

Final Regulations of the Office of the Public Access Ombudsman
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Code of Maryland Regulations (COMAR)
Title 14. Independent Agencies
Subtitle 37. Office of the Public Access Ombudsman

Chapter 01. General Provisions (Refs & Annos)

COMAR 14.37.01.01

.01 Definitions.

B. Terms Defined.

- (1) “Act” means the Public Information Act, General Provisions Article, Title 4, Annotated Code of Maryland.
- (2) “Applicant” has the meaning stated in General Provisions Article, § 4-101(b), Annotated Code of Maryland.
- (3) “Custodian” has the meaning stated in General Provisions Article, § 4-101(d), Annotated Code of Maryland.
- (4) “Dispute” means a point of contention between an applicant and a custodian arising from a request for public records under the Act, including those matters stated in General Provisions Article, § 4-1B-04(a), Annotated Code of Maryland.
- (5) “Exemption” means a denial of inspection of a public record or part of a public record pursuant to General Provisions Article, Title 4, Subtitle 3, Annotated Code of Maryland.
- (6) “Identifying information” means any information that identifies a party or other person.
- (7) “Mediation” has the meaning stated in Courts and Judicial Proceedings Article, § 3-1801(b), Annotated Code of Maryland.
- (8) “Mediation communication” has the meaning stated in Courts and Judicial Proceedings Article, § 3-1801(c), Annotated Code of Maryland.
- (9) “Mediation Confidentiality Act” means the Maryland Mediation Confidentiality Act, Courts and Judicial Proceedings
- (10) “Mediation information” means all information made and received as part of the Ombudsman's mediation process and the decision to participate in mediation, including documentary materials and mediation communications.
- (11) “Mediator” has the meaning stated in Courts and Judicial Proceedings Article, § 3-1801(d), Annotated Code of Maryland.
- (12) “Office” means the Office of the Public Access Ombudsman.
- (13) “Ombudsman” means the person appointed to the position of the Public Access Ombudsman pursuant to General Provisions Article, § 4-1B-03, Annotated Code of Maryland.
- (14) “Party” means a participant or potential participant in the Ombudsman's mediation process, including an applicant and a custodian.
- (15) “Public record” has the meaning stated in General Provisions Article, § 4-101(j), Annotated Code of Maryland.
- (16) “Standards of Conduct for Mediators” means the Maryland Standards of Conduct for Mediators, Arbitrators and Other ADR Practitioners adopted by the Maryland Judiciary's Mediation and Conflict Resolution Office.
- (17) “Written guidance” means nonbinding guidance that advises parties on the interpretation of the Act and the application of the Act to specific facts.

COMAR 14.37.01.02

.02 Objective.

The objective of the Office of the Public Access Ombudsman is to make reasonable attempts, including mediation, to resolve disputes between applicants and custodians relating to requests for public records under the Act.

Chapter 02. Process (Refs & Annos)

COMAR 14.37.02.01

.01 Requesting Assistance.

A party may request the Office's assistance in resolving a dispute by contacting the Office via telephone, mail, email, or website submission.

COMAR 14.37.02.02

.02 Documents Required.

A. A party requesting assistance from the Office shall, if possible, provide the Office with:

- (1) A copy of the applicant's written request for public records; and
- (2) The custodian's response letter.

B. Upon the Office's request, a party may provide the Office with:

- (1) Any records produced to the applicant by the custodian; and
- (2) Any other documents that the Ombudsman believes may facilitate the mediation process.

COMAR 14.37.02.03

.03 Process Voluntary.

The Ombudsman's mediation process is voluntary for each party.

COMAR 14.37.02.04

.04 Conduct of Ombudsman.

A. The Ombudsman shall read and, consistent with State law, shall abide by the Standards of Conduct for Mediators during the mediation process.

B. The Ombudsman shall remain neutral, impartial, and independent during the mediation process.

C. The Ombudsman shall disclose to the parties all actual and potential conflicts of interest reasonably known to the Ombudsman. After disclosure, the Ombudsman shall decline to mediate unless all parties consent to participate.

D. If the Ombudsman is unable to conduct a mediation process in a neutral, impartial, and independent manner, the Ombudsman shall withdraw from that mediation.

E. If the Ombudsman withdraws from a mediation, the Ombudsman may suggest to the parties an alternative dispute resolution resource.

F. In addition to or in lieu of mediation, the Ombudsman may engage in other reasonable efforts to resolve or prevent a dispute or potential dispute, such as by answering questions about the Act, by providing trainings on the Act, and by engaging in preliminary conversations with a party about the subject of a dispute or potential dispute.

COMAR 14.37.02.05

.05 Conduct of Parties.

A. The Ombudsman may establish written standards of conduct with which the parties will be expected to comply during the mediation process.

B. The Ombudsman shall disclose all written standards of conduct to the parties at the outset of the mediation.

C. A party's failure to abide by a written standard of conduct may result in termination of the mediation process.

COMAR 14.37.02.06

.06 Termination of Mediation.

A. The Ombudsman may terminate the mediation process at any time if the Ombudsman determines that mediation will not reasonably lead to resolution of the dispute.

B. In making the determination to terminate a mediation, the Ombudsman may consider, among other factors:

- (1) The duration of the mediation process;
- (2) The parties' efforts to resolve the dispute;
- (3) The Ombudsman's efforts to resolve the dispute;
- (4) The likelihood that the parties will change their positions;
- (5) A party's failure to abide by the written standards of conduct;
- (6) A party's failure to abide by the party's confidentiality obligations; and
- (7) A party's use of the mediation process for purposes of delay or harassment.

Chapter 03. Confidentiality of Mediation Information

Chapter 03. Confidentiality of Mediation Information (Refs & Annos)

COMAR 14.37.03.01

.01 General Confidentiality Provisions.

- A. Except as provided in Regulation 02 of this chapter, the Ombudsman shall maintain the confidentiality of all mediation information in accordance with the Act, the Standards of Conduct for Mediators, and the Mediation Confidentiality Act.
- B. The Ombudsman may not disclose or be compelled to disclose mediation information in any judicial, administrative, or other proceeding, in accordance with the Act and with the Mediation Confidentiality Act.
- C. A party may not disclose or be compelled to disclose mediation information in any judicial, administrative, or other proceeding, in accordance with the Mediation Confidentiality Act.
- D. The Ombudsman may request the parties to enter into a written agreement to strictly maintain the confidentiality of all mediation information if, in the Ombudsman's discretion, such agreement would facilitate the mediation process.

COMAR 14.37.03.02

.02 Exceptions to Confidentiality of Mediation Information.

The Ombudsman may disclose mediation information in the following situations:

- A. With Office staff, including the Assistant Attorney General who represents the Office, to carry out the duties of the Office; and
- B. Where the parties have consented in writing to the disclosure.

Chapter 04. Disputed Public Records

COMAR 14.37.04.01

.01 Ombudsman's Review of Disputed Public Records.

- A. When the dispute involves a custodian's application of an exemption to a public record or part of a public record, the Ombudsman may request the custodian to submit the disputed public record or part of a public record to the Ombudsman for review.
- B. A custodian may not be compelled to disclose to the Ombudsman a public record or part of a public record in the custodian's custody.
- C. A custodian's voluntary submission of a public record or part of a public record for review under this chapter may not be construed as a waiver of:
 - (1) Any privilege held by the custodian; or
 - (2) Any assertion of confidentiality under the Act.

COMAR 14.37.04.02

.02 Confidentiality of Disputed Public Records.

The Ombudsman shall strictly maintain the confidentiality of any public record or part of a public record submitted for review under this chapter, and may not disclose any such public record or part of a public record with another party without the written permission of the custodian.

Chapter 05. Written Guidance

COMAR 14.37.05.01

.01 Ombudsman May Provide.

- A. The Ombudsman may provide written guidance to parties in furtherance of the mediation process.
- B. Written guidance may not disclose information that any party claims is confidential.

COMAR 14.37.05.02

.02 Ombudsman May Publish.

- A. In the Ombudsman's sole discretion, and to the extent that the Ombudsman believes publication will promote understanding of the Act, the Ombudsman may publish written guidance.
- B. Before publishing written guidance, the Ombudsman shall:

- (1) Remove all identifying information; and
- (2) Obtain consent from the parties to whom it was provided.

Currentness

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