10-618(f));

A permissible denial for one of the above stated reasons may only be exercised if the City Administrator finds that inspection of the document would lead to one of the following results:

- (a) Interference with a valid and proper law enforcement proceeding;
- (b) Deprivation of the right to a fair trial or impartial hearing for a person in interest;
- (c) An unwarranted invasion of privacy;
- (d) Disclosure of the identity of a confidential source;
- (e) Disclosure of an investigative technique or procedure;
- (f) Prejudice to an investigation; or
- (g) Danger to the life or physical safety of an individual.

(6) Site-specific information on endangered or threatened species of plant or animal, a species of plant or animal in need of conservation, caves or historic property as defined in Article 83B, §5-

601(k) of the Code, except that the custodian shall not deny inspection to the owner of the land upon which the resource is located or any entity that could take the land through the right of eminent domain (§10-618(g)).

XI. Partially Denied Documents

If a requested record contains information, access to which is denied under these Regulations and the Act, in addition to information that is not denied, then the City shall redact the document. The denied information shall be redacted from the document, and the redacted document shall be provided along with a denial letter in accordance with §VIII above regarding that portion of the record that was denied.

XII. Notice to and Consideration of Views of Persons Potentially Affected by Disclosure

Unless prohibited by law, the custodian may provide notice of a request for inspection or copying of any public record of the Department to any person who, in the judgment of the custodian, could be adversely affected by disclosure of that public record.

The custodian may consider the views of the potentially affected person before deciding whether to disclose the public record to an applicant.

XIII. Public Record Temporarily Unavailable

If a requested public record of the City is in the custody and control of the person to whom written application is made but the record is not immediately

available for inspection or copying, the custodian shall promptly:

Notify the applicant that the public record is not immediately available; and

Schedule a date within a reasonable time for inspection or copying.

XIV. Public Record Destroyed or Lost

If a requested public record has been destroyed or lost, the person to whom the application is made shall promptly:

Notify the applicant that the public record is not available; and

Explain the reasons why the public record cannot be produced.

XV. Documents Are Not Required to be Created

The Maryland Public Information Act does not require the City to create a document that does not exist. If, however, through the normal course of events, the requested documents are created in the future, an additional request is required to access the documents. If the document does not exist, the applicant will be notified in writing within ten (10) working days of receipt of the request.

XVI. Judicial Review of Denial

An applicant who is denied inspection of a public record may file a complaint in the Circuit Court in accordance with §10-623 of the Act.

XVII. Disclosure Against Public Interest

Denial Pending Court Order:

If, in the opinion of the City Clerk, disclosure of a public record of the City otherwise subject to disclosure under the Act would do substantial injury to the public interest, the City Clerk may temporarily deny the request to obtain a court order allowing non-disclosure.

The temporary denial shall be in writing.

Circuit Court Review:

Within 10 working days after the denial, the City Clerk shall apply to the Circuit Court for Allegany County for an order permitting continued denial or restriction of access.

Notice of the City Clerk's complaint shall be served on the applicant in the manner provided for service of process by the Maryland Rules of Procedure.

XVIII. Fees

The fee schedule for copying and certifying copies of public records of the City is as follows:

- (1) **Copies:**
 - (a) The fee for each copy made by a photocopying machine within the City is \$0.25 cents per page.
 - (b) The fee for each copy made otherwise shall be based on the actual cost of reproduction.
- (2) **Electronic Documents:**

If a person requests a document be provided electronically, the City Clerk will assess the fee.
- (3) **Certification of Copies:**

If a person requests that a copy of a public record be certified as a true copy, an additional fee of \$1.00 per page (or if appropriate, per item) shall be charged.
- (4) **Minimum Fee:**

No charge will be made if the total fee is \$5.00 or less.

If the fee for copies or certified copies of any public record of the City is specifically set by a law other than the Act or this Regulation, the custodian shall charge the prescribed fee.

If the custodian cannot copy a public record within the City offices, the custodian shall make arrangements for the prompt reproduction of the record at public or private facilities outside the City offices. The custodian shall:

(1) Collect from the applicant a fee to cover the actual cost of reproduction; or

(2) Direct the applicant to pay the cost of reproduction directly to the facility making the copy.

Before copying a public record of the City, the custodian shall estimate the cost of reproduction and at the discretion of the custodian either obtain the agreement of the applicant to pay the cost, or demand prepayment of the estimated cost before reproducing the record. Prepayment is required if the estimated cost exceeds \$5.00.

(5) **Search and Preparation Fee**

The custodian may charge a reasonable fee for time that an official or employee of the City spends:

(1) To search for requested public records; or

(2) To prepare public records for inspection and copying.

The fee described above shall be in the amount of Twenty Dollars (\$20.00) for each hour in excess of Two (2) hours expended by City personnel in reviewing, researching, compiling and preparing the records for inspection and time devoted to supervising/observing the applicant's record inspection.

(6) **Payment of Fees**

The applicant shall pay all fees, including the search and preparation fee, if applicable, to the City at or prior to the time the applicant inspects the public record. No records shall be released to the applicant until all required fees are paid.

If the applicant requests that copies of a public record be mailed or delivered to the applicant or to a third party, the custodian shall charge the applicant for the cost of postage or delivery and shall collect the cost of postage or delivery prior to releasing the records to the applicant or mailing or delivering the record. No charge will be made if the total postage or delivery cost is \$1.00 or less.

(7) **Waiver or Reduction of Fee**

The "Official Custodian" may waive or reduce any fee charged pursuant to this regulation if:

- (1) The applicant requests a waiver; and
- (2) After consideration of the ability of the applicant to pay the fee and other relevant factors, the custodian determines that the waiver or reduction is in the public interest.

XIX. Time and Place of Inspection.

An applicant may inspect any public record of the City that the applicant is entitled to inspect during the normal working hours of the City government, Monday through Friday, except holidays.

The inspection shall occur where the public record is located, unless the custodian, after taking into account the applicant's expressed wish, determines that another place is more suitable and convenient.

AUTHORITY AND RESOURCE:

Authority - State Statute: Annotated Code of Maryland, State Government Article, Sections 10-611 through 10-628. Should any section of this policy conflict in form, interpretation, or through omission from state law, the Annotated Code shall take precedence over said policy, which shall be amended to comply.

Secondary Resource - Public Information Act Manual dated January 1997 published by the Office of the Attorney General.