COUNTY COUNCIL

OF

TALBOT COUNTY, MARYLAND

2016 Legislative Session, Legislative Day: July 26, 2016

Resolution No.: 231

Introduced by: Mr. Bartlett, Mr. Pack, Ms. Price

A RESOLUTION TO AMEND THE COUNTY'S STANDARDIZED RULES AND PROCEDURES FOR PROCESSING PUBLIC INFORMATION ACT REQUESTS

By the Council: July 26, 2016

Introduced, read the first time, and ordered posted, with Public Hearing scheduled on Tuesday, August 23, 2016 at 6:30 p.m. in the Bradley Meeting Room, South Wing, Talbot County Courthouse, 11 North Washington Street, Easton, Maryland 21601

By Order: Susan W. Moran

Susan W. Moran, Secretary

A RESOLUTION TO AMEND THE COUNTY'S STANDARDIZED RULES AND PROCEDURES FOR PROCESSING PUBLIC INFORMATION ACT REQUESTS

WHEREAS, Maryland law requires local jurisdictions to adopt policies and procedures for responding to requests for inspection and copying of public records under the Maryland Public Information Act, General Provisions Article §4-101, *et.seq.,* Md. Code Ann.; and,

WHEREAS, Talbot County adopted the "Talbot County, Maryland, Rules and Regulations" governing Public Information Act requests on February 13, 2007; and,

WHEREAS, changes in the law since the County's adoption of the "Talbot County, Maryland, Rules and Regulations" necessitate certain amendments thereto;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND, that the "Talbot County, Maryland, Rules and Regulations" governing Public Information Act Requests adopted on February 13, 2007, shall be and are hereby amended as shown in Exhibit "A", attached hereto and incorporated by reference herein.

BE IT FURTHER RESOLVED, that this Resolution shall take effect immediately upon its passage.

PUBLIC HEARING

Having been posted and Notice of time and place of hearing and Title of Resolution No. _____ having been published, a public hearing was held on Tuesday _____ 2016, at _____ p.m. in the Bradley Meeting Room, South Wing, Talbot County Courthouse, 11 North Washington Street, Easton, Maryland 21601.

BY THE COUNCIL

Read second time:

ENACTED: _____

By Order, _____
Susan W. Moran, Secretary

Pack -

Williams -

Bartlett-

Price -

Callahan -

EFFECTIVE: _____

i:\county attorney\16-102 pia - update manual\resolution - updated pia policy (6-17-16).doc

EXHIBIT A – AMENDMENTS TO COUNTY PIA POLICY

KEY

Boldface.....Heading or defined term.

Underlining .....Added to existing policy by original bill.

~~Strikethrough~~.....Deleted from existing policy by original bill.

Double underlining .....Added to policy by amendment.

~~Double strikethrough~~ .....Deleted from existing policy by amendment.

* * *.....Existing policy unaffected.

* * *

SECTION I
PUBLIC INFORMATION ACT REQUESTS

Authority: ~~State Government Article~~General Provisions Article, ~~§§ 10-611~~§ 4-101~~,~~ *et seq.*, Annotated Code of Maryland

§ 1.1 Scope.

These regulations establish procedures for filing and processing requests for inspection and copying of public records under the Maryland Public Information Act.

§ 1.2 Interpretation.

These regulations are intended to facilitate access to the County's public records when access is allowed by law and to minimize costs and delays. To the extent of any inconsistency between these regulations and the requirements of State law, State law governs. For terms used in these regulations, the masculine gender includes the feminine, the singular includes the plural, and vice versa. Section titles are for convenience only, are not part of these regulations, and are not to be used as interpretive guides to construction.

§ 1.3 Definitions.

These regulations use the following definitions:

Act means the Public Information Act, State Government Article, §§10-611 through 10-628, Annotated Code of Maryland.

Applicant means a person who requests to inspect a public record.

Custodian means a County employee authorized to have and who has physical custody or control of a public record.

County means Talbot County, Maryland.

County PIA representative means the County employee or official designated by the County Manager as the County's representative who a member of the public should contact to request a public record from the County in accordance with General Provisions Article § 4-503.

Indigent means an individual's family household income is less than 50% of the median family income for the State as reported in the Federal Register.

Official custodian means a department head.

Person includes a governmental unit.

Person in interest means a person who is the subject of a public record.

Public record means the original or any copy of documentary material, in any form, in the custody or control of the County that is made or received by the County in connection with the transaction of public business.

Working day means any weekday that the County offices are open to the public other than a legal holiday.

§ 1.4 Who may inspect.

Any person may request to inspect or copy the County's public records.

§ 1.5 Written request.

A. Except as provided in Paragraph B of this subsection, any person who wishes to inspect a public record shall submit a written request to the official custodian or the County PIA representative. If the official custodian is unknown, the request may be addressed to the County ~~Manager~~PIA representative. The County PIA representative shall (i) forward any requests for public information he or she receives to the official custodian whose department the County PIA representative reasonably believes has custody of the requested information and (ii) give the applicant notice of the same.

B. A person need not submit a written request if:

(1) The public record is listed as being available for immediate inspection in accordance with Paragraph C of this subsection; or,

(2) The official custodian waives the requirement for a written request.

C. The official custodian ~~shall consider whether to~~ designates the following ~~specific~~ types of public records ~~, and shall maintain lists of the specific types of public records,~~ that are to be made available for immediate inspection without written request:

(1) ~~Without a written request; or,~~Approved minutes of any meeting open to the public of any County body, board, or commission; and,

(2) ~~Immediately upon written request.~~ Video-tapes, audio-tapes, or transcripts of any meeting open to the public of any County body, board or commission.

D. Contents. A written request shall:

(1) Contain the applicant's name, street address and phone number;

(2) Reasonably identify, by brief description, the public records sought;

(3) Include an agreement to pay all costs required by these regulations or other law; and,

(4) Be signed by the applicant.

E. Except when the decision to grant or deny a request is related to the status of an applicant as a person in interest, and except as required by other law or regulation, the custodian may not condition granting an application upon:

(1) The identity of the applicant;

(2) Any organizational or other affiliation of the applicant; or,

(3) Disclosure by the applicant of the purpose for the application.

§ 1.6 Time of response.

A. The official custodian shall make a decision to grant or deny the request within 30 days after receipt, as reasonably necessary to retrieve the public records, review the request, and reach a decision.

B. If the official custodian reasonably believes that it will take more than 10 working days to produce the public record, he or she will notify the applicant in writing or by electronic mail within 10 working days after receipt of the request and provide:

(1) The amount of time that the official 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 for the delay.

~~B.~~C. For requests that are denied, within 10 working days of the decision the official custodian shall provide a written statement giving the applicant:

(1) The reason(s) for the ~~decision~~denial and if inspection is denied under GP § 4-343, a brief explanation of why the denial is necessary;

(2) The legal authority for the ~~decision~~denial;

~~(2)~~(3) Without disclosing protected information, a brief description of the undisclosed record or portion that will enable the applicant to assess the applicability of the legal authority for the denial; and,~~and,~~

~~(3)~~(4) Notice of remedies available to review the decision.

~~C.~~D. Lack of custody or control. If a public record is not in the custody or control of the person to whom the request is addressed, he shall notify the applicant within 10 working days after receipt of the request and, if known, shall provide the name of the official custodian whose department the person reasonably believes may have the record(s) and/or the location or possible location of the public record(s).

~~D.~~E. Public records lost or destroyed. If the custodian knows that a public record has been lost or destroyed, he shall promptly notify the applicant and explain the reasons it cannot be produced.

~~E.~~F. Time extension. With the applicant's consent, any time limit imposed by these regulations may be extended for an additional period not to exceed 30 days.

§ 1.7 Notice to affected persons.

A. Unless prohibited by law, the custodian may provide notice of a request to any person who, in the judgment of the custodian, could be adversely affected by disclosure of the public record.

B. The custodian may consider the views of such person before deciding to disclose the public record.

§ 1.8 Review prior to inspection.

Except for public records classified as available for immediate inspection under § 1.5 C, the official custodian shall promptly review or make arrangements to have the Office of Law review the request and all public records compiled in response to the request. All questions concerning interpretation or application of the Act shall be referred to the Office of Law.

§ 1.9 Disclosure against public interest.

A. Generally. This subsection applies only to public records that are otherwise subject to disclosure under the Act.

B. Denial Pending Court Order. If, in the opinion of the official custodian, inspection of a public record would cause substantial injury to the public interest, the official custodian may, in a written response, temporarily deny any request to inspect a public record that is otherwise subject to disclosure under the Act.

C. Circuit Court Review. Within 10 working days after temporary denial, the official custodian shall file an action in the Circuit Court to obtain an order permitting continued denial or restriction of access.

§ 1.10 Fees.

A. Unless waived by the official custodian, at the official custodian's election, the applicant shall pre-pay or agree to pay all fees due under these regulations before the County copies any public records or completes its response to the applicant's request.

B. The fees are:

(1) Copies.

(a) There shall be no charge for copies for any single request in any twelve (12) month period that results in a total charge of five dollars ($5.00) or less.

(b) Fees for copies generated by the County are:

(i) 25 cents per black and white letter or legal size page;

(ii) 50 cents per black and white ledger size page;

(iii) $1.00 per color letter, legal, or ledger size page.

(c) Fees for copies made by commercial vendors are the actual costs for reproduction.

(d) Vendors. If the custodian employs a vendor to copy a public record, at the custodian's election, the applicant shall pre-pay costs of reproduction or the applicant shall pay the vendor directly.

(e) Chain-of-custody. Records delivered to a vendor shall be accompanied by a County form establishing the chain-of-custody to be signed by the vendor upon pick up and return. Public records must remain in the exclusive possession or control of the County or the vendor.

(f) Postage and delivery. The County shall charge the applicant for staff time and the cost of postage or delivery if the applicant requests that copies be mailed or delivered.

(2) Certification. The fee for certifying a public record as a true copy is $5.00 per page (or if appropriate, per item)~~certification~~, in addition to other fees.

(3) Record search and preparation time. The fee to search, compile, review, prepare, and otherwise respond to a request to inspect or copy public records under these regulations is ~~$30.00 per hour~~the cost calculated by multiplying the actual time spent by each individual employee involved in the response, including attorney review time, by his or her hourly salary, including benefits, and adding these respective figures together, except that there is no fee for the first 2 hours of cumulative time spent responding to the request.

C. Other law. Notwithstanding ~~§ 1.14 A above~~any provision in these Rules and Regulations, if a specific fee for a copy, an electronic copy, a printout or a photograph of a public record is established by other law or regulation, that law or regulation shall govern.

D. Waiver or Reduction of Fees. The County Manager may waive or reduce any fee set under these regulations if:

(1) The applicant requests a waiver in writing; and

(2) (i) The applicant is an individual; is indigent; and files an affidavit of indigency; or,

(ii) The County Manager determines that the waiver or reduction is in the public interest. In making that determination, the County Manager shall consider, among other relevant factors, the amount of the fee and the applicant's ability to pay.

§ 1.11 Time and place for inspection.

A. If the request is granted, the public record shall be produced:

(1) Immediately if it is classified under § 1.5 C as being available for immediate inspection; or,

(2) Within 30 days after receipt of the request, as reasonably necessary to retrieve the public records, review the request, reach a decision, and arrange for the inspection.

B. If a public record in the custody and control of the County is temporarily unavailable for inspection or copying, the official custodian shall promptly notify the applicant and schedule a date within a reasonable time for inspection or copying.

C. Inspection of public records shall occur during the County's normal working hours.

D. Inspection shall occur where the public record is located unless the custodian determines another place is more suitable and convenient for both the applicant and the County.

E. County personnel should remain present during inspection as necessary to assure the public records remain intact, in their original condition, and to preserve the County's custody and control.

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