

Rules for Processing Maryland Public Information Act Requests (MPIAs)

Howard County Public School System
Office of General Counsel

I. Purpose

Requests for public records under Maryland's Public Information Act (MPIA), which grants the public a broad right of access to public records while protecting legitimate governmental interests and the privacy rights of individual citizens, will be handled by the Howard County Public School System and the Howard County Board of Education in accordance with the Annotated Code of Maryland, General Provisions Article Sections 4. These regulations summarize the school system's obligation to respond to MPIA requests, details the steps for submitting requests, and outlines procedures for processing requests in a timely manner.

II. Definitions

The following terms have the meanings indicated:

A. Terms Defined.

1. "MPIA" means the Maryland Public Information Act under General Provisions Article, §§ 4-101 to 4-601, Annotated Code of Maryland (MPIA GP).
2. "Requester" means a person or governmental unit that asks to inspect a public record.
3. "Copy" means any form of reproduction using a photocopying machine or other reproduction technology, including a paper copy, an electronic copy, a printout, or an image.
4. "Custodian" means (as defined in MPIA GP § 4-101(d)):
 - i. the official custodian; or
 - ii. any other authorized individual who has physical custody and control of a public record.
5. "HCPSS" means the Howard County Public School System and the Howard County Board of Education.
6. "Indigent" means (as defined in MPIA GP § 4-206(a)(2)) an individual's family household income is less than 50% of the median family income for the State as reported in the Federal Register.
7. "Metadata" means (as defined in MPIA GP § 4-205(a)) 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.
8. "Official custodian" means (as defined in MPIA GP § 4-101(f)) 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. “Ombudsman” means (as defined in MPIA GP § 4-1B-01 to 4-1B-04) the Public Access Ombudsman appointed to resolve disputes under the MPIA.
10. “MPIA Representative” means the HCPSS employee who is responsible for accepting requests for public records.
11. “Person in interest” means (as defined in MPIA GP § 4-101(g)):
 - i. a person or governmental unit that is the subject of a public record or a designee of the person or governmental unit;
 - ii. if the person has a legal disability, the parent or legal representative of the person; or
 - iii. as to requests for correction of certificates of death under § 5-310(d)(2) of the Health– General Article, the spouse, adult child, parent, adult sibling,
12. “Public record” means (as defined in MPIA GP § 4-101(j)) the original or any copy of any documentary material that:
 - i. 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
 - ii. is in any form, including:
 - a. a card;
 - b. a computerized record;
 - c. correspondence;
 - d. a drawing;
 - e. film or microfilm;
 - f. a form;
 - g. a map;
 - h. a photograph or photostat;
 - i. a recording; or
 - j. a tape.
13. “Reasonable Fee” means (as defined in MPIA GP § 4-206(a)(3)) a fee bearing a reasonable relationship to the recovery of actual costs incurred by a governmental unit.
14. “Sociological data” means:
 - i. Social security number;
 - ii. Personal address;
 - iii. Personal phone number;
 - iv. Information identifying an individual’s protected class status;
 - v. Benefit and dependent designations; and
 - vi. Other data that, if released, would pose a risk to safety or privacy.
15. “Superintendent” means the Superintendent of the Howard County Public School System.
16. “Working day” means a day other than Saturday, Sunday, or when HCPSS Central Office is closed.

III. Superintendent as Official Custodian

Unless otherwise provided by law, the Superintendent is the official custodian of HCPSS public records.

IV. Who May Request Public Records

Any person or governmental unit may request to inspect or copy HCPSS public records.

V. HCPSS Public Records

The MPIA attempts to balance the public's right to transparency in school system operations, with laws that govern the availability of HCPSS records.

A. Records Covered.

1. Public records created or received by the HCPSS Board of Education, an HCPSS school or office, or a school system official in connection with the transaction of HCPSS 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.
2. Records covered under the MPIA are only those in existence at the time of the request.
3. Requests to write, generate, or create documents, as well as answer direct questions not contained in a document, are not covered under the MPIA.

B. Exemptions.

1. Certain HCPSS public records must be withheld or redacted if confidential by law, such as, but not limited to:
 - i. Those subject to attorney-client privilege under MPIA GP § 4-301(1);
 - ii. Those subject to state and federal statute under MPIA GP § 4-301(2)(i), (ii);
 - iii. Those subject to court orders and rules under MPIA GP § 4-301(2)(iii), (iv);
 - iv. Medical information under MPIA GP § 4-329(b);
 - v. Personnel records under MPIA GP § 4-311;
 - vi. Confidential commercial and financial information under MPIA GP § 4-335;
 - vii. Individual finance records under MPIA GP § 4-336;
 - viii. Student records under both the Family Educational Rights and Privacy Act of 1974 and MPIA GP § 4-313; and
 - ix. Sociological data under MPIA GP § 4-330 received by HCPSS on citizens and employees in the course of operation.
2. Other records may be exempt from disclosure if determined by HCPSS to be contrary to the public interest after careful consideration of the possible consequences of disclosure, such as:
 - i. Pre-decisional and deliberative discussions under MPIA GP § 4-344;
 - ii. Ongoing research projects under MPIA GP § 4-346;
 - iii. Investigative and intelligence materials, or security procedures, including those compiled for ongoing litigation under MPIA GP § 4-351;

- iv. Emergency procedures under MPIA GP § 4-352; and
 - v. The content of academic examinations under MPIA GP § 4-3345.
3. 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 large to otherwise exempt documents.
 4. If a request is denied for access to HCPSS public records, or information within a record redacted, requesters will be notified as to the specific statutory provisions for each exemption.

C. General Public Records.

1. HCPSS makes every attempt to include commonly requested publically available documents on www.hcpss.org and Board of Education documents including Open Meeting Minutes on <http://www.boarddocs.com/mabe/hcpssmd/Board.nsf/public>.
2. All documents that may be viewed on these sites at the time of the request are designated as general public records.

D. Electronic Records.

1. Except as provided in D(3) and (4) of this section, HCPSS will provide requesters 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 requester requests a copy of the public record in a searchable and analyzable electronic format; and
 - iii. HCPSS 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.
2. HCPSS will provide a portion of the public record in a searchable and analyzable electronic format if:
 - i. Requested by the requester, and
 - ii. HCPSS is able to do so by using the existing functions of the database or software program that contains the searchable and analyzable data.
3. HCPSS is not required to:
 - i. Create or reconstruct a public record in an electronic format if the public record is not available in an electronic format; or
 - ii. 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.
4. HCPSS may remove metadata from an electronic document before providing the electronic record to a requester by:
 - i. Using a software program or function; or
 - ii. Converting the electronic record into a different searchable and analyzable format.

E. Public Records Destroyed or Lost.

1. If HCPSS 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.

VI. Initiating Requests

As of July 1, 2017, HCPSS uses an electronic submission, tracking and review system for MPIA requests. A request submitted through the online system at mpia.hcpss.org will materially assist HCPSS in responding to MPIA requests, however emailed or mailed requests will also be accepted.

A. Requester Guidelines.

1. All requests shall contain:
 - i. A brief description reasonably identifying the public records sought;
 - ii. The requester's name; and
 - iii. Contact information (email addresses must be valid to process requests).
2. Instructions for submitting an MPIA request to HCPSS and an electronic request form can be found on the HCPSS website at mpia.hcpss.org/request/new.
3. Requesters are also able to email requests to mpia_requests@hcpss.org or mail requests to Howard County Public School System, Attention: Maryland Public Information Act Representative, Office of General Counsel, 10910 Clarksville Pike, Ellicott City, Maryland 21042. Written requests will be processed through the online system in the same manner as electronically submitted requests in accordance with section VII.
4. Contact information is used to respond to requests, as well as initiate dialogue with a requester when clarification, fees, or other circumstances apply.
5. Applications 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.

B. HCPSS Staff Guidelines.

1. As a general practice, HCPSS staff will refer members of the public to mpia.hcpss.org to file an MPIA request.
2. If an office or school receives a written request for public records under the MPIA via mail or email it should be forwarded to the MPIA Representative in Central Office for processing in accordance with section VII.
3. Where a HCPSS office or school receives a request for public records that does not specifically reference the MPIA, staff should indicate the request will be handled per the MPIA and follow the instructions for initiating a request in B(1) and (2) of this section when:
 - i. There is not currently a HCPSS process in place to handle the records request outside the MPIA;
 - ii. The office or school will not be able to handle the request within the timeframe requested;
 - iii. The search for, preparation and reproduction of responsive records will take beyond two hours or the requester has asked for copies exceeding the \$10.00 minimum fee outlined in XII; or

- iv. The MPIA or any other law may prevent disclosure of one or more HCPSS public records to the requester.
- 4. Where a HCPSS office or school receives a request for public records that does not specifically reference the MPIA, and none of the parameters in B(3) of this section apply, staff should:
 - i. Indicate the request will be handled per regular operational procedures; and
 - ii. Give the requester the option to submit an MPIA request in accordance with A of this section.

VII. Processing Requests

Once an electronic or written MPIA request has been received by HCPSS, the MPIA Representative or a designee shall:

- A. Post a summary of the request in the online tracking system.
 - 1. Posts may be summarized to include specific documents requested, as well as remove any legally protected information the requester may have provided to process the request.
 - 2. Once posted, requesters receive an automated email with a unique file number and link from the online tracking system.
- B. Update the status of the request in the online tracking system.
 - 1. Status changes in the online system include:
 - i. “Submitted” meaning the request was received, summarized and posted by the MPIA Representative.
 - ii. “In Progress” meaning the request has moved along, typically to the custodian(s) of the record(s) requested to search for, review and prepare responsive documents.
 - iii. “Waiting for Clarification” meaning HCPSS has:
 - a. Sent correspondence to the requester looking to better understand the public records requested or to narrow unreasonably broad requests; and/or
 - b. Assessed a fee to search for, review and prepare the requested records in accordance with section IX, and is awaiting a response to continue to process the request.
 - iv. “Complete” meaning:
 - a. The request has been denied;
 - b. The request has been fulfilled by supplying responsive documents – with or without redaction;
 - c. No records were found to exist; and/or
 - d. No valid contact information, clarification or payment was received from the requester to continue to process a response.
 - 2. As updates to the status of a request are made in the tracking system the requester will also receive updates from mpia_requests@hcpss.org.

- C. Contact HCPSS offices and schools who are custodians of the requested public records. Custodians will be asked to:
 - 1. Confirm no responsive public records exist;
 - 2. Indicate public records were destroyed or lost;
 - 3. Confirm existence of responsive public records;
 - 4. Indicate the time needed by staff to search for, review and prepare responsive records; and/or
 - 5. Discuss potential exemptions for responsive public records.

- D. Post responsive records and notes in the online tracking system.
 - 1. As records become available, the MPIA Representative will post those responsive documents which are publically releasable to the online tracking system.
 - 2. For documents which have been redacted per the MPIA, notes will be included in the online response referencing statutory provisions for each exemption.
 - 3. For documents that exist but are not publically releasable, notes will be posted in place of the documents referencing statutory exemptions for the denial.
 - 4. For documents containing legally protected information available only to the person in interest, documents will be omitted from the online report.
 - 5. When no responsive records exist, known records have been lost or destroyed, or the request is withdrawn, notes in the online tracking system will indicate why no records have been produced.

- E. Correspond with requesters.
 - 1. The MPIA Representative will correspond directly with the requester while processing the request as needed to:
 - i. Clarify records sought;
 - ii. Relay fees to search for, review and prepare responsive documents; and
 - iii. Consider fee waiver requests.
 - 2. The MPIA Representative will provide formal MPIA response letters to the requester in accordance with section VIII.

VIII. Responding to Requests

When providing formal MPIA responses:

- A. If HCPSS decides to grant a request for inspection, HCPSS will produce the public record for inspection:
 - 1. Immediately; or
 - 2. Within a reasonable time period, not to exceed 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 HCPSS reasonably believes that it will take more than 10 working days to produce the public record, HCPSS will indicate in writing or by electronic mail within 10 working days after receipt of the request:

1. The amount of time that the custodian anticipates it will take to produce the public record;
 2. An estimate of the range of fees that may be charged to comply with the request for public records; and
 3. The reason why it will take more than 10 working days to produce the records.
- C.
1. If HCPSS decides to deny a request for inspection, HCPSS will:
 - i. Deny the request within 30 days after the request; and
 - ii. Immediately notify the applicant of the denial.
 2. If a request is denied, HCPSS will provide the requester, at the time of the denial or within 10 working days, a written statement that gives:
 - i. The reason for the denial,
 - ii. The legal authority for the denial; and
 - iii. Notice of the remedies available for review of the denial.
- D. If a request is denied, HCPSS will provide the requester, at the time of the denial or within 10 working days, a written statement that gives:
1. The reasons for the denial, including, for records denied under MPIA GP § 4-343, a brief explanation of:
 - i. Why denial is necessary; and
 - ii. Why the harm from disclosure of the public record would be greater than the public interest in providing access to the information in the public record such that disclosure of the public record would be contrary to the public interest;
 2. The legal authority for the denial;
 3. 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
 4. 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, HCPSS, within 10 working days after receipt of the request, will notify the requester:
1. That the school system does not have custody or control of the requested public record; and
 2. If known:
 - i. The name of the custodian of the public record; and
 - ii. The location or possible location of the public record.
- F. Any time limit imposed by A through E of this section may be extended:
1. With the consent of the requester, for an additional period of up to 30 days; and
 2. For the period of time during which a dispute initiated by the requester is pending before the Ombudsman.

IX. Notice to and Consideration of Views of Person Potentially Affected by Disclosure

- A. Unless prohibited by law, HCPSS 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 HCPSS, could be adversely affected by disclosure of that public record.
- B. HCPSS may consider the views of the potentially affected person before deciding whether to disclose the public record to a requester.

X. Review of Denial

- A. If HCPSS denies a request to inspect or copy a public record of the school system, the requester may file an action for judicial enforcement under MPIA GP § 4-362 without pursuing the remedies set forth in B and C of this section.
- B. If HCPSS charges a fee of more than \$350 under section XII, the requester may, within 90 days after the date the fee is imposed, file a written complaint with the State Public Information Act Compliance Board under MPIA GP § 4-1A-05(a).
- C. The requester and HCPSS each may contact the Ombudsman, under MPIA GP § 4-1B-04, to resolve a dispute relating to requests for public records.

XI. Disclosure Against Public Interest

- A. Denial Pending Court Order.
 - 1. If, in the opinion of the Superintendent, disclosure of a public record of HCPSS otherwise subject to disclosure under the Act would do substantial injury to the public interest, the Superintendent may temporarily deny the request and seek a court order allowing continued nondisclosure.
 - 2. A temporary denial shall be in writing.
- B. Circuit Court Review.
 - 1. Within 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.
 - 2. Notice of the Superintendent's complaint shall be served on the requester in the manner provided for service of process by the Maryland Rules.

XII. 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 HCPSS to process the request.

- A. Search and Preparation Fees.
 - 1. Except as provided in A(5) of this section, HCPSS may charge a reasonable fee for time that employees spend:
 - i. Searching for requested public records;

- ii. Reviewing requested public records for potential disclosure; and
 - iii. Preparing public records for inspection or copying.
- 2. Fee estimates will include time spent by all involved in the review and preparation of responsive documents, including the MPIO Representative and/or legal counsel.
- 3. HCPSS will calculate the fee under A(1) of this section based on the current hourly salary of staff as reported by the HCPSS Payroll Office multiplied by the hours estimated.
- 4. HCPSS will not charge fees for the first two hours staff spends to search for, review and prepare responsive documents.
 - i. When multiple staff salaries are included in a fee estimate, costs will be calculated such that two hours of the highest salary is deducted from the total estimate.
- 5. Prior to any response being produced, a cost estimate will be sent to the requester, who may elect to:
 - ii. Pay the fees in full before work will begin;
 - iii. Narrow the requested records; or
 - iv. Withdraw the MPIO request.
- 6. After receipt of fees by HCPSS, if it becomes apparent processing will take longer than estimated, HCPSS will stop work and notify the requester of additional costs.
- 7. Upon completion of processing, if the request took less time than estimated, the difference will be refunded to the requester.
- 8. If no response is received from the requester in accordance with A(5) of this section within 30 days of sending a fee estimate, HCPSS will close the request.

B. Copy Fees.

- 1. The fee for each copy made by a standard printer or photocopying or scanning machine within the school system is 20 cents per page.
- 2. If records are not susceptible to photocopying (for example, punch cards, videos, magnetic tapes, blueprints or microfilm), the fee for copies will be based on the actual cost of reproduction.
- 3. If a person requests that a copy of a public record be certified as a true copy, an additional fee of \$1 per page (or if appropriate, per item) shall be charged.
 - i. If the fee for copies or certified copies of any public record is specifically set by a law other than the Act or this regulation, HCPSS will charge the prescribed fee.
- 4. Before copying a public record of the school system, HCPSS will estimate the cost of reproduction and require prepayment of the costs.
- 5. HCPSS 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, HCPSS will:
 - i. Collect from the requester a fee to cover the actual cost of reproduction; or
 - ii. Direct the requester to pay the cost of reproduction directly to the facility making the copy.

6. If the requester asks that copies of a public record be mailed or delivered to the requester or to a third party, HCPSS may charge the requester for the cost of postage or delivery.
7. HCPSS will make every attempt to send available documents electronically to reduce copy fees for requesters.
8. No charge will be made if the total fee is \$10 or less.

C. Waiver or Reduction of Fee.

1. HCPSS may waive or reduce any fee set under this section if the requester asks for a waiver and:
 - i. HCPSS determines that the waiver or reduction is in the public interest; or
 - ii. The requester is indigent and files an affidavit verifying the facts that support a claim of indigence.
2. In determining whether a fee is in the public interest, HCPSS will consider, among other relevant factors, the ability of the applicant to pay the fee.

D. Time and Place of Inspection.

1. A requester may inspect releasable HCPSS public records at a mutually agreeable time during the normal working hours of the school system.
2. The inspection shall occur where the public record is located, unless HCPSS, after taking into account the requester's expressed wish, determines that another place is more suitable and convenient.