

Title 15 DEPARTMENT OF AGRICULTURE

Subtitle 01 OFFICE OF THE SECRETARY

Chapter 04 Public Information Act Requests

Authority: State Government Article, §10-613, Annotated Code of Maryland

.01 General.

These regulations set out procedures for filing of requests with the Department of Agriculture for the inspection and copying of records under the Public Information Act, State Government Article, §10-611 et seq., Annotated Code of Maryland. It is the policy of the Department to facilitate public access to the records of the Department, when access is allowed by law, by minimizing costs and time delays to persons requesting information.

.02 Definitions.

A. The following terms have the meanings indicated.

B. Terms Defined.

(1) "Act" means the Public Information Act, State Government Article, §10-611 et seq., Annotated Code of Maryland.

(2) "Applicant" means a person requesting disclosure of public records.

(3) "Department" means the Department of Agriculture.

(4) "Custodian" means an authorized person employed by the Department having personal custody and control of public records of the Department.

(5) "Official custodian" means the person who is responsible for the maintenance, care, and keeping of the public records of the Department. Unless otherwise provided by law, the Secretary is the official custodian of the Department's records.

(6) "Public records" means all paper, correspondence, forms, books, photographs, photostats, films, microfilms, sound recordings, maps, drawings, or other written documents, regardless of physical form or characteristics. "Public records" includes all copies made or received by the Department in connection with the transaction of public business and includes the salaries of all employees of the Department.

(7) "Secretary" means the Secretary of Agriculture.

(8) "Working day" means a day other than Saturday, Sunday, or State holiday.

(9) "Written documents" means all books, papers, maps, photographs, cards, tapes, recordings, computerized records, or other documentary materials, regardless of physical form or characteristics.

.03 Who May Request.

A person may request to inspect or copy public records of the Department.

.04 Necessity for Written Request.

A. Inspections.

(1) Except as otherwise provided in this chapter, the custodian shall generally make public records available for inspection by an applicant without demanding a written request.

(2) The custodian shall require a written request if the custodian reasonably believes that the Act or any other law may prevent the disclosure of the record to the applicant or that a written request will materially assist the Department in responding to the request.

B. Copies. If the applicant is requesting a copy of any public record, the custodian may require a written request by the applicant.

.05 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.

.06 Filing Written Request.

A written request shall be addressed to the custodian of the record. If the custodian is unknown to the applicant, the request may be addressed to the Department.

.07 Response to Request.

A. If the custodian decides to grant a written request for inspection, the custodian shall produce the record for inspection immediately or within a reasonable period, not to exceed 30 days from the date of the request when a period of time is needed to retrieve the information.

B. If the custodian decides to deny the written request, the custodian shall do so within 30 days of the written request and, immediately upon deciding to deny the request, notify the applicant of the denial.

C. If a requested public record is not in the custody or control of the person to whom written application is made, that person shall, within 10 working days of the receipt of the request, notify the applicant. If that person knows the name of the custodian of the record or the location or possible location of the record, this information shall also be given to the applicant.

D. With the consent of the applicant, any time limit imposed by §§A—C, of this regulation, may be extended for an additional period not to exceed 30 days.

.08 Notification of Persons Who May be Affected by Disclosure.

Unless prohibited by law, the custodian should notify any person who could be adversely affected by disclosure of a record that a request for inspection or copying of the record has been made. The custodian may consider the views of that person before deciding whether to disclose the record to the applicant.

.09 Records Not in the Custody and Control of the Person Receiving the Request.

If a requested public record is not in the custody or control of the person to whom written application is made, the person shall notify the applicant of this fact within 10 working days of the receipt of the request, and if known, the custodian of the record and the location or possible location of the record.

.10 Records Temporarily Unavailable.

If a requested public record is in the custody and control of the person to whom written application is made, but is not immediately available for inspection or copying, the custodian shall, within 10 working days of the receipt of the request, so notify the applicant and set a date and hour within a reasonable time for inspection and copying.

.11 Records Destroyed or Lost.

If the requested record has been destroyed or lost, the custodian to whom the application is made shall, within 10 working days of the request, notify the applicant of this fact, and explain in the response the reasons why the record cannot be produced.

.12 Review of the Denial.

A. If a written request is denied by the custodian for a reason other than that the record is temporarily unavailable, the applicant may, within 30 days after receipt of the notice of the denial, request an administrative hearing.

B. If the applicant requests a hearing, the hearing shall be conducted by a hearing officer designated by the Secretary, and the hearing shall be governed by State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland. After the hearing, the hearing officer shall prepare a recommended decision for the Secretary. The Secretary shall issue a final decision of the Department.

C. If the hearing results in a total or partial denial of the written request, the applicant may file an appropriate action in the circuit court under §10-623 of the Act.

D. If the applicant chooses not to request a hearing under §A, of this regulation, the applicant may file an action for judicial enforcement under §10-623 of the Act without exhausting that administrative remedy.

.13 Disclosure Against Public Interest.

If, in the opinion of the Secretary, disclosure of any public record that is otherwise required to be disclosed under the Act would do substantial injury to the public interest, the Secretary may temporarily deny the request in writing and shall apply within 10 working days of the denial to the to the appropriate circuit court for an order permitting continued denial or restriction of access. Notice of the application

filed with the circuit court shall be served upon the applicant in the same manner that is provided for service of process by the Maryland Rules of Procedure.

.14 Fees.

A. The fee schedule for copying and certifying copies of records is as follows:

(1) Copies. The fee for each copy is 15 cents per page if reproduction is made by a photocopying machine within the Department. If records are not susceptible to photocopying (for example, punch cards, magnetic tapes, blueprints, and microfilm), the fee for copies shall be based on the actual cost of reproduction.

(2) Certification of Copies. If a person requests that a copy of a record be certified as a true copy, an additional fee of \$1 per page or, if appropriate, per item shall be charged.

(3) Minimum Fee Charged. A charge may not be made if the total amount of the fee is \$1 or less.

B. Notwithstanding §A, of this regulation, if the fees for copies, printouts, photographs, or certified copies of any record are specifically prescribed by a law other than the Act or this regulation, the prescribed fee shall be charged.

C. If the custodian is unable to copy a record within the Department, the custodian shall make arrangements for the prompt reproduction of the record at public or private facilities outside the Department. 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.

D. Before copying a record, the custodian shall estimate the cost of reproduction and either obtain the agreement of the applicant to pay the cost or demand prepayment of any estimated fee before reproducing the record.

E. Except as provided in §F, of this regulation, the official custodian may charge reasonable fees for official's or employee's time expended searching for requested records or for any time expended preparing records for inspection and copying.

F. The official custodian may not charge any search or preparation fee for the first 2 hours of official or employee time needed to respond to a request for information.

G. Upon request, the official custodian may waive or reduce any fee charged pursuant to this regulation if the custodian determines that the waiver or reduction is in the public interest. The official custodian shall consider, among other relevant factors, the ability of the applicant to pay the cost or fee.

H. If the applicant requests that copies be mailed or delivered to the applicant, the custodian may charge the applicant for the cost of postage or delivery to the applicant.

.15 Time of Inspection.

An applicant may inspect any public record that the applicant is entitled to inspect during the normal working hours of the Department.

.16 Place of Inspection.

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

.17 Inspection of Occupational and Professional Licensing Data for Compelling Public Purpose.

A. As provided under State Government Article, §10-617(h) (3), Annotated Code of Maryland, the custodian may permit the right of inspection of occupational and professional licensing records, other than those specified under State Government Article, §10-617(h)(2), Annotated Code of Maryland, on individual persons as set forth in this regulation.

B. A federal, State, local, or other law enforcement agency may inspect the occupational and professional licensing record of an individual who is the subject of the record.