

October 30, 2018

Ms. Roxanne Ready
Capital News Service
c/o Data Editor Sean Mussenden
3210 Knight Hall
College Park, Maryland 20742

Re: Public Information Act Request

Dear Ms. Ready:

Thank you for your email dated October 19, 2018, in which you requested certain information from this Office under the Maryland Public Information Act ("MPIA" or the "Act"). Specifically, you have asked for the following information:

1. A "searchable electronic copy of both the database containing complaints filed with this Office and the database of licensees";
2. A "copy of all records stored by [this Office, including] the names and locations of organizations against which complaints have been filed, as well as the dates, types, and summary text of the complaints themselves and the result and resolution of the complaints or status of any pending investigations, if available;"
3. The "database of all cemeteries, monument dealers, sellers of burial goods, and related companies and businesses licensed by [this Office] ... stored in a Db2 database and referred to internally as the AS-400 ... for fiscal years 2013 – 2017 ... [or] for as long as they have been stored[, including] the internal registration number, license number, license expiration date, license category, name and address of the licensee." You have requested the "information from this database exported into Excel spreadsheets [and also the database itself in its original format, if possible;"
4. In addition to the databases and records, "electronic copies of any available documentation for them[, including] a record layout, data dictionary, lookup tables or code sheets, and user manual, if applicable, as well as a sample of any forms you use to transfer the information into the database;" and
5. A key to the license categories;

You have also requested a waiver of any fees for search and preparation and for copying of the requested records.

Ms. Roxanne Ready
October 30, 2018
Page 2 of 3

As to the first issue, you have considerably expanded the parameters of your request from your email of September 18, 2018, please be advised that it will take more than 10 working days to produce the records you requested. I am writing to give you a date by which we expect to be able to complete the task, to explain why we are not able to produce them more quickly, and to provide an estimate of the costs of producing the records.

Again, while it is the policy of our agency that the public has the right to know the nature of non-pending complaints against registrants and permit holders, and again, although I believe the material contained in the Excel spreadsheet is generally subject to disclosure under the MPIOA, please be aware that some of the records you have requested may contain information that is not subject to disclosure and may, therefore, be subject to redaction. General Provisions Article ("G-P"), §4-333.

As we discussed earlier, and as required to G-P §4-203(b)(2), I wish to advise you that it will take more than ten business days to respond to your request to produce the records. The delay in producing a responsive record is attributable to the fact that the Db2 database may contain specific records or information that must be withheld or redacted pursuant to specific provisions in the Act. Consequently, each file would have to be reviewed before we can produce responsive records. I anticipate that this Office will need between 30 and 45 additional working days after receiving your request to proceed to assemble and produce the records.

Once again, I would like to make you aware of certain statutory and regulatory provisions. To the extent required, the Act entitles you to two free hours of the "search and preparation" of records. G-P, §4-206(c); Code of Maryland Regulations ("COMAR") 09.01.04.14.A.(1) and 09.01.04.14.E. If additional time is required, this Office may charge a reasonable hourly fee, in addition to the fees for the copies themselves. G-P, §4-206(b) and (d); COMAR 09.01.04.14. At this time, I anticipate that review and preparation of the requested records will take approximately 20-30 hours at a cost of \$33 per hour.

As to the second issue, your request to waive any fees for the review, redaction, assembly and copying of the records, please be advised that this Office declines to waive those fees. The Act provides that an applicant may obtain copies of public records upon payment of reasonable copying charges or may request a waiver of those charges. The custodian of the records has discretion to waive the charges if the applicant requests a waiver and if the custodian, after considering the applicant's ability to pay and other relevant factors, determines that it would be in the public interest to waive the charges. GP §4-206(e).

Ms. Roxanne Ready
October 30, 2018
Page 3 of 3

The statute provides that the official custodian "may charge an applicant a reasonable fee for: (i) the search for, preparation of, and reproduction of a public record, on request of the applicant, in a customized format; and (ii) the actual costs of the search for, preparation of, and reproduction of a public in a standard format, including media and mechanical processing costs." GP §4-206(b). And while the charges may be waived, such waivers, even where an applicant is indigent or incarcerated, are extraordinary. 81 *Opinions of the Attorney General* 154 (January 31, 1996). However, as your letter offers no justification for a fee waiver other than a generic allegation that such a waiver would "benefit the public," this Office has determined that there is no public interest compelling a waiver. *Massey v. F.B.I.*, 3 F.3d 620, 625 (2nd Cir. 1993).

In your letter, you instructed that if the fee waiver request is denied, "I request that you notify me of these fees before complying with any portion of this request." As it is apparently your desire to consider amending your request based on the costs involved, our Office will wait for further direction from you. If you have any other questions about obtaining the information you need, please feel free to contact me.

Sincerely,



Deborah Rappazzo
Executive Director

cc: Mr. John Papavasiliou, Deputy Commissioner
Stuart J. Cordish, Assistant Attorney General