

MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Requests Under the Maryland Public Information Act	Number 27-01AM
Originating Department County Executive	Effective Date November 20, 2001

Montgomery County Regulation on
REQUESTS UNDER THE MARYLAND PUBLIC INFORMATION ACT

Issued by: County Executive

Regulation No. 27-01AM

COMCOR

Authority: Md. Code Ann., State Gov't § 10-613(b) and § 2A-15 Montgomery County Code

Council Review: Method 2 under § 2A-15 Montgomery County Code

Register Vol. 18 No. 8

Comment Deadline: August 31, 2001

Effective Date: November 20, 2001

Sunset Date: None

SUMMARY: The purpose of this regulation is to establish procedures governing the timely production and inspection of public records subject to the Maryland Public Information Act.

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BACKGROUND: The Maryland Public Information Act requires each custodian to adopt reasonable rules or regulations governing the timely production and inspection of public records. Over time, departments have developed their own independent and informal methods for processing these requests, and the Chief Administrative Officer last issued a County-wide directive in 1977. The County needs to unify and update its policy.



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Section 1. Purpose

These regulations establish procedures for filing requests with Montgomery County for the inspection and copying of records under the Maryland Public Information Act. It is the County's policy to facilitate access to its public records by minimizing costs and time delays to persons requesting inspection of public records.

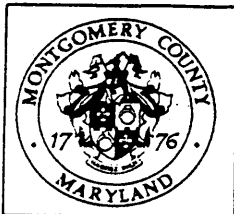
These regulations must be interpreted consistent with the Act and, in case of conflict, the Act governs. These regulations are not intended to create any legal rights for any person beyond those in the Act.

Section 2. Additional Agencies Complying with Regulation

The following agencies will comply with this regulation, subject to modification by Council resolution: County Council, Board of Appeals, Merit System Protection Board, Office of Hearing Examiner, Inspector General, Office of Legislative Oversight, and People's Counsel.

Section 3. Definitions

- A. "Act" or "Maryland Public Information Act" means Md. Code Ann., State Gov't §§ 10-611 through 10-628 (2000), as amended.
- B. "Applicant" means a person requesting disclosure of a public record.
- C. "Department" means any organizational unit in the Executive branch of the County government, including a Department, Office, Authority, Agency, Board, Committee or Commission responding to a request under the Act.
- D. "Custodian" means an authorized Department employee having personal custody and control of public records of the Department.
- E. "Official Custodian" means the person who is responsible for the maintenance, care, and keeping of the Department's public records. Unless otherwise provided by law, the Department Director is the official custodian of the Department's records.
- F. "Public record" or "record" means the original or any copy of any documentary material, regardless of physical form or characteristics, made or received in



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connection with the transaction of public business.

- G. "Director" means the Director, Executive Director, Agency Head, Chair or other person in charge of the Department, including a designee.
- H. "Working day" means a day other than Saturday, Sunday, or County holiday.

Section 4. Who May Request.

Any person may request to inspect or copy any Department's public records. The custodian must refer a request to the County Attorney's Office if the custodian knows that the applicant is a party (or acting on behalf of a party) in litigation with either the County or a County employee.

Section 5. Necessity for Written Request.

- A. Inspections.
 - (1) Except as otherwise provided in this regulation, the custodian should generally make public records available for inspection by an applicant without demanding a written request.
 - (2) The custodian must 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; that a written request will materially assist the Department in responding to the request; or that the request may involve substantial cost or time in making the records available.

- B. Copies.

If the applicant requests a copy of any public record, the custodian may require a written request from that applicant.

Section 6. Contents of Written Request.

A written request must reasonably identify the record sought. The request must include the applicant's name, address, and telephone number. If the request is unclear or unreasonably broad, the custodian may ask the applicant to clarify or, if possible, narrow the request. If the



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requested record would be available to a "person in interest" under the Act, the custodian may ask the applicant to provide information to determine if the applicant is a person in interest.

Section 7. Filing Written Request.

The applicant must address the written request to the record's custodian or official custodian. If the applicant does not know either the custodian's or the official custodian's name, the applicant may address the request to the Director of the Department that has custody of the record.

Section 8. Response to Written Request.

- A. If the custodian grants a written request for inspection, the custodian must produce the record for inspection immediately or, where a period of time is needed to retrieve the information, within a reasonable period of time not to exceed 30 days from the date of the request.
- B. Any denial of a request must be done within 30 days of receipt of the written request. Any decision for denial must be reviewed by the County Attorney's Office before it is sent to the applicant. Within 10 working days of a denial, the custodian must also provide the applicant with a written statement containing the reasons for the denial, the legal authority for the denial, and notice of any remedies under the Act for review 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 must so notify the applicant within 10 working days of receipt of the request. That person must also provide the applicant the name of the custodian of the record or the location or possible location of the record, if known.
- D. With the consent of the applicant, the custodian may extend any time limit imposed by this section for an additional 30 days.

Section 9. Notification of Persons Who May Be Affected By Disclosure.

Unless prohibited by law, the custodian may notify any person who could be adversely affected by disclosure of a public record in response to a request for inspection or copying. If the custodian decides to solicit the views of any affected person, the custodian may consider those



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views before deciding whether to disclose the record to the applicant. If the custodian decides to disclose a record contrary to the request of that person, the custodian may first provide that person an opportunity to file an appropriate action to prevent the disclosure.

Section 10. Review of the Denial.

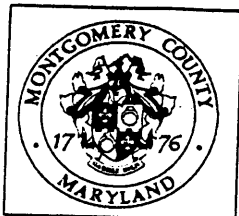
If the custodian denies a written request, the applicant may file an appropriate action in the circuit court under §10-623 of the Act.

Section 11. Disclosure Against Public Interest.

If, in the opinion of the official custodian, disclosure of a public record that the custodian must otherwise disclose under the Act would do substantial injury to the public interest, the official custodian, after conferring with the County Attorney's Office, may temporarily deny the request in writing and apply within 10 working days of the denial to the circuit court for an order permitting continued denial or restriction of access.

Section 12. Fees.

- A. The following schedule governs the fees for copying and certifying records. The Executive may amend these fees by regulations issued under method 3.
 - (1) *Copies.* The fee for each copy is \$.15 per page (letter or legal size) if reproduction is made by a photocopying machine within the Department. Larger documents (up to computer printout dimensions) are \$1.00 per page. Large size plans are \$2.00 per page. If records are not susceptible to photocopying (for example, punch cards, magnetic tapes, blueprints, and microfilm), the fee for copies must be based on the actual cost of reproduction.
 - (2) *Certification of Copies.* If a person requests that the custodian certify a copy of a record as a true copy, the custodian may charge an additional fee of \$1.00 per page, or if appropriate, \$1.00 per item.
 - (3) *Minimum Fee Charged.* The custodian must not charge a fee if the total amount of the fee would be \$1.00 or less.
- B. Notwithstanding subsection (A), if the fees for copies, printouts, photographs, or



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certified copies of any record are specifically prescribed by a law other than the Act or this regulation, the custodian must charge the prescribed fee.

- C. If the custodian is unable to copy a record within the Department, the custodian must make arrangements for the prompt reproduction of the record at public or private facilities outside the Department. The custodian either must 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. Except as provided in subsection (E), the official custodian may charge reasonable fees for the time expended searching for requested records and preparing them for inspection and copying. This fee should be related to the custodian's actual cost (for example, the cost of any outside contractor employed, or the hourly rate of any employee assigned, to do the work) and may include the cost of any actions taken under section 8.
- E. The official custodian may not charge any search or preparation fee for the first two hours of time that is needed to respond to a request for information.
- F. Before responding to a request, the custodian may estimate the search, preparation and reproduction costs and either obtain the written agreement of the applicant to pay the cost or demand prepayment of the estimated fee.
- G. Upon written 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 must 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.

Section 13. Time of Inspection.

The applicant may inspect any public record that the applicant is entitled to inspect during the Department's normal working hours.

Section 14. Place of Inspection.



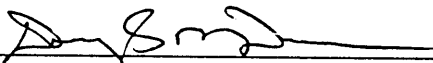
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The applicant must inspect the records where they are maintained unless the custodian, after taking into account the applicant's request to inspect the records at another location, determines that another place of inspection is more suitable and convenient.

APPROVED:

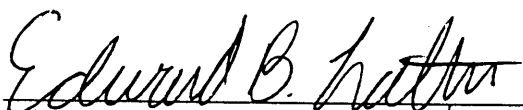


Douglas M. Duncan
County Executive

Distribution:

County Executive's File
Secretary to the County Council
Director of Finance (2)
Park and Planning Relocation Assistance
County Attorney

Approved as to form and legality.



Edward B. Lattner
Associate County Attorney 11/9/01