

CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

ACTION COMMITTEE FOR
TRANSIT, ET AL.,
Plaintiffs,

v.

TOWN OF CHEVY CHASE, ET AL.,
Defendants.

CASE NO. 400312-V

Judge John W. Debelius III

Track II


Next Event: Motion for Alt. Serv. Deadline,
June 1, 2015

PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT
AND OPPOSITION TO DEFENDANT TOWN OF CHEVY CHASE'S
MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

Plaintiffs Action Committee for Transit ("ACT") and Benjamin Ross hereby move pursuant to Maryland Rule 2-501 for summary judgment and oppose Defendant Town of Chevy Chase's Motion to Dismiss or, in the Alternative, for Summary Judgment. In support of its Motion and Opposition, Plaintiffs refer to the Memorandum of Law attached hereto and made part hereof.

Respectfully submitted,

By:



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MAY 11 2015

Clerk of the Circuit Court
Montgomery County, Md.

*Counsel for Plaintiffs Action Committee
for Transit and Ben Ross*

CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

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MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS'
CROSS-MOTION FOR SUMMARY JUDGMENT
AND OPPOSITION TO DEFENDANTS' MOTION TO DISMISS
OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

I. INTRODUCTION

The municipalities and citizens of the inner Maryland suburbs of Washington have battled for nearly 20 years about whether the Purple Line – a proposed light rail transit project that would extend from Bethesda to New Carrollton – will revitalize their residents' communities or harm their way of life. The two sides in the dispute have legitimate, sincerely-held, contrary views of what best serves the public interest. They are entitled to engage in a fair political fight.

Defendant Town of Chevy Chase ("the Town") opposes the Purple Line. It is apparently determined to keep Purple Line supporters and other members of the public in the dark regarding exactly how it is spending extraordinary amounts of the public's money for its opposition. Plaintiffs Action Committee for Transit ("ACT") and Benjamin Ross support the Purple Line. They want the public to know how public money is being spent to oppose it.

The Town stepped over the line of legitimate disagreement last year when it withheld information that properly should be in the public domain, demanding exorbitant fees of parties who cannot afford and, by law, should not have to pay them. The Maryland Public Information

Act (“MPIA”) provides for public interest groups and journalists to obtain and disseminate information that should be public without fees and without delay. The MPIA’s fee provisions are not intended to keep public information from those with whom the government disagrees.

The Town believes it may deny Plaintiffs’ fee waiver requests on account of its political position on the Purple Line, claiming that it “was entitled to consider ... in denying the fee waiver request” Plaintiffs’ criticisms of the Town. Such a denial is unconstitutional viewpoint discrimination. As a matter of law, the Town cannot consider the content of previous publications or publicly-expressed views when deciding whether to impose fees. The Town’s viewpoint discrimination is the most egregious, but not the only, unlawful basis for its denial.

The Town has provided no evidence that the Complaint is deficient on its face and no plausible justification for the denial of access to public records through exorbitant fee requests. Plaintiffs’ motion for summary judgment should be granted and the Town’s motion to dismiss or for summary judgment should be denied.

II. STATEMENT OF FACTS

A. The High-Profile Purple Line Project Attracts Significant Public Interest

The Purple Line is the most high-profile transportation project in the northern D.C. suburbs since the Metro was built. The proposed 16-mile light rail line would connect Bethesda to New Carrollton, providing citizens with better access to Metrorail, MARC, Amtrak, and bus routes.¹ According to a joint government study, the Purple Line would bring more than 27,000 jobs, \$2.2 billion in income, and \$12.8 billion in property value to the area.²

¹ See Denise Lu & Laris Karklis, *Mapping the proposed Purple Line*, WASH. POST (June 2, 2014), <http://www.washingtonpost.com/wp-srv/special/local/purple-line/>.

² Kate S. Alexander, *Purple Line’s projected economic impact grows*, GAZETTE.NET (April 21, 2015), <http://www.gazette.net/article/20150421/NEWS/150429944/1007&template=gazette>.

This project has attracted extensive press coverage and is not without controversy. The *Washington Post* has published approximately 1,000 articles on the Purple Line; *Greater Greater Washington* has published more than 1,400.³ The battle has only intensified since Governor Larry Hogan took office in 2015, as stakeholders attempt to influence his position.⁴

ACT is a non-profit advocacy group that promotes better communities through increased public transportation.⁵ Benjamin Ross is a blogger and journalist who writes about the Purple Line controversy. Like the Montgomery County Council, the Prince George's County Council, the University of Maryland, and former Governor Martin O'Malley, ACT and Mr. Ross support construction of the Purple Line because of the project's economic and social benefits.⁶ The Town, by contrast, has opposed construction of the Purple Line.⁷

B. ACT And Mr. Ross Request Public Records And Seek Fee Waivers

The Town entered into a \$20,000-per-month agreement with the firm Buchanan Ingersoll & Rooney in December 2013 and January 2014 for services related to the Purple Line project.⁸

³ Schoenbaum Aff. ¶ 2.

⁴ Katherine Shaver & Bill Turque, *Battle for Purple Line heats up as Hogan prepares to become Maryland governor*, WASH. POST (Dec. 11, 2014), http://www.washingtonpost.com/local/trafficandcommuting/battle-for-purple-line-heats-up-as-hogan-prepares-to-become-maryland-governor/2014/12/11/2d239c9e-809f-11e4-9f38-95a187e4c1f7_story.html.

⁵ About Us, ACTION COMMITTEE FOR TRANSIT, http://www.actfortransit.org/about_us.html.

⁶ Bill Turque & Arelis R. Hernandez, *Maryland's larger counties lock arms to stanch loss of funding to rural areas*, WASH. POST (Jan. 16, 2015), http://www.washingtonpost.com/local/md-politics/marylands-larger-counties-lock-arms-to-stanch-loss-of-funding-to-rural-areas/2015/01/16/f6f3c4ec-9b46-11e4-96cc-e858eba91ced_story.html; Louis Peck, *Local Officials Call for Business Community to Push for Purple Line*, BETHESDA MAGAZINE (Feb. 5, 2015), <http://www.bethesdamagazine.com/Bethesda-Beat/2015/Local-Officials-Call-for-Business-Community-to-Push-for-Purple-Line/>.

⁷ E.g., Katherine Shaver, *Chevy Chase hires law firm to evaluate Purple Line plans*, WASH. POST (Jan. 9, 2014), <http://www.washingtonpost.com/blogs/dr-gridlock/wp/2014/01/09/town-of-chevy-chase-hires-law-firm-to-evaluate-purple-line-plans/>.

⁸ *Id.*

A January 14, 2014 *Washington Post* article discussed allegations that the Buchanan firm was chosen because federal money is expected to fund a portion of the Purple Line and Buchanan attorney Robert L. Shuster's brother, Congressman Bill Shuster, is Chairman of the Transportation and Infrastructure Committee of the U.S. House of Representatives.⁹

1. ACT's February 4, 2014 Request

ACT filed an MPIA request on or about February 4, 2014 requesting Town records related to the retention of the Buchanan firm.¹⁰ On March 6, the Town made documents available for review and did not charge ACT any fees (other than copy costs).¹¹

Shortly thereafter, in March of 2014, the Town extended its engagement of the Buchanan firm at a cost of \$29,000 per month.¹² The contract called for the firm to represent the Town in "federal and Maryland state government relations matters," and two other firms – Chambers, Conlon & Hartwell, LLC and Alexander & Cleaver – were listed as subcontractors.¹³

2. ACT's April 1 And 6, 2014 Requests

On April 1, 2014, ACT filed a second, distinct MPIA request for access to or copies of the Town's agreements, contracts, invoices, bills, correspondence, and meeting minutes related to the Buchanan, Chambers, and Alexander firms.¹⁴ After learning about possible additional

⁹ Katherine Shaver, *Purple Line advocates question Town of Chevy Chase hiring congressman's brother*, WASH. POST (Jan. 23, 2014), http://www.washingtonpost.com/local/trafficandcommuting/purple-line-advocates-question-town-of-chevy-chase-hiring-congressmans-brother/2014/01/23/f83d29ce-8382-11e3-9dd4-e7278db80d86_story.html.

¹⁰ Ex. A.

¹¹ Ex. B; Schoenbaum Aff. ¶ 5.

¹² Ex. C.

¹³ Ex. C.

¹⁴ Ex. D. Miriam Schoenbaum, an ex officio board member of ACT, also filed an MPIA request on April 1, 2014 on behalf of ACT for records regarding the Town's compliance with the training requirements in the Open Meetings Act.

activities the Town may have undertaken related to the Purple Line, ACT on April 6, 2014 submitted an MPIO request for records about the public relations firm Xenophon Strategies.¹⁵ It did not occur to ACT's board members to request formally a waiver of fees associated with these requests because the Town had not charged fees for ACT's previous request in February.¹⁶

The Town demanded \$700 to search for documents requested on April 1, and \$250 for the April 6 request, refusing to provide the statutorily required two free hours of research.¹⁷ Nowhere did it cite, nor is there, a provision of the MPIO that allows for such a denial.¹⁸

On April 18, ACT applied for a waiver of the fees under § 4-206(e) of the MPIO.¹⁹ ACT, a non-profit, volunteer group with a limited budget, believed it was entitled to a waiver because it sought to disseminate the information to educate citizens about the Town's use of public resources.²⁰ On April 23, without explanation, the Town denied the fee waiver requests.²¹

3. ACT And Ms. Schoenbaum's May 21, 2014 MPIO Request

On May 21, 2014, ACT made another MPIO request seeking the most recent documents reflecting the Town's engagement of the three firms and the Xenophon public relations firm.²² In its request, ACT sought a waiver of all fees because the documents would "contribute

¹⁵ Ex. E.

¹⁶ Schoenbaum Aff. ¶ 5.

¹⁷ Exs. F, G. The Town said the \$700 and \$250 amounts were only estimates, leaving open the possibility that ACT could face even higher fees of an unknown amount.

¹⁸ See MD. CODE ANN., GEN. PROV. § 4-206(c) (providing that a government may not charge fees for the first two hours spent responding to an MPIO request).

¹⁹ Exs. H, I.

²⁰ Exs. H, I; Schoenbaum Aff. ¶¶ 3, 5.

²¹ Ex. J.

²² Ex. K. The May 21, 2014 request was intended to cover only those records that were created or were releasable after ACT's February 4, 2014 request. In addition, the May 21 request was intended to supersede the April requests because ACT, which had not received any responsive documents from the April requests and which did not intend to pay the expensive fees demanded by the Town, considered the April requests dead. On June 23, 2014, ACT withdrew both the April 1 and April 6 requests to avoid any duplication or confusion. Schoenbaum Aff. ¶ 6.

significantly to the public's understanding of the business, activities, and public-money expenditures of a government body (the Town of Chevy Chase) related to a major public infrastructure project (the Purple Line)."²³ In addition, the individual from ACT who submitted the request, Miriam Schoenbaum, sought a fee waiver because she expected to publish the information on *Greater Greater Washington*, an independent D.C.-area news website.²⁴

The Town responded on June 20, agreeing to make limited documents available for inspection by Ms. Schoenbaum.²⁵ The Town denied the fee waiver requests without explanation and demanded at least \$1,345 to search for and review the remaining responsive documents.²⁶ The Town also asserted, without citing any authority: "Based on the previous request made by you relating to the same general topic, we will not provide the first two (2) hours of research free of charge."²⁷

4. ACT's October 15, 2014 Request

At this point, the non-profit ACT sought and retained *pro bono* legal counsel. On October 15, 2014, Baker Hostetler LLP, on behalf of ACT, submitted a final MPIA request to the Town that encompassed all of the information ACT had previously sought and requested a waiver of fees.²⁸ On October 27, the Town responded to the MPIA request through outside counsel, Alexander & Cleaver, denying the fee waiver and demanding \$879 before it would

²³ Ex. K at 3.

²⁴ Ex. K at 4-5.

²⁵ Ex. L. Although the Town claimed that responding to the request had been "very time consuming and expensive," the Town provided access only to a few meeting minutes, an unredacted copy of its March 14, 2014 engagement with the Buchanan firm, and two pages of non-itemized invoices from the Buchanan firm to the Town.

²⁶ Ex. L.

²⁷ Ex. L.

²⁸ Ex. M.

begin to compile its response.²⁹ The Town again refused to provide the two free hours of research and did not guarantee that the deposit would be sufficient to fulfill the entire request.³⁰

5. Mr. Ross's November 10, 2014 Request

On November 10, 2014, Benjamin Ross, a published author who has written extensively on issues regarding the Purple Line, filed a similar MPIA request with the Town and requested a waiver of fees both in the public interest and in his capacity as a member of the media.³¹ On or about November 21, the Town denied Mr. Ross's request for a waiver of the fees because it said it did not "believe" that his request was made in his "capacity as a member of the media."³² The Town also refused to provide two free hours of research based on Mr. Ross's position as a board member of ACT, which it said had made previous requests "relating to the same general topic."³³

C. ACT And Mr. Ross File Suit

On January 30, 2015, ACT and Mr. Ross filed this lawsuit on grounds that the Town denied their fee waiver requests in violation of the MPIA.

III. LEGAL STANDARD

A. Motion For Summary Judgment And Motion To Dismiss

Summary judgment is appropriate where "there is no genuine dispute as to any material fact and [] the party in whose favor judgment is entered is entitled to judgment as a matter of law." MD. RULE 2-501(f). Maryland law directs that "the non-movant bears no burden of proof at the summary judgment stage." *Goodwich v. Sinai Hosp.*, 680 A.2d 1067, 1078 (Md. 1996). Instead, the non-movant "must demonstrate that there is a genuine dispute of material fact by

²⁹ Ex. N.

³⁰ Ex. N.

³¹ Ex. O.

³² Ex. P.

³³ Ex. P.

presenting facts that would be admissible in evidence.” *Id.* (citation omitted). A “material fact” is one that, once resolved, “will somehow affect the outcome of the case.” *Id.* (citation omitted).

If this Court were to consider matters outside the pleadings to resolve Defendants’ motion, it must treat that motion as one for summary judgment. *120 W. Fayette St., LLLP v. Mayor and City Council of Baltimore*, 964 A.2d 662, 666-67 (Md. 2009). However, to the extent the Court considers Defendants’ motion as a motion to dismiss, it is limited to “the four corners of the complaint and its incorporated exhibits.” *Id.* at 667. In doing so, it “is required to assume the truth of all of the well-pled facts in the complaint and attached exhibits, and the ‘reasonable inferences drawn from them, in a light most favorable to the non-moving party.’” *Id.* Granting a motion to dismiss is proper only when the defendant proves that the “‘facts alleged fail to state a cause of action.’” *Green v. H & R Block*, 735 A.2d 1039, 1046 (Md. 1999).³⁴

B. The Defendant Bears The Burden Of Proving That Its Denials Were Proper

Defendants argue that the standard of review places the burden on the requesting party, here the Plaintiffs, to demonstrate entitlement to a fee waiver. That argument is contrary to the purpose and structure of the MPIA.

The MPIA directs that it “shall be construed in favor of allowing inspection of a public record, with the least cost and least delay to the person ... that requests the inspection.” MD. CODE ANN., GEN. PROV. § 4-103. The Maryland Court of Appeals has held that the MPIA is explicit that “citizens of the State of Maryland be accorded wide-ranging access to public information concerning the operation of their government.” *Md. Dep’t of State Police v. Md. State Conf. of NAACP Branches*, 59 A.3d 1037, 1043 (Md. 2013). Maryland courts hold that

³⁴ In their motion, Defendants fail to specify the basis for their motion to dismiss. Given that Defendants do not challenge Plaintiffs’ standing or contest subject matter jurisdiction, the basis for Defendants’ motion is presumably for failure to state a claim.

“the provisions of the statute ‘must be liberally construed ... in order to effectuate the Public Information Act’s broad remedial purpose.’” *Kirwan v. The Diamondback*, 721 A.2d 196, 199 (Md. 1998).

This review standard includes the MPIA’s fee waiver provision. *See Mayor and City Council of Baltimore v. Burke*, 506 A.2d 683, 688 (Md. Ct. Spec. App. 1986) (overturning city’s denial of fee waiver when it could not offer adequate justifications for denial). It is the Town’s burden to demonstrate sufficient consideration of the public benefit in releasing the information.

IV. ARGUMENT

This case arises from repeated abuses of the MPIA by municipal officials seeking to stymie their political opponents’ access to public information. It is undisputed by the parties that the Town repeatedly refused to grant fee waivers in connection with the public-information requests by ACT and Mr. Ross. It is also undisputed that the Town refused to grant two hours of free research for each request. The other material facts, including the Town’s asserted reasons for these refusals, are similarly not in dispute. Based on that undisputed record and the legal admissions in the Town’s brief, Plaintiffs are entitled to summary judgment.

A. The Town Violated The MPIA When It Refused To Grant Fee Waivers

The MPIA provides that a fee waiver is appropriate when “(1) the applicant asks for a waiver; and (2) after consideration of the ability of the applicant to pay the fee and other relevant factors, the official custodian determines that the waiver would be in the public interest.” MD. CODE ANN., GEN. PROV. § 4-206(e). A court must overturn a government body’s denial of a fee waiver when the denial does not conform to the MPIA. *See Burke*, 506 A.2d at 688 (reversing city’s denial of fee waiver because the city “did not abide by” the statute’s guidelines). The MPIA does not specify what standard a trial court should use in reviewing a fee-waiver

determination, and no Maryland court has definitively articulated a standard. But under the federal Freedom of Information Act (“FOIA”), courts are required to review fee-waiver determinations *de novo*. 5 U.S.C. § 552(a)(4)(A)(vii). Because the FOIA is persuasive authority in interpreting analogous provisions of the MPIA, *see, e.g., Fioretti v. Md. State Bd. of Dental Exam’rs*, 716 A.2d 258, 263 (Md. 1998), this Court should review *de novo* the Town’s fee-waiver denials. However, even under a less searching standard, such as a review of whether the denials were “arbitrary and capricious,”³⁵ the Town’s determinations were contrary to law.

The Town has articulated in its briefing several justifications for its refusals to grant the fee waivers requested by Plaintiffs. First, the Town relies on the fact that ACT and Mr. Ross have criticized the Town’s position on the Purple Line. Second, the Town relies on a conclusory determination that fee waivers would not serve the public interest. Third, the Town offers scattered post-hoc explanations that were not legitimate reasons at the time that Plaintiffs requested those waivers. All of these justifications fail as a matter of law.

1. The Town’s Primary Justification For Denying The Fee Waivers Constitutes Impermissible Viewpoint-Based Discrimination

The Town is candid about its primary reason for refusing to grant fee waivers to ACT and Mr. Ross. *See, e.g.,* Defs.’ Mem. 21, 26, 28, 31-33. The Town asserts that it had “distrust” for ACT and Mr. Ross because they criticized the Town’s opposition to the Purple Line. *Id.* at 26. The Town characterizes these criticisms as “false accusations and smear tactics” that the Town “was entitled to consider ... in denying the fee waiver request.” *Id.* The Town is wrong.

³⁵ The Town implicitly suggests, without citing any legal authority, that the proper standard is an “arbitrary and capricious” standard. Defs.’ Mem. 28. The *Burke* court did mention in passing that it found the fee-waiver determination in that case to be “arbitrary and capricious.” But *Burke* was not a holding as to the proper standard and it was issued during a time when the federal FOIA itself called for an “arbitrary and capricious” review of fee determinations. Shortly after *Burke*, FOIA was amended to require *de novo* review.

Citizens, journalists, and advocacy groups are entitled to express disagreement with the policies and actions of elected officials on matters of public controversy. Whether such expression constitutes legitimate public debate or unfair “smear tactics” is, of course, in the eye of the beholder. But as a matter of law, the Town is not permitted to consider the content of previous publications or publicly-expressed views opposing the Town when deciding whether the release of public information is in the public interest.

A government body may not discriminate against a speaker based on the speaker’s message. *R.A.V. v. City of St. Paul*, 506 U.S. 377, 382 (1992) (“The First Amendment generally prevents government from proscribing speech ...because of disapproval of the ideas expressed.”). This prohibition on content- and viewpoint-based discrimination includes attempts by government to inflict uneven financial burdens on certain speakers. *Rosenberger v. Rector and Visitors of the U. Va.*, 515 U.S. 819, 828 (1995) (“[T]he government offends the First Amendment when it imposes financial burdens on certain speakers based on the content of their expression.”); *see also Bd. of Cnty. Comm’rs v. Umbehr*, 518 U.S. 668 (1996) (holding that a local government may not retaliate against a government contractor for criticizing government policy). The Supreme Court has explained that once a legislature grants a statutory right to all citizens, it cannot revoke that right from some citizens whose views are “thought inimical to the Government’s own interest.” *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 548-49 (2001) (invalidating statute that revoked public funding from lawyers who tried to challenge or reform welfare laws). The Maryland right to public information—including the right to a fee waiver in appropriate circumstances—is one such statutory right.

The Supreme Court has also recognized that states cannot apply their freedom-of-information laws in ways that differentiate among requesters based on their views. In *Los*

Angeles Police Dep't v. United Reporting Publ'g, 528 U.S. 32 (1999), a company challenged a provision of the California public information act that required requesters to declare how they intended to use the information. There, at least six justices recognized that any viewpoint-based restrictions on access to public information would be unconstitutional. *See id.* at 43 (Ginsburg, J., concurring) (“California could not, for example, release . . . information only to those whose political views were in line with the party in power.”); *id.* at 45-46 (Stevens, J., dissenting) (“[I]f the State identified the disfavored persons based on their viewpoint, or political affiliation, for example, the discrimination would clearly be invalid.”).

Here, the Town acknowledges that it considered the opposing views of ACT and Mr. Ross in denying the fee-waiver requests—denials that indisputably constitute restrictions on access to public information. The Town asserts that it was entitled to consider its purported “distrust” of ACT and Mr. Ross. Defs.’ Mem. 26. If such a theory were credited, any government body controlled by one political party could deny fee waivers to members of the media or the public whom it associates with the opposing party by professing “distrust” of their views or intentions. Such an outcome is not tolerated under the First Amendment, nor is it tolerated under the MPIA. The Town’s admitted consideration of the viewpoints and prior statements of ACT and Mr. Ross cannot qualify as a “relevant factor” for a fee-waiver determination under § 4-206(e), because any such considerations are unconstitutional.

2. The Town Failed To Consider The Strong Public Interest In The Information Sought By ACT And Mr. Ross

The MPIA requires the government to evaluate whether a fee waiver would be “in the public interest.” In *Burke*, the court overturned the city of Baltimore’s fee waiver denial because there was no evidence that the city undertook a sufficient analysis “of whether the waiver would be in the public interest.” 506 A.2d at 688. That analysis should have included “the importance

of public exposure” to an issue of significant interest and controversy. *Id.*

Here, the Town attempts to distinguish its fee waiver denial from the one in *Burke* by asserting that, unlike the city of Baltimore, it did consider the public interest. Defs.’ Mem. 29. Yet, the only evidence the Town offers to show that it considered the public interest is the Town’s own bare assertion, in a letter to ACT, that the fee-waiver request was “considered” and “denied.” *Id.* This conclusory, self-serving assertion is insufficient. The Town offers no evidence that it conducted a good-faith review (as required under *Burke*) of the level of public interest in the Purple Line generally or in the specific information sought by ACT and Mr. Ross.

Under a proper analysis of the public interest, ACT and Mr. Ross are entitled to a fee waiver as a matter of law. The parties do not dispute the enormous public curiosity and discussion about the Purple Line—manifest in the thousands of news articles published about the issue and the importance it is assigned by public officials in the state. As *Burke* recognized, a fee waiver is in the public interest when the requester seeks to “mak[e] available to the ... community information concerning one of the City’s major financial undertakings.” 506 A.2d at 688. That is precisely what Plaintiffs have done in the past and seek to do here.

The Town cannot dispute that the debate over the Purple Line is in the public interest, and indeed should be estopped from arguing otherwise. On April 16, 2014, the Town filed an MPIA request of its own, seeking information from the Maryland Transit Administration related to ACT and other pro-Purple Line groups.³⁶ In that request, the Town sought – and received – a fee waiver on grounds that the information would “contribute significantly to the public’s understanding of [MTA’s] relationship with ACT” and the other groups.³⁷ Plaintiffs are asking

³⁶ Ex. Q.

³⁷ Exs. Q, R.

for the same treatment from the Town under the MPIA that the Town thinks it should receive.

3. The Town's After-The-Fact Justifications Are Legally Deficient

The Town's other, *post hoc* rationalizations for the fee waiver denials all fail as a matter of law. First, the Town argues that it was entitled to deny the fee waivers based on its limited municipal budget. Defs.' Mem. 4, 32. The MPIA, however, applies equally to all government bodies regardless of their financial resources. Indeed, in *Burke*, the court chided the city of Baltimore for a fee waiver denial that was based primarily on the city's concerns about the expense to the city. 506 A.2d at 688.

Second, the Town insinuates that Plaintiffs never really needed a fee waiver because, the Town claims, Plaintiffs have spent "ample resources" on the filing of this lawsuit. Defs.' Mem. 7, 28, 30. As Plaintiffs have made clear for months, they are being represented *pro bono*.³⁸ Moreover, a requester's decision to challenge a fee waiver denial in court cannot justify denying the fee waiver in the first place; otherwise, such denials would be effectively unreviewable.

Finally, the Town contends that Mr. Ross's stated intention of disseminating public information as an author and blogger does not constitute a proper public interest. The Town claims that Mr. Ross was "deceptive" in making his request in his capacity as a journalist. Defs.' Mem. 10-11, 30. But the Town does not dispute Mr. Ross's status as a journalist who blogs about public affairs,³⁹ nor does the Town have any evidence to suggest that Mr. Ross was insincere in his stated interest of disseminating the requested information to the public.

³⁸ See, e.g., Press Release, Action Committee for Transit, Action Committee for Transit Files Suit Over Improper Secrecy in Campaign Against Purple Line (Feb. 2, 2015), *available at* <http://www.actfortransit.org/archives/press/2015Feb02RelChevyChaseLawsuitFiled.html>.

³⁹ As one federal appellate court explained, news today is "just as likely to be broken by a blogger at her computer as a reporter at a major newspaper" and thus the "news-gathering protections of the First Amendment cannot turn on professional credentials or status." *Glik v. Cunniffe*, 655 F.3d 78, 84 (1st Cir. 2011).

B. The Town Violated The MPIA By Refusing Two Hours Of Free Research

The MPIA provides that an “official custodian may not charge a fee for the first 2 hours that are needed to search for a public record and prepare it for inspection.” MD. CODE ANN., GEN. PROV. § 4-206(c). This blanket provision applies to all requests and all requesters, regardless of whether a requester is entitled to a fee waiver for a search of records in excess of two hours. The Town, however, repeatedly refused to provide the two free hours because it determined that ACT and Mr. Ross’s requests were “relat[ed] to the same general topic” as previous ACT requests.

The Town does not identify any provision of the MPIA nor any case law that permits a government to deny the statutorily required two free hours based on purported similarity to prior requests. No such provision exists. Moreover, the requests were never duplicative; they covered different categories of information and sought that information for different time periods.⁴⁰ They were not artificially segmented to avoid research and review costs.⁴¹ Plaintiffs were entitled by law to the two free hours of research for each of their distinct MPIA requests.⁴²

V. CONCLUSION

Plaintiffs were statutorily entitled to fee waivers under the MPIA so they could access and disseminate information highly relevant to a matter of public interest. The Town’s asserted reasons for denying the fee waivers violate Plaintiff’s constitutionally protected First Amendment rights and fail as a matter of law.

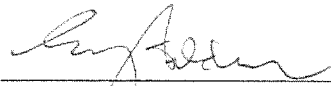
⁴⁰ See generally Exs. A, D, E, K, M, O.

⁴¹ See Schoenbaum Aff. ¶ 6.

⁴² The Town also argues that it “did not violate the MPIA by denying Plaintiffs’ request for closed session minutes of the Town Council.” Defs.’ Mem. 18. The propriety of withholding any closed-session records, however, is not presently before the Court. If the Court were to order release of the records at issue, and the Town were to withhold records on the basis of privilege, any potential challenge to that privilege could be addressed at that time.

Respectfully submitted,

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)

[PROPOSED] ORDER

Upon consideration of Plaintiffs' Cross-Motion for Summary Judgment and Opposition to Defendant Town of Chevy Chase's Motion to Dismiss or, in the Alternative, for Summary Judgment, and any oppositions thereto, it is hereby

ORDERED that Plaintiffs' Motion be, and hereby is, GRANTED, and that judgment be entered for Plaintiffs Action Committee for Transit ("ACT") and Benjamin Ross and all relief requested in their Complaint be, and hereby is, GRANTED; and it is

FURTHER ORDERED that Defendant Town of Chevy Chase's Motion to Dismiss or, in the Alternative, for Summary Judgment be, and hereby is, DENIED.


Dated: _____

The Hon. John W. Debelius III

CERTIFICATE OF SERVICE

I hereby certify that, on this 11th day of May 2015, a copy of the foregoing was sent by first-class mail, postage prepaid, to:

Kevin Karpinski
Victoria M. Shearer
KARPINSKI, COLARESI & KARP, P.A.
Suite 1850
120 East Baltimore Street
Baltimore, MD 21202



Laurie A. Babinski

AFFIDAVIT

CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

ACTION COMMITTEE FOR
TRANSIT, ET AL.,

Plaintiffs,

v.

TOWN OF CHEVY CHASE, ET AL.,
Defendants.

CASE NO. 400312-V

Judge John W. Debelius III

Track II Deadline,

Next Event: Motion for Alt. Serv. Deadline,

June 1, 2015

AFFIDAVIT OF MIRIAM SCHOENBAUM

I, Miriam Schoenbaum, under oath, state the following:

1. I am an ex officio board member of Plaintiff Action Committee for Transit ("ACT"), and I filed on behalf of ACT several of the public information requests that are at issue in this lawsuit.

2. As a member of ACT, I regularly follow media coverage of the proposed Purple Line project, and I am aware that the project has received significant media attention. For instance, a search of the *Washington Post*'s website reveals approximately 1,000 articles that mention the Purple Line, and a search of *Greater Greater Washington*'s website reveals more than 1,400 articles that mention the Purple Line.

3. All of the public information requests filed by ACT seeking information from the Town of Chevy Chase ("the Town") about the Purple Line project were motivated by a desire to find out how the Town was using taxpayer money to oppose the Purple Line.

4. ACT is a non-profit, grassroots organization, and before filing its public information requests of February 4, 2014, April 1, 2014, April 6, 2014, and May 21, 2014, ACT and its members had little experience with the Maryland Public Information Act ("MPIA").

5. In response to ACT's February 4, 2014 public information request, the Town did not charge any fees (other than copy costs). It therefore did not occur to ACT to formally request a waiver of fees in conjunction with ACT's April 1, 2014 and April 6, 2014 requests. When the Town responded to the April requests demanding fees of at least \$950, ACT determined that it should be entitled to fee waivers under the MPIA. ACT believed that it qualified for fee waivers because ACT was seeking the information for a public (not personal or commercial) interest and because the requested documents would contribute to public understanding of government operations.

6. When ACT filed its request of May 21, 2014 seeking information related to the Town's engagement of lobbying and public relations firms, ACT intended that request to cover records that were created or were releasable after the February 4, 2014 request. The May 21, 2014 request was intended to supersede the April requests because ACT, which had not received any responsive documents from the April requests and which did not intend to pay the expensive fees demanded by the Town, considered the April requests dead. On June 23, 2014, ACT withdrew its April 1, 2014 and April 6, 2014 MPIA requests in order to avoid any possible duplication or confusion.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 8, 2015

Miriam Schoenbaum
Miriam Schoenbaum

District of Columbia: SS
Subscribed and sworn to before me, in my presence,
this 8th day of May, 2015
Barbara J. Malloy
Barbara J. Malloy, Notary Public, D.C.
My commission expires November 14, 2017.

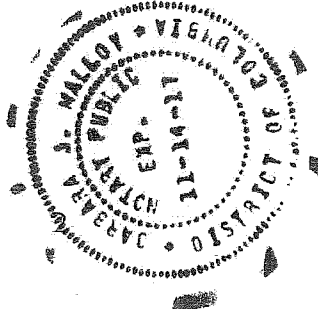


EXHIBIT A

Subject: MPIA Records Inspection Request Involving Retention of Buchanan, Ingersoll & Rooney
From: Ronit Dancis (ronitadancis@yahoo.com)
To: pburda@townofchevyCHASE.org; kstrom@townofchevyCHASE.org; al.lang@townofchevyCHASE.org;
dlublin@townofchevyCHASE.org; jbickerman@townofchevyCHASE.org;
thoffman@townofchevyCHASE.org;
Date: Tuesday, February 4, 2014 7:13 AM

February 4, 2014

Mayor Patricia A. Burda
Town Council of Chevy Chase
Mr. Todd Hoffman, Town Manager
The Town of Chevy Chase
4301 Willow Lane
Chevy Chase, MD 20815

Re: MPIA Records Inspection Request Involving Retention of Buchanan, Ingersoll & Rooney; Requests for Recusals of Mayor Burda and Councilmember Bickerman

Dear Mayor Burda, Councilmembers and Mr. Hoffman:

This is a request under the Maryland Public Information Act, State Government Article §§10-611 to 630 from The Action Committee for Transit (ACT). We wish to inspect all records in your custody and control pertaining to the following: (1) The retention agreement and any associated contract(s) between the Town of Chevy Chase and the firm of Buchanan, Ingersoll & Rooney.

(2) Any invoices or bills from the firm of Buchanan, Ingersoll & Rooney to the Town of Chevy Chase, whether paid or unpaid.

(3) All correspondence between the Town of Chevy Chase, the Town Council and/or individual council members and Buchanan, Ingersoll & Rooney.

(4) All minutes of all meetings between the Town Council and/or individual council members and Buchanan, Ingersoll & Rooney, including a list of the attendees at each meeting.

We request that Mayor Burda recuse herself from the deliberations regarding this request to avoid any actual, potential or perceived conflict of interest. Mayor Burda told the Washington Post in an article published on January 26, 2014 that "We're not lobbying Congress." However, a lobbying disclosure form filed by Buchanan, Ingersoll & Rooney states that the firm was hired by the Town of Chevy Chase to lobby both the US Senate and the US House of Representatives on behalf of the Town. Given that the Mayor's public statement contradicts the lobbying disclosure form, we are concerned that she may have a conflict of interest in making these records public.

We also request that Councilmember Bickerman recuse himself from the deliberations regarding this request to avoid any actual, potential or perceived conflict of interest. Mr. Bickerman at a January 8th public hearing stated in no uncertain terms that he has mediated a variety of cases involving and even "with" Buchanan, Ingersoll & Rooney. He appears, therefore, to have both a financial and professional conflict of interest in this matter.

If all or any part of this request is denied, we request that ACT be provided with a written statement of the grounds for the denial. If you determine that some portions of the requested records are exempt from disclosure, please provide ACT with the portions that can be disclosed.

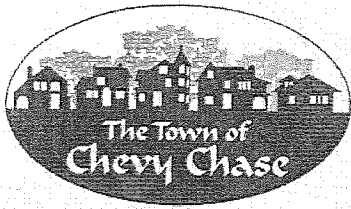
Please advise ACT as to the cost, if any, for inspecting the records described above. We anticipate that ACT will want copies of all of the records sought. If you have adopted a fee schedule for obtaining copies of records and other rules or regulations implementing the Act, please send ACT a copy.

We look forward to receiving disclosable records promptly and, in any event, to a decision about all of the requested records within 30 days. Thank you for your cooperation. If you have any questions regarding this request, please telephone Tina Slater, ACT VP at 301 585-5038.

Sincerely,

Ronit Aviva Dancis
VP, Action Committee for Transit
Action Committee for Transit
PO Box 7074
Silver Spring, MD 20907-7074

EXHIBIT B



Patricia Burda, *Mayor*
Kathy Strom, *Vice Mayor*
Al Lang, *Secretary*
David Lublin, *Treasurer*
John Bickerman, *Community Liaison*

March 6, 2014

VIA ELECTRONIC MAIL: ronitadancis@yahoo.com

Ronit Aviva Dancis
VP, Action Committee for Transit
Action Committee for Transit
P.O. Box 7074
Silver Spring, Maryland 20907-7074

Re: MPIA Records Inspection Request

Dear Ms. Dancis:

The Town has received your request pursuant to the Maryland Public Information Act (hereinafter "Act") dated February 4, 2014, requesting inspection of certain records involving the retention of Buchanan, Ingersoll, & Rooney. In said letter, you request inspection of the following:

1. The retention agreement and any associated contract(s) between the Town of Chevy Chase and the firm of Buchanan, Ingersoll, and Rooney;
2. Any invoices or bills from the firm of Buchanan, Ingersoll, and Rooney to the Town of Chevy Chase, whether paid or unpaid;
3. All correspondence between the Town of Chevy Chase, the Town Council, and/or individual council members and Buchanan, Ingersoll, and Rooney; and,
4. All minutes of all meetings between the Town Council and/or individual council members and Buchanan, Ingersoll, and Rooney, including a list of the attendees at each meeting.

Your request covers documents that had to be reviewed by legal counsel for possible confidential, privileged, or exempted information. Responding to your request has been very time consuming and expensive.

The Act authorizes the Town to charge a reasonable fee for making the copies and a reasonable fee for the search for, preparation of, and reproduction of public records. The fee for research varies, based on the compensation level of the staff member that would need to review and compile the different categories of records. The hourly fees for the employees who worked on your request are as follows:

Todd Hoffman, Town Manager	\$75
Joel Happy, Town Clerk and Financial Officer	\$26

The Town charges \$.50 per page for photocopying. The first two (2) hours of staff time were provided at no charge, pursuant to the Act. Town staff has researched the records, and it did not exceed the two (2) hours that are provided at no charge. Any additional time expended will be charged at the rates set forth herein.

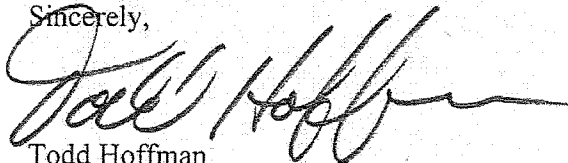
Our staff has collected the records requested in Requests 1 and 2, and they are available for inspection. The minutes requested in Request 4 are being denied, in part, since the meeting between the Council and Buchanan, Ingersoll, & Rooney was held in executive session on January 8, 2014 and is protected from disclosure pursuant to § 10-615(1) of the State Government Article of the Annotated Code of Maryland. However, we are providing inspection of an executive session summary that was included in the minutes of the public meeting held on January 8, 2014.

As to Request 3, we are making available for inspection all non-privileged communications pursuant to § 10-615(1) of the State Government Article of the Annotated Code of Maryland. Some communications are protected from disclosure because they constitute intra-agency correspondence under § 10-618(b), and we find that disclosure would be contrary to the public interest since they contain confidential opinions, deliberations, advice or recommendations from agents of the Town or outside consultants.

Pursuant to § 10-614(b)(3)(ii)3, I must inform you of all remedies available for review. Pursuant to § 10-623, you are entitled to pursue judicial enforcement remedies.

If you wish to inspect the records that are available under the Act, please contact the Town to arrange a mutually convenient time for inspection. If you wish to obtain copies of any records, our staff will assist you. You will be charged \$.50 per page.

Sincerely,



Todd Hoffman
Town Manager

EXHIBIT C

Buchanan Ingersoll & Rooney PC
Attorneys & Government Relations Professionals

James C. Wiltraut
Director-Federal Government Relations
202 452 7943
james.wiltraut@bipc.com

Terrence E. Heubert
Government Relations Professional
202 452 6041
terrence.heubert@bipc.com

1700 K Street, N.W., Suite 300
Washington, DC 20005-3807
T 202 452 7900
F 202 452 7989
www.buchananingersoll.com

March 14, 2014

Todd Hoffman
Town Manager
Town of Chevy Chase, Maryland
4301 Willow Lane
Chevy Chase, MD 20815

Re: Engagement Agreement

Dear Mr. Hoffman:

Buchanan Ingersoll & Rooney PC ("Buchanan Ingersoll & Rooney" or the "Firm") is pleased to accept your request to represent the Town of Chevy Chase (the "Town") in federal and Maryland state government relations matters ("Government Relations"). In accordance with the Rules of Professional Conduct and our Firm's procedures, this letter agreement (the "Agreement") confirms the terms on which Buchanan Ingersoll & Rooney will provide Government Relations services to the Town with respect to strategy development and implementation of the Town Government Relations initiatives. The terms and conditions contained in this Agreement as to compensation, confidentiality and conflicts of interest will be included in agreements with our subcontractors for this engagement: Chambers, Conlon & Hartwell, LLC and Alexander & Cleaver, P.A. (The "Subcontractors").

Billing Matters

The monthly retainer for our services is \$29,000 a month beginning February 24, 2014. While this engagement commences February 24, 2014, we will begin billing the Town on a monthly basis beginning March 1, 2014. This monthly retainer encompasses the fee for Government Relations services to be provided by the Subcontractors for this project. This Agreement may be terminated by either party upon 30 days written notice.

We will provide a monthly statement as well as reports on the representation either by memo or by telephone. Monthly billings will include expenses incurred in connection with each service matter. If you have questions concerning a statement, please call me at 202-452-7943.

Todd Hoffman
Town Manager
Town of Chevy Chase, Maryland
March 14, 2014
Page 2

Payment of statements is due upon receipt of our invoice. The Firm reserves the right to impose interest at a rate equal to one and one-half percent (1½%) per month on any outstanding balance that remains unpaid for more than 30 days after receipt of the invoice. The Firm also reserves the right to decline to continue to provide services to clients who do not pay within the guideline without making mutually acceptable arrangements for delayed payments. By signing this Agreement, the Town confirms its understanding of and agreement with the foregoing.

Compliance with Federal & Maryland Lobbying Disclosure Acts

In accordance with the Federal Lobbying Disclosure Act of 1995, as amended, the Firm will file an initial report registering as a lobbyist for the Town with the Secretary of the Senate of the United States and the Clerk of the United States House of Representatives. The registration form requires disclosure of the specific Federal issues lobbied, the House(s) of Congress and Federal agencies to be contacted, any affiliated companies that are contributing to payment for lobbying services, and foreign entities affiliated with the Town, if any, that have a direct interest in the outcome of the lobbying activity. The Firm will also be required to file quarterly reports with Congress to update the initial registration information and to disclose the total income accrued during the quarterly period from the Town for Federal lobbying activities. The reports filed by the Firm will be publicly available on websites maintained by the House and Senate. We will provide the Town with copies of our reports on request.

Maryland law requires the Town and the lobbyist to execute and file annual lobby registration statements with the Maryland Ethics Commission on November 1st of each year or as soon as retention has occurred. Alexander & Cleaver will prepare the required registration statement and renewal statements for the Town's signature and will file the same with the Ethics Commission. In accordance with Maryland Ethics laws, Alexander & Cleaver will file the required semi-annual lobby disclosure reports with the Ethics Commission. Maryland ethics laws require the Town to file a Public Disclosure Statement with the State Board of Elections if the Town makes political contributions and does business with the state. Alexander & Cleaver will assist the Town at no additional charge to determine whether this report is required, and, if so, with its filing.

Scope of Representation

The Town is the Firm's sole client with respect to this engagement, and the Firm's professional responsibilities are owed only to the Town. The Firm does not have a client relationship with any individuals and entities that are affiliated with the Town, unless the Firm otherwise agrees in writing. For example, the Firm's representation of the Town does not include representing its elected or appointed representatives, members, officers, directors,

Todd Hoffman
Town Manager
Town of Chevy Chase, Maryland
March 14, 2014
Page 3

employees, political subdivisions or authorities, joint ventures, affiliated entities or successors-in-interest.

We will keep the Town informed on the status of our work. Individuals may express their views about the possible outcomes; however, these views are not a prediction or guarantee of a result and do not constitute a promise or assurance of success.

Advance Waiver - Conflicts of Interest

Recognizing and addressing conflicts of interest is a continuing issue for attorneys and clients. We have implemented policies and procedures to identify actual and potential conflicts at the outset of each engagement. From time to time, we may be asked to represent someone whose interests may differ from or even be adverse to the interests of the Town. We are accepting this engagement with the Town's understanding and express consent that our representation of the Town will not preclude us from accepting an engagement from a new or existing client that is adverse to the Town ("Adverse Representation"), except under the circumstances identified below. By granting this advance waiver, the Town is relinquishing its right to receive detailed information about a proposed Adverse Representation and to decide on a case-by-case basis whether or not to give its consent. An Adverse Representation could involve, for example, the Firm representing another client in any of the following: litigation adverse to the Town; a review, opinion, or challenge involving intellectual property held by the Town; a business, commercial or real estate transaction between the Town and the other client; or representing other businesses/government entities with interest the same as or similar to the Town in Government Relations, lobbying, and legislative/administrative/executive activities. However, the Firm will not accept an Adverse Representation that is substantially related to the matters in which we represent the Town. Also, we will not accept an Adverse Representation if, because of our representation of the Town, we obtained confidential Town information that is material to the Adverse Representation.

During the term of this Agreement, the Firm will notify you if it accepts an engagement from another client that is adverse to the Town, subject to applicable confidentiality rules that may limit the information the Firm is permitted to disclose.

Document Procedures

The Firm's policy is to deliver to the client, upon request, all documents and property the client has provided the Firm and documents and materials prepared as part of the representation. We may exclude from this our internal memoranda and records, attorney notes, drafts not intended for external distribution, and similar working materials. We may also elect to retain a copy of other portions of the file at our expense. The Firm will retain, in

Todd Hoffman
Town Manager
Town of Chevy Chase, Maryland
March 14, 2014
Page 4

accordance with our records retention program, any files relating to client matters that the client does not ask to have returned. However, to avoid indefinite storage, the Firm reserves the right to dispose of any documents or other materials retained by us within a reasonable time after the completion of this engagement. If the client is in breach of the client's retainer agreement with the Firm, the Firm may choose to withhold certain portions of the client files consistent with our obligations under the Rules of Professional Conduct.

Public Information

The Firm sometimes identifies clients in various public communications including (but not limited to) press releases, the Buchanan Ingersoll & Rooney website and brochures used to describe the Firm and its capabilities. We ask that your signature on this letter also acknowledge your consent to including the Town's name in these communications.

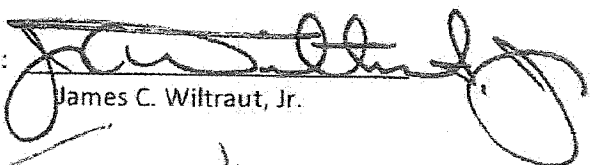
This Agreement will govern the Government Relations services performed by the Firm on behalf of the Town commencing with the date the Firm first performed services. Even if this Agreement does not take effect, the Town will be obligated to pay the Firm the reasonable value of any Government Relations services the Firm may have performed for the Town. The Firm will have no obligation to provide Government Relations services until a signed copy of this Agreement is returned to us.

We at Buchanan Ingersoll & Rooney greatly appreciate your confidence in us, and look forward to having the Town among our clients.

Please acknowledge your understanding and agreement regarding the terms of our engagement as described in this letter by signing one of the enclosed copies of this letter in the space provided below and returning it to me and include payment for the past services along with your first monthly retainer.

Sincerely,

BUCHANAN INGERSOLL & ROONEY PC

By: 
James C. Wiltraut, Jr.

By: 
Terrence E. Heubert

Todd Hoffman
Town Manager
Town of Chevy Chase, Maryland
March 14, 2014
Page 5

Agreed and accepted this 17 day of March, 2014.

The undersigned confirms that he is duly authorized to enter into this Agreement on behalf of the Town and that the Firm may provide legal representation to a client in a matter directly adverse to the Town, including litigation, except where such matters are substantially related to the Firm's representation of the Town.

TOWN OF CHEVY CHASE

By:


Signature

PATRICIA BURDA
Printed Name

Mayor, Town of Chevy Chase
Title

EXHIBIT D

April 1, 2014

Dear Mayor Burda, Councilmembers, and Mr. Hoffman,

This is a request under the Maryland Public Information Act on behalf of the Action Committee for Transit. We ask to inspect the following records:

AGREEMENTS AND CONTRACTS

1. All agreements and contracts (signed or unsigned) between the Town of Chevy Chase and the firm of Buchanan, Ingersoll, and Rooney, dating from February 8, 2014, onwards.
2. All agreements and contracts (signed or unsigned) between the Town of Chevy Chase and the firm of Chambers, Conlon, and Hartwell, dating from February 8, 2014, onwards.
3. All agreements and contracts (signed or unsigned) between the Town of Chevy Chase and the firm of Alexander and Cleaver, dating from February 8, 2014, onwards.

INVOICES AND BILLS

1. All invoices or bills (paid or unpaid) from the firm of Buchanan, Ingersoll, and Rooney to the Town of Chevy Chase, dating from January 16, 2014, onwards.
2. All invoices or bills (paid or unpaid) from the firm of Chambers, Conlon, and Hartwell to the Town of Chevy Chase, dating from January 16, 2014, onwards.
3. All invoices or bills (paid or unpaid) from the firm of Alexander and Cleaver to the Town of Chevy Chase, dating from January 16, 2014, onwards.

CORRESPONDENCE

1. All correspondence between the firm of Buchanan, Ingersoll, and Rooney, on the one hand, and the Town of Chevy Chase, the Town Council, and/or individual Town Council members, on the other, from February 20, 2014, onwards.
2. All correspondence between the firm of Buchanan, Ingersoll, and Rooney, on the one hand, and the Town of Chevy Chase, the Town Council, and/or individual Town Council members, on the other, from before February 20, 2014, which was not open to inspection under our previous PIA request dated February 4.
3. All correspondence between the firm of Chambers, Conlon, and Hartwell, on the one hand, and the Town of Chevy Chase, the Town Council, and/or individual Town Council members, on the other, from February 20, 2014, onwards.
4. All correspondence between the firm of Chambers, Conlon, and Hartwell, on the one hand, and the Town of Chevy Chase, the Town Council, and/or individual Town Council members, on the other, from before February 20, 2014, which was not open to inspection under our previous PIA request dated February 4.

5. All correspondence between the firm of Alexander and Cleaver, on the one hand, and the Town of Chevy Chase, the Town Council, and/or individual Town Council members, on the other, from February 20, 2014, onwards.
6. All correspondence between the firm of Alexander and Cleaver, on the one hand, and the Town of Chevy Chase, the Town Council, and/or individual Town Council members, on the other, from before February 20, 2014, which was not open to inspection under our previous PIA request dated February 4.

Note that since the Town Council voted on February 20, 2014, to retain the firm of Buchanan Ingersoll & Rooney and its subcontractors Alexander and Cleaver and Chambers, Conlon & Hartwell to provide legal and government relations services to the Town of Chevy Chase, the requested records from before February 20, 2014, should now be open for inspection.

MINUTES

1. All minutes of all meetings (including lists of attendees) between the firm of Buchanan, Ingersoll, and Rooney, on the one hand, and the Town of Chevy Chase, the Town Council, and/or individual Town Council members, on the other, from February 20, 2014, onwards.
2. All minutes of all meetings (including lists of attendees) between the firm of Buchanan, Ingersoll, and Rooney, on the one hand, and the Town of Chevy Chase, the Town Council, and/or individual Town Council members, on the other, from before February 20, 2014, which were not open to inspection under our previous PIA request dated February 4.
3. All minutes of all meetings (including lists of attendees) between the firm of Chambers, Conlon, and Hartwell, on the one hand, and the Town of Chevy Chase, the Town Council, and/or individual Town Council members, on the other, from February 20, 2014, onwards.
4. All minutes of all meetings (including lists of attendees) between the firm of Chambers, Conlon, and Hartwell, on the one hand, and the Town of Chevy Chase, the Town Council, and/or individual Town Council members, on the other, from before February 20, 2014, which were not open to inspection under our previous PIA request dated February 4.
5. All minutes of all meetings (including lists of attendees) between the firm of Alexander and Cleaver, on the one hand, and the Town of Chevy Chase, the Town Council, and/or individual Town Council members, on the other, from February 20, 2014, onwards.
6. All minutes of all meetings (including lists of attendees) between the firm of Alexander and Cleaver, on the one hand, and the Town of Chevy Chase, the Town Council, and/or individual Town Council members, on the other, from before February 20, 2014, which were not open to inspection under our previous PIA request dated February 4.

Note that since the Town Council voted on February 20, 2014, to retain the firm of Buchanan, Ingersoll, and Rooney and its subcontractors Alexander and Cleaver and Chambers, Conlon, and Hartwell to provide legal and government relations services to the Town of Chevy Chase, the requested records from before February 20, 2014, should now be open for inspection.

COSTS FOR RESPONDING TO INFORMATION REQUESTS

1. Any fee schedules for responding to requests for information under the Maryland Public Information Act.
2. All invoices or bills for copying costs for records or documents that the Town has billed from March 20, 2013, to March 20, 2014.

Please tell us how much this PIA request will cost. We expect to want copies of all of the records we are requesting.

Also please note that the Maryland Public Information Act Manual (12th Ed.) (October 2011) states on page 4-2, "Under SG §10-614(b)(2), if a record is found to be responsive to a request and is recognized to be open to inspection, it must be produced "immediately" after receipt of the written request. An additional reasonable period "not to exceed 30 days" is available only where the additional period of time is required to retrieve the records and assess their status under the PIA. A custodian should not wait the full 30 days to allow or deny access to a record if that amount of time is not needed to respond."

If you have questions about this request, please call Tina Slater, ACT Vice President for the Purple Line, at 301 585-5038.

Sincerely,

Miriam Schoenbaum
Action Committee for Transit
PO Box 7074
Silver Spring, MD 20907-7074

EXHIBIT E

April 6, 2014

Dear Mayor Burda, Councilmembers, and Mr. Hoffman,

This is a request under the Maryland Public Information Act on behalf of the Action Committee for Transit. We ask to inspect the following records:

All documents which have been written, received, sent, or used in any way (whether by the Town of Chevy Chase, the Town Council, and/or individual Town Council members) since Nov. 1, 2013 that relate to Xenophon Strategies, David A. Fuscus, Julie Chlopecki, or Mark Hazlin. This includes but is not limited to agreements, contracts, subcontracts, invoices or bills (paid or unpaid), correspondence, reports, and minutes of all meetings (including list of attendees).

Please tell us how much this PIA request will cost. We expect to want copies of all of the records we are requesting.

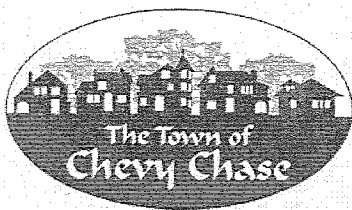
Also please note that the Maryland Public Information Act Manual (12th Ed.) (October 2011) states on page 4-2, "Under SG §10-614(b)(2), if a record is found to be responsive to a request and is recognized to be open to inspection, it must be produced "immediately" after receipt of the written request. An additional reasonable period "not to exceed 30 days" is available only where the additional period of time is required to retrieve the records and assess their status under the PIA. A custodian should not wait the full 30 days to allow or deny access to a record if that amount of time is not needed to respond."

If you have questions about this request, please call Tina Slater, ACT Vice President for the Purple Line, at 301 585-5038.

Sincerely,

Ronit Aviva Dancis
Action Committee for Transit
PO Box 7074
Silver Spring, MD 20907-7074

EXHIBIT F



Patricia Burda, *Mayor*
Kathy Strom, *Vice Mayor*
Al Lang, *Secretary*
David Lublin, *Treasurer*
John Bickerman, *Community Liaison*

April 17, 2014

VIA ELECTRONIC MAIL: mwschoenbaum@yahoo.com

Miriam Schoenbaum
Action Committee for Transit
P.O. Box 7074
Silver Spring, Maryland 20907-7074

Re: MPIA Records Inspection Request (Request related to Outside Consultants)

Dear Ms. Schoenbaum:

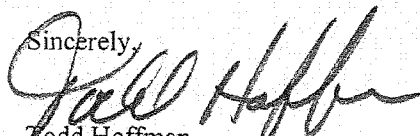
This letter is in response to your email of April, 1, 2014 requesting inspection of public records of the Town of Chevy Chase ("the Town"). As you may know, the Maryland Public Information Act authorizes the Town to charge a reasonable fee for making copies and a reasonable fee for researching its records. The fee for research varies, based on the compensation level of the staff member that would need to review and compile the different categories of records. The hourly fees of the employees that are anticipated to work on your request are as follows:

Todd Hoffman, Town Manager: \$75.00 per hour
Joel Happy, Town Clerk: \$25 per hour
Town Attorney: \$215 per hour

The Town charges \$0.50 cents per page for photocopying. It is anticipated that the research within our office will be at least five (5) hours, which does not include the fee for review by the Town's attorney. Accordingly, we would request that a deposit of \$700 be provided to the Town before research begins. Please note that your request will not be processed before the applicable deposit has been delivered. Based on the previous request made by your organization relating to the same general topic, we will not provide the first two (2) hours of research free of charge. The above description of charges are estimates, and the Town reserves the right to request additional deposits and to revise the cost based on actual time spent and actual copying costs, as it deems necessary.

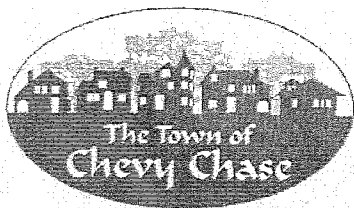
Please contact me with any questions you may have.

Sincerely,


Todd Hoffman
Town Manager

cc: Patricia Burda, Mayor

EXHIBIT G



Patricia Burda, *Mayor*
Kathy Strom, *Vice Mayor*
Al Lang, *Secretary*
David Lublin, *Treasurer*
John Bickerman, *Community Liaison*

April 17, 2014

VIA ELECTRONIC MAIL:ronitadancis@yahoo.com

Ronit Aviva Dancit
Action Committee for Transit
P.O. Box 7074
Silver Spring, Maryland 20907-7074

Re: MPIA Records Inspection Request (Xenophon Strategies)

Dear Ms. Dancit:

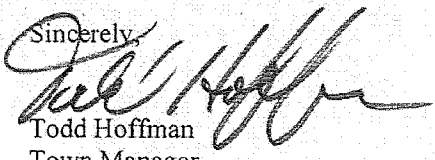
This letter is in response to your email of April 6, 2014 requesting inspection of public records of the Town of Chevy Chase ("the Town"). As you know, the Maryland Public Information Act authorizes the Town to charge a reasonable fee for making copies and a reasonable fee for researching its records. The fee for research varies, based on the compensation level of the staff member that would need to review and compile the different categories of records. The hourly fees of the employees that are anticipated to work on your request are as follows:

Todd Hoffman, Town Manager: \$75.00 per hour
Joel Happy, Town Clerk: \$25 per hour
Town Attorney: \$215 per hour

The Town charges \$0.50 cents per page for photocopying. It is anticipated that the research within our office will be at least five (5) hours, which does not include the fee for review by the Town's attorney. The first two (2) hours of research will be done free of charge. Accordingly, we would request that a deposit of \$250.00 be provided to the Town before research begins. Please note that your request will not be processed before the applicable deposit has been delivered. The above description of charges are estimates, and the Town reserves the right to request additional deposits and to revise the cost based on actual time spent and actual copying costs, as it deems necessary.

Please contact me with any questions you may have.

Sincerely,


Todd Hoffman
Town Manager

cc: Patricia Burda, Mayor

EXHIBIT H

Sent

• Contacts

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 [Vitals.com/Dr_Todd Hoffman](#)

Dr. Todd Hoffman - Learn About Your Doctor.

Doctor Reviews, Ratings amp; More.

RE: Public Information Act request - Buchanan Ingersoll & Rooney, Chambers Conlon & Hartwell, Alexander & Cleaver

Friday, April 18, 2014 10:24 AM

From:

"M Schoenbaum" <mwschoenbaum@yahoo.com>

To:

"Patricia Burda" <pburda@townofchevy Chase.org> "Kathy Strom"

<kstrom@townofchevy Chase.org> "Al Lang" <al.lang@townofchevy Chase.org> "David Lublin"

<dlublin@townofchevy Chase.org> "Todd Hoffman" <thoffman@townofchevy Chase.org>

Cc:

"Jason DeLoach" <jdeloach@alexander-cleaver.com>

Dear Mr. Hoffman,

The purpose of this e-mail is to ask the Town of Chevy Chase to waive the fees and costs you are assessing, per your e-mail below, for the request submitted by the Action Committee for Transit, under the Maryland Public Information Act, for records related to the Town's dealings with the firms Buchanan Ingersoll & Rooney, Chambers Conlon & Hartwell, and Alexander & Cleaver.

A waiver is in the public interest. ACT is not seeking this information for a narrow personal or commercial interest. Rather, ACT is seeking this information for a public purpose -- namely, to obtain information about the Town's expenditure of public funds for legal advice and government lobbying to support the Town's efforts related to the State of Maryland's Purple Line project. The requested disclosure will contribute to public understanding of government operations and activities.

Sincerely,

Miriam Schoenbaum
15004 Clopper Rd
Boyd MD 20841

On Thu, 4/17/14, Todd Hoffman <thoffman@townofchevy Chase.org> wrote:

Subject: RE: Public Information Act request - Buchanan Ingersoll & Rooney, Chambers Conlon & Hartwell, Alexander & Cleaver

To: "M Schoenbaum" <mwschoenbaum@yahoo.com>, "Patricia Burda" <pburda@townofchevy Chase.org>, "Kathy Strom" <kstrom@townofchevy Chase.org>, "Al Lang" <al.lang@townofchevy Chase.org>, "David Lublin" <dlublin@townofchevy Chase.org>

Cc: "Jason DeLoach" <jdeloach@alexander-cleaver.com>

Date: Thursday, April 17, 2014, 12:37 PM

Ms.

Schoenbaum,

Attached please find

a letter in response to your MPA request.

Todd Hoffman
Town Manager
Town of Chevy Chase,
Maryland
4301 Willow Lane
Chevy Chase, MD 20815

301-654-7144 (P)
301-718-9631 (F)
thoffman@townofchevy Chase.org

From: M Schoenbaum
[mailto:mwschoenbaum@yahoo.com]

Sent: Tuesday, April 01, 2014 6:31 PM

To: Todd Hoffman; Patricia Burda; Kathy Strom; Al
Lang; David Lublin

Subject: Public Information Act request - Buchanan
Ingersoll & Rooney, Chambers Conlon & Hartwell,
Alexander & Cleaver

Dear Mayor Burda,
Councilmembers, and Mr. Hoffman,

Attached please find a
Public Information Act request on behalf of the Action
Committee for Transit, related to the Town's
records involving
the firms Buchanan Ingersoll & Rooney, Chambers
Conlon & Hartwell, and Alexander &
Cleaver.

Thank you very
much,

Miriam Schoenbaum

15004 Clopper Rd

Boys MD 20841

EXHIBIT I

Sent

• Contacts

Sponsored

♥ [Vitals.com/Dr_Todd Hoffman](http://Vitals.com/Dr_Todd_Hoffman)

Dr. Todd Hoffman - Learn About Your Doctor.

Doctor Reviews, Ratings amp; More.

Fw: PIA request for Xenophon

Friday, April 18, 2014 11:14 AM

From:

"M Schoenbaum" <mwschoenbaum@yahoo.com>

To:

"Patricia Burda" <pburda@townofchevy Chase.org> "Kathy Strom"

<kstrom@townofchevy Chase.org> "Al Lang" <al.lang@townofchevy Chase.org> "David Lublin"

<dlublin@townofchevy Chase.org> "Todd Hoffman" <thoffman@townofchevy Chase.org>

Dear Mr. Hoffman,

The purpose of this e-mail is to ask the Town of Chevy Chase to waive the fees and costs you are assessing, per your e-mail below, for the request submitted by the Action Committee for Transit, under the Maryland Public Information Act, for records related to the Town's dealings with the firm Xenophon Strategies.

A waiver is in the public interest. ACT is not seeking this information for a narrow personal or commercial interest. Rather, ACT is seeking this information for a public purpose -- namely, to obtain information about the Town's expenditure of public funds for legal advice, government lobbying, and public relations to support the Town's efforts related to the State of Maryland's Purple Line project. The requested disclosure will contribute to public understanding of government operations and activities.

Sincerely,

Miriam Schoenbaum
15004 Clopper Rd
Boyd MD 20841

>
> Ms. Dancit,
> Attached please find a letter in
> response to your MPIA request.

>
>
>
>
>
> _____
> Todd Hoffman
> Town Manager
> Town of Chevy Chase,
> Maryland
> 4301 Willow Lane
> Chevy Chase,
> MD 20815
> 301-654-7144 (P)
> 301-718-9631 (F)

> thoffman@townofchevy Chase.org

> From: Ronit Dancis

> [mailto:ronitadancis@yahoo.com]

> Sent: Sunday, April 06, 2014 3:58 PM

> To: Patricia Burda; Kathy Strom; Al Lang; David
> Lublin; John Bickerman; Todd Hoffman

> Subject: PIA request for Xenophon

> Dear Mayor Burda, Councilmembers,
> and Mr. Hoffman,

> Attached please find a Public
> Information Act request on behalf of the Action Committee
> for Transit regarding Xenophon Strategies.

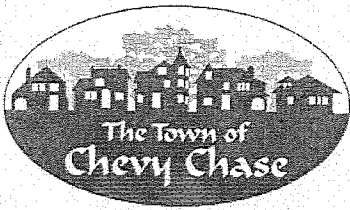
> Thank you very much,

> Ronit Aviva Dancis

> PO Box
> 7074

> Silver Spring, MD
> 20907-7074

EXHIBIT J



Patricia Burda, *Mayor*
Kathy Strom, *Vice Mayor*
Al Lang, *Secretary*
David Lublin, *Treasurer*
John Bickerman, *Community Liaison*

April 23, 2014

VIA ELECTRONIC MAIL: mwschoenbaum@yahoo.com

Miriam Schoenbaum
Action Committee for Transit
P.O. Box 7074
Silver Spring, Maryland 20907-7074

Re: MPIA Records Inspection Requests -- Requests for Waiver of Fees

Dear Ms. Schoenbaum:

We are in receipt of your requests for waiver of fees that were quoted in your MPIA requests. Please be advised the Town has decided to deny your requests for said waivers. It is anticipated that the Town will expend a significant amount of time researching and processing your requests.

In the meantime, if you have any questions or concerns, please do not hesitate to contact the undersigned.

Sincerely,

Todd Hoffman
Town Manager

EXHIBIT K

15004 Clopper Road
Boys MD 20841

May 21, 2014

Todd Hoffman
Town Manager
Town of Chevy Chase
4301 Willow Lane
Chevy Chase, MD 20815
thoffman@townofchevyCHASE.org

Dear Mr. Hoffman,

This is a request for public records under the Maryland Public Information Act, from myself as an individual and from myself on behalf of the Action Committee for Transit.

SUMMARY OF REQUEST

We ask to inspect public records related to contracts and agreements between the Town of Chevy Chase and four firms to provide legal advice, government lobbying, and other services to help the Town fight the Purple Line, as reported in the Washington Post on February 21, 2014 (see http://www.washingtonpost.com/local/trafficandcommuting/town-of-chevy-chase-hires-law-firm-to-fight-purple-line/2014/02/21/3c87b492-9a98-11e3-80ac-63a8ba7f7942_story.html).

The purpose of our request is to contribute significantly to the public's understanding of the transaction of public business (agreements, contracts, expenditures, correspondence, and meetings) related to a major public infrastructure project (the Purple Line) by a government body (the Town of Chevy Chase and employees of the Town of Chevy Chase) and public officials (members of the Chevy Chase Town Council), by making public the requested records and the information the records contain.

The Maryland Public Information Act (see SG §10-612(a) and (b)) states:

10-612. Access to Public Records.

(a) In General

All persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees.

(b) Construction

To carry out the right set forth in subsection (a) of this section, unless an unwarranted invasion of the privacy of a person in interest would result, this Part III of this subtitle shall be construed in favor of permitting inspection of a public record, with the least cost and least delay to the person or governmental unit that requests the inspection.

SPECIFIC RECORDS REQUESTED

We ask to inspect the following records:

Agreements and contracts

1. All agreements and contracts (signed or unsigned) between the Town of Chevy Chase and the firm of Buchanan Ingersoll & Rooney, from February 8, 2014, to May 21, 2014.
2. All agreements and contracts (signed or unsigned) between the Town of Chevy Chase and the firm of Chambers Conlon & Hartwell, from February 8, 2014, to May 21, 2014.
3. All agreements and contracts (signed or unsigned) between the Town of Chevy Chase and the firm of Alexander & Cleaver, from February 8, 2014, to May 21, 2014.
4. All agreements and contracts (signed or unsigned) between the Town of Chevy Chase and the firm of Xenophon Strategies, David A. Fuscus, Julie Chlopecki, or Mark Hazlin, from November 1, 2013, to May 21, 2014.

Invoices and bills

1. All invoices or bills (paid or unpaid) from the firm of Buchanan Ingersoll & Rooney to the Town of Chevy Chase, from January 16, 2014, to May 21, 2014.
2. All invoices or bills (paid or unpaid) from the firm of Chambers Conlon & Hartwell to the Town of Chevy Chase, from January 16, 2014, to May 21, 2014.
3. All invoices or bills (paid or unpaid) from the firm of Alexander & Cleaver to the Town of Chevy Chase, from January 16, 2014, to May 21, 2014.
4. All invoices or bills (paid or unpaid) from the firm of Xenophon Strategies, David A. Fuscus, Julie Chlopecki, or Mark Hazlin, from November 1, 2013, to May 21, 2014.

Correspondence

1. All correspondence between the firm of Buchanan Ingersoll & Rooney, on the one hand, and the Town of Chevy Chase, the Town Council, and/or individual Town Council members, on the other, from February 20, 2014, to May 21, 2014; as well as from before February 20, 2014, which was not open to inspection under ACT's previous PIA request dated February 4.
2. All correspondence between the firm of Chambers Conlon & Hartwell, on the one hand, and the Town of Chevy Chase, the Town Council, and/or individual Town Council members, on the other, from February 20, 2014, to May 21, 2014; as well as correspondence from before February 20, 2014, which was not open to inspection under ACT's PIA request dated February 4.
3. All correspondence between the firm of Alexander & Cleaver, on the one hand, and the Town of Chevy Chase, the Town Council, and/or individual Town Council members, on the other, from February 20, 2014, to May 21, 2014; as well as correspondence from before February 20, 2014, which was not open to inspection under ACT's PIA request dated February 4.
4. All correspondence between the firm of Xenophon Strategies, David A. Fuscus, Julie Chlopecki, or Mark Hazlin, on the one hand, and the Town of Chevy Chase, the Town Council, and/or individual Town Council members, on the other, from November 1, 2013, to May 21, 2014.

Minutes

1. All minutes of all meetings (including lists of attendees) between the firm of Buchanan Ingersoll & Rooney, on the one hand, and the Town of Chevy Chase, the Town Council, and/or individual Town Council members, on the other, from February 20, 2014, to May 21, 2014; as well as minutes from before February 20, 2014, which were not open to inspection under ACT's previous PIA request dated February 4.
2. All minutes of all meetings (including lists of attendees) between the firm of Chambers Conlon & Hartwell, on the one hand, and the Town of Chevy Chase, the Town Council, and/or individual Town Council members, on the other, from February 20, 2014, to May 21, 2014; as well as minutes from before February 20, 2014, which were not open to inspection under ACT's previous PIA request dated February 4.
3. All minutes of all meetings (including lists of attendees) between the firm of Alexander & Cleaver, on the one hand, and the Town of Chevy Chase, the Town Council, and/or individual Town Council members, on the other, from February 20, 2014, to May 21, 2014; as well as minutes from before February 20, 2014, which were not open to inspection under ACT's previous PIA request dated February 4.
4. All minutes of all meetings (including lists of attendees) between the firm of Xenophon Strategies, David A. Fuscus, Julie Chlopecki, or Mark Hazlin, on the one hand, and the Town of Chevy Chase, the Town Council, and/or individual Town Council members, on the other, from November 1, 2013, to May 21, 2014.

REQUEST FOR WAIVER OF ALL FEES

I request a waiver of all fees for this Public Information Act request, both on behalf of myself as a member and on behalf of the Action Committee for Transit, in accordance with the Maryland Public Information Act and relevant guidance from case law from the federal Freedom of Information Act (FOIA). The reason for the fee waiver request is that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of the business, activities, and public-money expenditures of a government body (the Town of Chevy Chase) related to a major public infrastructure project (the Purple Line). Neither the Action Committee for Transit nor I is seeking this information for any commercial purpose whatsoever. In addition, I am seeking this information as a representative of the news media.

Maryland Public Information Act

The *Maryland Public Information Act Manual* (12th Ed.) (October 2011) says:

An applicant may ask the agency for a total or partial waiver of fees. Under SG§10-621(e), the official custodian may waive any fee or cost assessed under the PIA if the applicant asks for a waiver and if the official custodian determines that a waiver would be in the public interest.

To determine whether a waiver is in the public interest, the official custodian must consider not only the ability of the applicant to pay, but also other relevant factors. A waiver may be appropriate, for example, when a requester seeks information for a public purpose rather than a narrow personal or commercial interest...

ACT and I believe that this PIA request serves a public purpose and that a fee waiver would be in the public interest. We are asking for a government body's records on the government body's activities and expenditures related to a major public works project. As a basic principle, the public has both a strong interest and a right to know what a government body and public officials are doing with public money. And this interest is especially strong when the government body's activities and expenditures affect a project that will cost several billion dollars, involve all levels of government from municipal to federal, and directly or indirectly affect thousands of businesses and millions of people. My purpose for this PIA request, as well as ACT's, is to make public the requested records and the information they contain. Neither ACT nor I have any purpose for this PIA request that furthers a commercial, trade, or profit interest.

Note that although the Manual states that "Under SG §10-621(b), an official custodian may charge reasonable fees for the search and preparation of records for inspection and copying," the Manual is silent on whether the time required for this search and preparation of records is a relevant factor that the official custodian should consider when determining whether a waiver is in the public interest. The Manual mentions only ability of the applicant to pay, whether the information is for a public purpose, and "other relevant factors".

For further reference on these "other relevant factors", the Manual advises the custodian to look at case law for the federal Freedom of Information Act (FOIA): "In deciding whether to waive a fee, an official custodian may find it helpful to look at case law interpreting the comparable FOIA provision, 5 U.S.C. §552(a)(4)(A)."

According to the *United States Department of Justice Guide to the Freedom of Information Act* (2009 edition), under the comparable FOIA provision, the time required for the search and preparation of records is not a relevant factor in a federal agency's decision about waiving a fee for a FOIA request.

Freedom of Information Act

Because the Maryland Public Information Manual refers to case law for FOIA, I provide the following information to show that the federal government would waive the fees for this request if it were a FOIA request.

Miriam Schoenbaum

According to the *United States Department of Justice Guide to the Freedom of Information Act* (2009 edition), under FOIA, there are "three types of fees that may be assessed in response to FOIA requests: search, review, and duplication. The fees that may be charged to a particular requester are dependent upon the requester's fee category... representatives of the news media, are assessed only duplication fees."

About representatives of the news media, the FOIA guide says the following:

Congress has now included a definition directly in the FOIA statute. With the passage of the OPEN Government Act and some twenty-one years after the term was first included in the statute, Congress, borrowing from both the Court of Appeals for

the District of Columbia Circuit's opinion in *National Security Archive v. DOD* and the OMB Fee Guidelines has now statutorily defined a "representative of the news media." This subcategory includes "any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience."

Additionally, Congress incorporated into the statutory definition the OMB Fee Guidelines' definition of "news" as "information that is about current events or that would be of current interest to the public." The new statutory definition also addresses the potential growth of alternative news media entities by providing a non-exclusive list of media entities. Finally, the statutory definition specifies that freelance journalists shall be considered representatives of the news media if they "can demonstrate a solid basis for expecting publication through [a news media] entity, whether or not the journalist is actually employed by the entity."

To date, there have been no new cases addressing the statutory definition codified by the Open Government Act.

I have a solid basis for expecting publication through a news media entity; for further reference, please see my publications on the news media entity *Greater Greater Washington*, here: <http://greatergreaterwashington.org/mschoenbaum/>. In particular, I have recently published a piece on *Greater Greater Washington* about issues specifically and closely related to this Public Information Act request; please see here: <http://greatergreaterwashington.org/post/22737/purple-line-meets-a-stone-wall-in-chevy-chase/>. In my publications, I gather information of potential interest to a segment of the public, use my editorial skills to turn the raw materials into a distinct work, and distribute that work to an audience.

For more information about the news media entity *Greater Greater Washington*, please see the following links:

- http://www.washingtonpost.com/local/dc-politics/david-alpert-his-vision-for-greater-greater-washington-and-the-district/2013/02/08/e7966612-5c41-11e2-9fa9-5fbdc9530eb9_story.html
- <http://www.washingtoncitypaper.com/articles/39679/how-32-year-old-google-veteran-david-alpert-and-his/>
- <http://www.washingtonian.com/blogs/capitalcomment/blogger-beat/the-blogger-beat-greater-greater-washington.php>

In short, this PIA request from me satisfies the U.S. Department of Justice's guidance for waiving search fees and review fees under FOIA on grounds that I am a representative of the news media.

Action Committee for Transit

According to the *United States Department of Justice Guide to the Freedom of Information Act* (2009 edition), fees under the Freedom of Information Act (FOIA) should be waived or reduced for requesters "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." The U.S. Department of Justice has issued

guidance advising agencies to consider six analytical factors when applying this fee waiver standard. The six factors are as follows:

1. Public interest
 - a. The subject matter of the requested records, in the context of the request, must specifically concern identifiable "operations or activities of the government."
 - b. The disclosable portions of the requested information must be meaningfully informative in relation to the subject matter of the request.
 - c. The disclosure must contribute to "public understanding" as opposed to the individual understanding of the requester or a narrow segment of interested persons
 - d. The disclosure must contribute "significantly" to public understanding of government operations or activities.
2. Commercial interest
 - a. Does the request involve any "commercial interest of the requester" which would be furthered by the disclosure?
 - b. If there is a commercial interest, is the commercial interest or the public interest primary?

The following is a discussion of each of these six factors, in turn.

1. The subject matter specifically concerns identifiable operations or activities of the government

This PIA request specifically concerns identifiable operations or activities of the government – namely, the Town of Chevy Chase's agreements, contracts, invoices, bills, correspondence, and meeting minutes with four named firms (Buchanan Ingersoll & Rooney; Chambers Conlon & Hartwell; Alexander & Cleaver, and Xenophon Strategies) and three named individuals (David A. Fuscus, Julie Chlopecki, and Mark Hazlin)

2. The disclosable portion of the requested information is meaningfully informative in relation to the subject matter of the request

The records requested in this PIA request are meaningfully informative in relation to the subject matter. The information in these records is not already in the public domain and cannot be obtained elsewhere. In addition, the records are unlikely to consist of routine administrative information.

3. The disclosure must contribute to public understanding as opposed to the individual understanding of the requester or a narrow segment of interested persons

The records requested in this PIA request will contribute to public understanding. The records will add to the understanding of residents of the Town of Chevy Chase; residents of Montgomery and Prince George's Counties; students, faculty, and staff at the University of Maryland, College Park; and residents of the State of Maryland about activities and expenditures undertaken by a government body (the Town of Chevy Chase) and by public officials (the Chevy Chase Town Council), using public funds, in relation to a major public infrastructure project (the Purple Line).

The information in these records is not highly technical, and no specialized knowledge will be required to extract, synthesize, or effectively convey the information in these records to the public. Further, as a grass-roots transit advocacy organization with several representatives of the news media on its board (as discussed above), ACT has an established history of disseminating information to the public, through press releases, public meetings, newsletters, press interviews, blog posts, magazine articles, newspaper articles, and books.

4. The disclosure must contribute significantly to public understanding of government operations or activities.

The records requested in this PIA request will contribute significantly to public understanding of government operations or activities. The public currently knows, from reading reports in the news media, only that the Town of Chevy Chase hired one of the law firms at a cost of \$29,000 per month to help the town explore legal options and lobby members of Congress and the Federal Transit Administration about the Purple Line. The information in this request will provide information on the purposes and circumstances of this hiring. In addition, the public currently does not know that the Town of Chevy Chase has had dealings with the public relations firm Xenophon Strategies or individuals associated with Xenophon Strategies, or what the Town of Chevy Chase's dealings have been about and for. The information in this request will provide information on the Town of Chevy Chase's expenditure of public money for this purpose. Finally, the information in the requested records will contribute to the public's understanding of the actions a government body is undertaking, paid for by public money, in relation to a major public infrastructure project.

5. Does the request involve any "commercial interest of the requester" which would be furthered by the disclosure?

This request does not involve any commercial, trade, or profit interest on the part of ACT, or any interest related to commerce. ACT is a grass-roots transit advocacy organization. ACT board members are volunteers. ACT was incorporated in 2000 as a non-stock corporation with a board of directors elected by the members. ACT has no stockholders, and the corporation's charter requires any assets to be donated to a 501(c)(3) charity if the corporation is dissolved.

6. If there is a commercial interest, is the commercial interest or the public interest primary?

There is no commercial interest; please see the discussion for #5, above.

In short, this PIA request from ACT satisfies the six factors in the Department of Justice's guidance for waiving all fees under FOIA on grounds that the disclosure of the requested information is in the public interest.

REQUEST PROCEDURES

The Maryland Public Information Act requires the custodian of the records to produce a requested record immediately upon receipt of a written PIA request, if the record is responsive to a request and is open to inspection. The PIA provides for an additional reasonable period not to exceed 30 days only where the additional period of time is required to retrieve the records and assess

their status under the PIA. If access to the records in this request will take longer than 30 days, please contact me with information about when ACT and I might expect copies (paper or electronic) or the ability to inspect the requested records.

If it is convenient for you to provide some or all of the records in an electronic format, ACT and I will be happy to receive the records in an electronic format.

If this request does not sufficiently identify the records that we seek, or is unclear or unreasonably broad, please contact me to clarify or narrow the request.

If you are not the custodian of the records we are requesting, please notify me of this fact, as well as, if you know them, the actual custodian of the record and the location or possible location of the record.

If you deny any or all of this request, please provide a written statement of the reasons for the denial, the legal authority for the denial, and a notice of the remedies for review of the denial.

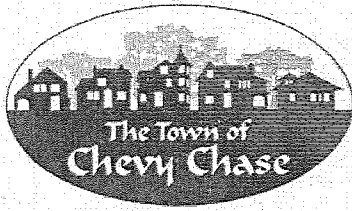
If you deny our request for a fee waiver, wholly or in part, please provide a written statement of the reasons for the denial, their relationship to the guidance in the Maryland Open Meetings Act Manual about factors relevant to a decision on whether or not to waive the fees, and their relationship to the guidance in the FOIA Guide about relevant factors for fee waivers.

I look forward to your response.

Sincerely,

Miriam Schoenbaum

EXHIBIT L



Kathy Strom, *Mayor*
Patricia Burda, *Vice Mayor*
Al Lang, *Secretary*
Vicky Taplin, *Treasurer*
John Bickerman, *Community Liaison*

June 20, 2014

VIA ELECTRONIC MAIL: mwschoenbaum@yahoo.com

Miriam Schoenbaum
1500 Clopper Road
Boyd's, MD 20841

RE: MPIA Request Dated May 21, 2014

Dear Ms. Schoenbaum:

The Town of Chevy Chase (hereinafter "Town") has received your request pursuant to the Maryland Public Information Act (hereinafter "Act") dated May 21, 2014. This letter will serve as the official response of the Town. As you know, the Maryland Public Information Act authorizes the Town to charge a reasonable fee for making copies and a reasonable fee for researching its records. In your request, you outline your arguments in support of a waiver of all fees associated with your request. Please be advised your request for a waiver has been considered and is denied. Accordingly, the Town will expect payment in full for all fees associated with your request.

The fees imposed by the Town for research varies, based on the compensation level of staff member that would need to review and compile the different categories of records. Additionally, documents will have to be reviewed by legal counsel for possible confidential, privileged, or exempted information. The hourly fees of the employees and attorney that are anticipated to work on your request are as follows:

- Todd Hoffman, Town Manager: \$75.00 per hour
- Joel Happy, Town Clerk: \$25.00 per hour
- Town Attorney: \$215.00 per hour

As for your request, there are five (5) subjects that form the basis of your requests. They are as follows:

1. Agreements and Contracts;
2. Invoices and Bills;
3. Correspondence;

4. Minutes;
5. Waiver of Costs for Responding to Requests

Responding to your request has been very time consuming and expensive. Our staff has collected some of the records requested, and they are ready for inspection. These documents are responsive to Requests 1, 2 and 4 outlined above. They are as follows:

- Minutes dated May 14th, April 9th, March 12th, February 20th and February 12th;
- Contract with Buchanan, Ingersoll & Rooney dated March 14, 2014; and
- Invoices of Buchanan Ingersoll & Rooney

Your request for correspondence is extensive and will have to be researched by Town staff. Further, any and all correspondence potentially responsive to your request will have to be reviewed by the Town's attorney for possible confidential, privileged, or exempted information. It is anticipated that the research within our office will be at least five (5) hours, which does not include the fee for review by the Town's attorney. It is anticipated the review by the attorney will be at least three (3) hours. Accordingly, we would request that a deposit of \$1,345.00 be provided to the Town before research begins.

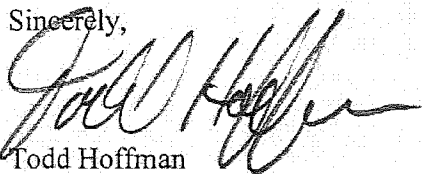
Finally, any and all copies of these documents will be charged the standard rate. The Town charges \$.50 cents per page for photocopying. Please note that your request will not be processed before the deposit disclosed herein has been delivered. Based on the previous request made by you relating to the same general topic, we will not provide the first two (2) hours of research free of charge. Please be advised the description of charges herein are estimates, and the Town reserves the right to request additional deposits, and to revise the cost based on actual time spent and actual photocopying costs incurred, as it deems necessary.

Pursuant to § 10-614(b)(3)(ii)3, I must inform you of all remedies available for review. Pursuant to § 10-623, you are entitled to pursue judicial enforcement remedies.

If you wish to inspect the records that are currently available under the Act, please contact the Town to arrange a mutually convenient time for your inspection. If you wish to obtain copies of any records at the applicable rate, our staff will assist you.

Please contact me with any questions you may have.

Sincerely,



Todd Hoffman
Town Manager

EXHIBIT M

BakerHostetler

Baker & Hostetler LLP

Washington Square, Suite 1100
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5304

T 202.861.1500
F 202.861.1783
www.bakerlaw.com

Ambika J. Biggs
direct dial: 202.861.1619
abiggs@bakerlaw.com

October 15, 2014

VIA OVERNIGHT DELIVERY

Ron Bolt, Esq.
Town Attorney
Town of Chevy Chase
4301 Willow Lane
Chevy Chase, MD 20815

Re: *Maryland Public Information Act Request on behalf of Action Committee for Transit*

Dear Mr. Bolt:

This Firm represents the Action Committee for Transit ("ACT") and submits this request for public records under the Maryland Public Information Act on ACT's behalf. If you are not the custodian of the requested records, please forward this information request to the proper custodian.

SUMMARY OF REQUEST

ACT requests copies of public records relating to contracts, agreements, and communications between the Town of Chevy Chase ("Town") and four firms that the Town retained to provide services in relation the Purple Line public transit project. ACT also seeks full minutes of closed sessions held by the Town Council, pursuant to the Town's Charter, which provides that minutes of Town Council proceedings "shall be open to public inspection." Charter of the Town of Chevy Chase § 207. ACT makes this request in order to promote the public's understanding of the Town and the conduct of its public officials in conducting public business relating a major public infrastructure project. ACT intends to contribute significantly to the public's understanding by making public the requested records and the information the records contain.

Atlanta Chicago Cincinnati Cleveland Columbus Costa Mesa Denver
Houston Los Angeles New York Orlando Philadelphia Seattle Washington, DC

Ron Bolt, Esq.
Town Attorney
Town of Chevy Chase
October 15, 2014
Page 2

The Maryland Public Information Act ("MPIA") states that "[a]ll persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees." Md. Code Gen. Provisions § 4-103(a). In reviewing this request, the Town should recognize that the MPIA mandates that the Act "shall be construed in favor of permitting inspection of a public record, with the least cost and least delay to the person . . . that requests the inspection." *Id.* § 4-103(b).

SPECIFIC RECORDS REQUESTED

ACT respectfully requests copies of – or an opportunity to inspect – the following records:

Agreements and contracts

1. All agreements and contracts (including any drafts) between or among the Town of Chevy Chase and the firm of Buchanan Ingersoll & Rooney, from February 8, 2014 to present.
2. All agreements and contracts (including any drafts) between or among the Town of Chevy Chase and the firm of Chambers Conlon & Hartwell, from February 8, 2014 to present.
3. All agreements and contracts (including any drafts) between or among the Town of Chevy Chase and the firm of Alexander & Cleaver, from February 8, 2014 to present.
4. All agreements and contracts (including any drafts) between or among the Town of Chevy Chase and the firm of Xenophon Strategies, including representatives David A. Fuscus, Julie Chlopecki, or Mark Hazlin, from November 1, 2013 to present.
5. All agreements and contracts (including any drafts) between or among the Town of Chevy Chase and the firm of Sam Schwartz Engineering, from February 8, 2014 to present.

Invoices and bills

1. All invoices or bills (paid or unpaid) from the firm of Buchanan Ingersoll & Rooney to the Town of Chevy Chase, from January 16, 2014 to present.
2. All invoices or bills (paid or unpaid) from the firm of Chambers Conlon & Hartwell to the Town of Chevy Chase, from January 16, 2014 to present.

Ron Bolt, Esq.
Town Attorney
Town of Chevy Chase
October 15, 2014
Page 3

3. All invoices or bills (paid or unpaid) from the firm of Alexander & Cleaver to the Town of Chevy Chase, from January 16, 2014 to present.
4. All invoices or bills (paid or unpaid) from the firm of Xenophon Strategies, including representatives David A. Fuscus, Julie Chlopecki, or Mark Hazlin, from November 1, 2013 to present.
5. All invoices or bills (paid or unpaid) from the firm of Sam Schwartz Engineering to the Town of Chevy Chase, from January 16, 2014 to present.

Correspondence

1. All correspondence between or among the firm of Buchanan Ingersoll & Rooney (or its representatives) and the Town of Chevy Chase, the Town Council, or individual Town Council members from February 20, 2014 to present, as well any information predating February 20, 2014 that was not open to inspection under ACT's previous MPIA request dated February 4, 2014.
2. All correspondence between or among the firm of Chambers Conlon & Hartwell (or its representatives) and the Town of Chevy Chase, the Town Council, or individual Town Council members from February 20, 2014 to present, as well any information predating February 20, 2014 that was not open to inspection under ACT's previous MPIA request dated February 4, 2014.
3. All correspondence between or among the firm of Alexander & Cleaver (or its representatives) and the Town of Chevy Chase, the Town Council, and/or individual Town Council members from February 20, 2014 to present, as well any information predating February 20, 2014 that was not open to inspection under ACT's previous MPIA request dated February 4, 2014.
4. All correspondence between or among the Town of Chevy Chase, the Town Council, or individual Town Council members about or related to the firm of Xenophon Strategies, including representatives David A. Fuscus, Julie Chlopecki, or Mark Hazlin, from November 1, 2013 to present.
5. All correspondence between or among the firm of Xenophon Strategies, including representatives David A. Fuscus, Julie Chlopecki, or Mark Hazlin and the Town of Chevy Chase, the Town Council, or individual Town Council members, from November 1, 2013 to present.

Ron Bolt, Esq.
Town Attorney
Town of Chevy Chase
October 15, 2014
Page 4

6. All correspondence between or among the firm of Sam Schwartz Engineering (or its representatives) and the Town of Chevy Chase, the Town Council, and/or individual Town Council members from February 20, 2014 to present.

Meeting Records

1. All meeting minutes – including minutes not previously disclosed to the public – from all closed sessions held by the Town Council from November 1, 2013 to present.
2. All minutes and notes of all meetings between or among the firm of Buchanan Ingersoll & Rooney (or its representatives) and the Town of Chevy Chase, the Town Council, or individual Town Council members, from February 20, 2014 to present, as well any information predating February 20, 2014 that was not open to inspection under ACT's previous MPPIA request dated February 4, 2014.
3. All minutes and notes of all meetings between or among the firm of Chambers Conlon & Hartwell (or its representatives) and the Town of Chevy Chase, the Town Council, or individual Town Council members, from February 20, 2014 to present, as well any information predating February 20, 2014 that was not open to inspection under ACT's previous MPPIA request dated February 4, 2014.
4. All minutes and notes of all meetings between or among the firm of Alexander & Cleaver or its representatives and the Town of Chevy Chase, the Town Council, or individual Town Council members, from February 20, 2014 to present, as well any information predating February 20, 2014 that was not open to inspection under ACT's previous MPPIA request dated February 4, 2014.
5. All minutes and notes of all meetings between or among the firm of Xenophon Strategies, including representatives David A. Fuscus, Julie Chlopecki, or Mark Hazlin, and the Town of Chevy Chase, the Town Council, or individual Town Council members, from November 1, 2013 to present.
6. All minutes and notes of all meetings between or among the firm of Sam Schwartz Engineering (or its representatives) and the Town of Chevy Chase, the Town Council, or individual Town Council members from February 20, 2014 present.

REQUEST FOR WAIVER OF ALL FEES

ACT requests, and is entitled to, a waiver of all fees for this MPPIA request. A fee waiver is warranted because the information requested will serve the public interest and contribute significantly to the public's understanding of the business, activities, and public-money expenditures of a government body related to a major public infrastructure project. ACT is not seeking this information for any commercial purpose.

Ron Bolt, Esq.
Town Attorney
Town of Chevy Chase
October 15, 2014
Page 5

The Town may waive the fees associated with this request if “(1) the applicant asks for a waiver; and (2) after consideration of the ability of the applicant to pay the fee and other relevant factors, the official custodian determines that the waiver would be in the public interest.” Md. Code Gen. Provisions § 4-206(e). ACT asks for a waiver.

As to the second factor, ACT’s inability to pay favors it receiving a fee waiver. ACT is a non-profit entity run by volunteers, and its charter requires any assets to be donated to a 501(c)(3) charitable organization upon dissolution. As a grassroots, public interest organization, ACT lacks resources to pay the costs associated with an information request. This Firm is representing ACT on a *pro bono* basis, due to ACT’s limited financial resources and the public interest nature of the information sought.

While the “other relevant factors” are not set forth in the MPIOA, Maryland case law indicates they include the importance of the topic to the well-being of the public, as well as the chilling effect setting prohibitively high fees would have on the public dissemination of information through the press. *See Mayor & City Council of Baltimore v. Burke*, 506 A.2d 683 (Md. Ct. Spec. App. 1986). In addition, the Maryland Attorney General’s Public Information Act Manual¹ notes that a fee waiver is appropriate where information is sought “for a public purpose,” as opposed to a “narrow personal or commercial interest.”²

ACT does not seek the information for a commercial purpose. Instead, ACT’s purpose is to make public the requested records and the information they contain. The requested information is related to an ongoing public debate regarding the expenditure of significant amounts of public funds relating to a major public transportation project – a project that will impact residents’ lives and well-being by providing faster, more reliable transportation to homes, businesses, and recreational spaces – and to the Town’s conduct in opposing the same.³ Indeed, when the Town recently requested documents from the Maryland Transportation Authority regarding its contacts with ACT and other groups advocating for the Purple Line, the Town requested a fee waiver on the grounds that it would contribute to the public’s understanding surrounding this project and that the information was not sought for a commercial purpose. ACT, similarly, is entitled to a fee waiver.

¹ Office of the Attorney General (Maryland), *Maryland Public Information Act Manual*, at 7-1 (12th Ed. 2011).

² Federal case law interpreting FOIA’s fee waiver provision similarly has pointed to several factors that indicate when a request is in the “public interest,” including: “the request must concern the operations or activities of government,” “the disclosure must be ‘likely to contribute’ to an understanding of government operations or activities,” “disclosure must contribute to an understanding of the subject by the public at large,” and “disclosure must be likely to contribute significantly to such public understanding.” *Judicial Watch, Inc. v. Dep’t of Justice*, 365 F.3d 1108, 1126 (D.C. Cir. 2004).

³ *See, e.g., Katherine Shaver, Purple Line Advocates Question Town of Chevy Chase Hiring Congressman’s Brother*, WASHINGTON POST (Jan. 23, 2014).

Ron Bolt, Esq.
Town Attorney
Town of Chevy Chase
October 15, 2014
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REQUEST PROCEDURES

The MPPIA requires the custodian of the records to produce a requested record immediately upon receipt of a written request if the record is responsive to a request and is open to inspection. The Act provides for an additional reasonable period not to exceed 30 days only where the additional period of time is required to retrieve the records and assess their status under the Act. If access to the records in this request will take longer than 30 days, please contact me as soon as possible with information regarding when ACT can expect copies (paper or electronic) or the ability to inspect the requested records. If it is convenient for you to provide some or all of the records in an electronic format, that is acceptable to ACT.

If this request is unclear in any way, please contact me as soon as possible to clarify the request. If you deny any portion of this request, please provide a "*Vaughn* index" that sets forth the date, author, and general subject matter of any documents withheld, as well as the legal basis for your belief that the document should be shielded from disclosure.⁴ Additionally, if you deny the request for a fee waiver, please provide the legal grounds for the denial.

Thank you for your consideration of this request. Please do not hesitate to contact me if you have any questions regarding the foregoing.

Sincerely,

Baker & Hostetler LLP


Ambika J. Biggs

cc: Todd Hoffman, Town Manager

⁴ *Office of Attorney Gen. v. Gallagher*, 359 Md. 341, 345, 753 A.2d 1036, 1038 (2000).

EXHIBIT N

ALEXANDER & CLEAVER

ATTORNEYS AT LAW

Professional Association

Gary R. Alexander +*Δ
James A. Cleaver +*
Denise M. Bowman +*
Robert J. Garagiola +*
Todd K. Pounds +*
Jason A. DeLoach +
James K. McGee +
Lorenzo M. Bellamy +*
Shara Hendler +
Whitney Cleaver Smith +*Δ
Eliot C. Schaefer + Δ
Camille G. Fesche +*●◇
David N. Hruda +

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CUMBERLAND, MD
LA PLATA, MD
ROCKVILLE, MD
ALEXANDRIA, VA

GOVERNMENT RELATIONS CONSULTANTS:

Casper R. Taylor, Jr.
Robin Fogel Shaivitz
Lyle W. Fowlkes
Hannah Powers Garagiola
Kerry R. Watson, Jr.
Murray D. Levy
Tyler W. Bennett

ADMITTED TO PRACTICE IN + MD * DC Δ VA • NJ ◇ NY

October 27, 2014

Ambika J. Biggs
Baker & Hostetler LLP
Washington Square, Suite 1100
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5304

RE: MPIA Request – dated October 15, 2014

Dear Ms. Biggs:

The undersigned represents the Town of Chevy Chase (hereinafter "Town"). Please be advised the Town has received your request on behalf of your client, ACT, pursuant to the Maryland Public Information Act (hereinafter "Act") dated October 15, 2014. As you know, the Maryland Public Information Act authorizes the Town to charge a reasonable fee for making copies and a reasonable fee for researching its records. In your request, you outline your arguments in support of a waiver of all fees associated with the request. Please be advised the request for a waiver has been considered and is denied. Accordingly, the Town will expect payment in full for all fees associated with the request.

The fees imposed by the Town for research varies, based on the compensation level of the staff member that would need to review and compile the different categories of records. Additionally, I will have to review any and all records for possible confidential, privileged, or exempted information. The hourly rate of the Town employee that will work on the request, as well as my rate, are as follows:

Todd Hoffman, Town Manager: \$78.00 per hour
Attorney: \$215.00 per hour

As for your request, there are five (5) subjects that form the basis of your requests. They are as follows:

1. Agreements and Contracts;
2. Invoices and Bills;
3. Correspondence;
4. Minutes;
5. Waiver of Costs for Responding to Requests

The Town is prepared to respond to the request for meeting minutes "from all closed sessions held by the Town Council from November 23, 2013 to present." Pursuant to § 4-301(2)(i) of the Act, a custodian shall deny inspection of a public record or any part of a public record if disclosure would be contrary to a State statute. Accordingly, the request for closed session minutes is being denied pursuant to § 3-306(3)(ii) of the General Provisions Article of the Annotated Code of Maryland, which prohibits disclosure of closed session minutes.

As for the remaining items in the extensive request, the Town Manager will have to conduct research to see if any records are responsive to the request. Further, the undersigned will review any and all records potentially responsive to the request for possible confidential, privileged, or exempted information. It is anticipated that the research conducted by the Town Manager will be at least three (3) hours, which does not include my fee for review. It is anticipated my review will be at least three (3) hours. Accordingly, we would request that a deposit of \$879.00 be provided to the Town before research begins.

Moreover, any and all copies of these documents will be charged the standard rate. The Town charges .50 cents per page for photocopying. Please note that your request will not be processed before the deposit disclosed herein has been delivered. Based on the previous request made by your client relating to the same general topic, we will not provide the first two (2) hours of research free of charge. Please be advised the description of charges herein are estimates and the Town reserves the right to request additional deposits, and to revise the cost based on actual time spent and actual photocopying costs incurred, as it deems necessary.

Pursuant to § 4-203(c)(iii), we must provide inform you notice of the remedies under the Act. Pursuant to § 4-362, your client is entitled to pursue judicial enforcement remedies.

Upon receipt of the deposit, we will begin the process of researching to determine if any public records are responsive to your voluminous request.

Please contact me with any questions you may have.

Sincerely,



JASON A. DELOACH

EXHIBIT O

Benjamin Ross
4710 Bethesda Ave. #819
Bethesda, MD 20814

December 17, 2014

VIA HAND DELIVERY

Ron Bolt, Esq.
Town Attorney
Town of Chevy Chase
4301 Willow Lane
Chevy Chase, MD 20815

Re: Maryland Public Information Act Request

Dear Mr. Bolt:

I am submitting the following request for public records under the Maryland Public Information Act. If you are not the custodian of the requested records, please forward this information request to the proper custodian.

I am withdrawing the request letter I submitted earlier this morning.

I am submitting the following request as a member of the media. I am a published author who writes on issues of public interest, such as chemical pollution and urban development. I have written extensively on issues regarding the Purple Line in both print and electronic media. For the last 14 years, I have regularly contributed articles and (in more recent years) blog posts to *Dissent* magazine and I have written there on issues regarding the Purple Line. I also write at Greater Greater Washington blog. The purpose of this blog is to provide information about elected officials, development, traffic, and other matters impacting the Greater Washington area, including Montgomery County, Maryland.

SUMMARY OF REQUEST

I am requesting copies of public records relating to contracts, agreements, and communications between the Town of Chevy Chase ("Town") and four firms that the Town retained to provide services in relation the Purple Line public transit project. I am also requesting full minutes of closed sessions held by the Town Council, pursuant to the Town's Charter, which provides that minutes of Town Council proceedings "shall be open to public inspection." Charter of the Town of Chevy Chase § 207. I am making this request as a member of the news media in order to promote the public's understanding of the Town and the actions of its public officials in conducting public business relating to a major public infrastructure project. I intend to distribute the requested information to the public through blogs and/or in print in order to contribute to the public's understanding of the issues related to the Purple Line.

The Maryland Public Information Act ("MPIA") states that "[a]ll persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees." Md. Code Gen. Provisions § 4-103(a). In reviewing this request, the Town should recognize that the MPIA mandates that the Act "shall be construed in favor of permitting inspection of a public record, with the least cost and least delay to the person . . . that requests the inspection." *Id.* § 4-103(b).

SPECIFIC RECORDS REQUESTED

I respectfully request copies of—or an opportunity to inspect—the following records:

Agreements and contracts

1. All agreements and contracts (including any drafts) between or among the Town of Chevy Chase and the firm of Buchanan Ingersoll & Rooney, from February 8, 2014 to present.
2. All agreements and contracts (including any drafts) between or among the Town of Chevy Chase and the firm of Chambers Conlon & Hartwell, from February 8, 2014 to present.
3. All agreements and contracts (including any drafts) between or among the Town of Chevy Chase and the firm of Alexander & Cleaver, from February 8, 2014 to present.
4. All agreements and contracts (including any drafts) between or among the Town of Chevy Chase and the firm of Xenophon Strategies, including representatives David A. Fuscus, Julie Chlopecki, or Mark Hazlin, from November 1, 2013 to present.
5. All agreements and contracts (including any drafts) between or among the Town of Chevy Chase and the firm of Sam Schwartz Engineering, from February 8, 2014 to present.

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1. All invoices or bills (paid or unpaid) from the firm of Buchanan Ingersoll & Rooney to the Town of Chevy Chase, from January 16, 2014 to present.
2. All invoices or bills (paid or unpaid) from the firm of Chambers Conlon & Hartwell to the Town of Chevy Chase, from January 16, 2014 to present.
3. All invoices or bills (paid or unpaid) from the firm of Alexander & Cleaver to the Town of Chevy Chase, from January 16, 2014 to present.

4. All invoices or bills (paid or unpaid) from the firm of Xenophon Strategies, including representatives David A. Fuscus, Julie Chlopecki, or Mark Hazlin, from November 1, 2013 to present.
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Correspondence

1. All correspondence between or among the firm of Buchanan Ingersoll & Rooney (or its representatives) and the Town of Chevy Chase, the Town Council, or individual Town Council members from February 20, 2014 to present, as well any information predating February 20, 2014 that was not open to inspection under ACT's previous MPIA request dated February 4, 2014.
2. All correspondence between or among the firm of Chambers Conlon & Hartwell (or its representatives) and the Town of Chevy Chase, the Town Council, or individual Town Council members from February 20, 2014 to present, as well any information predating February 20, 2014 that was not open to inspection under ACT's previous MPIA request dated February 4, 2014.
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4. All correspondence between or among the Town of Chevy Chase, the Town Council, or individual Town Council members about or related to the firm of Xenophon Strategies, including representatives David A. Fuscus, Julie Chlopecki, or Mark Hazlin, from November 1, 2013 to present.
5. All correspondence between or among the firm of Xenophon Strategies, including representatives David A. Fuscus, Julie Chlopecki, or Mark Hazlin and the Town of Chevy Chase, the Town Council, or individual Town Council members, from November 1, 2013 to present.
6. All correspondence between or among the firm of Sam Schwartz Engineering (or its representatives) and the Town of Chevy Chase, the Town Council, and/or individual Town Council members from February 20, 2014 to present.

Meeting Records

1. All meeting minutes—including minutes not previously disclosed to the public—from all closed sessions held by the Town Council from November 1, 2013 to present.
2. All minutes and notes of all meetings between or among the firm of Buchanan Ingersoll & Rooney (or its representatives) and the Town of Chevy Chase, the Town Council, or individual Town Council members from February 20, 2014 to present, as well any information predating February 20, 2014 that was not open to inspection under ACT's previous MPIA request dated February 4, 2014.
3. All minutes and notes of all meetings between or among the firm of Chambers Conlon & Hartwell (or its representatives) and the Town of Chevy Chase, the Town Council, or individual Town Council members from February 20, 2014 present, as well any information predating February 20, 2014 that was not open to inspection under ACT's previous MPIA request dated February 4, 2014.
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5. All minutes and notes of all meetings between or among the firm of Xenophon Strategies, including representatives David A. Fuscus, Julie Chlopecki, or Mark Hazlin, and the Town of Chevy Chase, the Town Council, or individual Town Council members from November 1, 2013 to present.
6. All minutes and notes of all meetings between or among the firm of Sam Schwartz Engineering (or its representatives) and the Town of Chevy Chase, the Town Council, or individual Town Council members from February 20, 2014 present.

REQUEST FOR WAIVER OF ALL FEES

I am requesting a waiver of all fees for this MPIA request. A fee waiver is warranted because the information requested will serve the public interest and contribute significantly to the public's understanding of the business, activities, and public-money expenditures of a government body related to a major public infrastructure project. I am not seeking this information for any commercial purpose.

The Town may waive the fees associated with this request if "(1) the applicant asks for a waiver; and (2) after consideration of the ability of the applicant to pay the fee and other relevant factors, the official custodian determines that the waiver would be in the public interest." Md. Code Gen. Provisions § 4-206(e). I am requesting a waiver.

As to the second factor, the consideration of “other relevant factors” merits a fee waiver. These factors include the fact that this information involves an area of public interest aspect and a request on behalf of a member of the media. The information requested is undoubtedly in the public interest because it concerns the expenditure of public funds in regards to a public transportation project.

Additionally, my status as a member of the media supports a fee waiver. I frequently write books and articles on issues impacting the public. The subject of my work includes developments regarding the Purple Line. Under an analogous fee waiver provision in the Freedom of Information Act, a “representative of the news media” is defined broadly, to include “a representative of the news media” means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.”¹ This is consistent with other federal case law, which has refused to draw lines between “traditional” press and those who distribute information on matters of public concern to the public via the internet.² The Purple Line debate—including, specifically, the Town’s expenditure of funds on lobbyists—has garnered coverage in mainstream news outlets, as well.³

While the “other relevant factors” are not set forth in the MPIO, Maryland case law indicates they include the importance of the topic to the well-being of the public, as well as the chilling effect setting prohibitively high fees would have on the public dissemination of information through the press. *See Mayor & City Council of Baltimore v. Burke*, 506 A.2d 683 (Md. Ct. Spec. App. 1986). In addition, the Maryland Attorney General’s Public Information Act Manual notes that a fee waiver is appropriate where information is sought “for a public purpose,” as opposed to a “narrow personal or commercial interest.”⁴⁵

¹ 5 U.S.C. § 552(a)(4)(A)(ii).

² *See, e.g., Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 352 (2010) (“With the advent of the Internet and the decline of print and broadcast media, moreover, the line between the media and others who wish to comment on political and social issues becomes far more blurred.”); *Obsidian Fin. Grp., LLC v. Cox*, 740 F.3d 1284, 1291 (9th Cir. 2014) (noting, in defamation action against bloggers, that “[t]he protections of the First Amendment do not turn on whether the defendant was a trained journalist, formally affiliated with traditional news entities, engaged in conflict-of-interest disclosure, went beyond just assembling others’ writings, or tried to get both sides of a story.”).

³ *See, e.g., Katherine Shaver, Purple Line advocates question Town of Chevy Chase hiring congressman’s brother*, WASHINGTON POST (Jan. 23, 2014).

⁴ Office of the Attorney General (Maryland), *Maryland Public Information Act Manual*, at 7-1 (12th Ed. 2011).

⁵ Federal case law interpreting FOIA’s fee waiver provision similarly has pointed to several factors that indicate when a request is in the “public interest,” including: “the request must concern the operations or activities of government,” “the disclosure must be ‘likely to contribute’ to an understanding of government operations or activities,” “disclosure must contribute to an understanding of the subject by the public at large,” and “disclosure must be likely to contribute

I am not seeking the information for a commercial purpose. Instead, my purpose is to make public the requested records and the information they contain. The requested information is related to an ongoing public debate regarding the expenditure of significant amounts of public funds relating to a major public transportation project—a project that will impact residents' lives and well-being by providing faster, more reliable transportation to homes, businesses, and recreational spaces—and to the Town's conduct in opposing the same.⁶

REQUEST PROCEDURES

The MPPIA requires the custodian of the records to produce a requested record immediately upon receipt of a written request if the record is responsive to a request and is open to inspection. The Act provides for an additional reasonable period not to exceed 30 days only where the additional period of time is required to retrieve the records and assess their status under the Act. If access to the records in this request will take longer than 30 days, please contact me as soon as possible with information regarding when I can expect copies (paper or electronic) or the ability to inspect the requested records. If it is convenient for you to provide some or all of the records in an electronic format, that is acceptable.

If this request is unclear in any way, please contact me as soon as possible to clarify the request. If you deny any portion of this request, please provide a “*Vaughn* index” that sets forth the date, author, and general subject matter of any documents withheld, as well as the legal basis for your belief that the document should be shielded from disclosure.⁷ Additionally, if you deny the request for a fee waiver, please provide the legal grounds for the denial.

Thank you for your consideration of this request. Please do not hesitate to contact me if you have any questions regarding the foregoing.

Sincerely,

Benjamin Ross

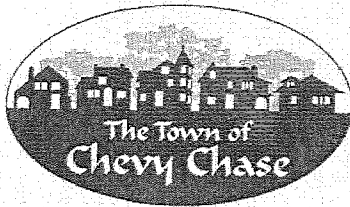
cc: Todd Hoffman, Town Manager

significantly to such public understanding.” *Judicial Watch, Inc. v. Dep't of Justice*, 365 F.3d 1108, 1126 (D.C. Cir. 2004).

⁶ See, e.g., Katherine Shaver, *Purple Line Advocates Question Town of Chevy Chase Hiring Congressman's Brother*, WASHINGTON POST (Jan. 23, 2014).

⁷ *Office of Attorney Gen. v. Gallagher*, 359 Md. 341, 345, 753 A.2d 1036, 1038 (2000).

EXHIBIT P



Kathy Strom, *Mayor*
Patricia Burda, *Vice Mayor*
Al Lang, *Secretary*
Vicky Taplin, *Treasurer*
John Bickerman, *Community Liaison*

November 21, 2014

Benjamin Ross
4710 Bethesda Avenue, #819
Bethesda, MD 20814

RE: MPIA Request – dated November 10, 2014

Dear Mr. Ross:

Please be advised the Town has received your request pursuant to the Maryland Public Information Act (hereinafter "Act") dated November 10, 2014. The Maryland Public Information Act authorizes the Town to charge a reasonable fee for making copies and a reasonable fee for researching its records. In your request, you identify yourself as a member of the media as a basis for a waiver of all fees associated with the request. Please be advised that the request for a waiver has been considered and is denied. We do not believe this request is being made in your capacity as a member of the media. This belief is based on the first request you submitted and then immediately withdrew on November 10, 2014, which clearly indicated it was being submitted on behalf of the Action Committee for Transit (ACT), along with your known affiliation with ACT. Accordingly, the Town will expect payment in full for all fees associated with the request.

The fees imposed by the Town for research varies, based on the compensation level of the staff member who would need to review and compile the different categories of records. Additionally, the town's attorney will have to review any and all records for possible confidential, privileged, or exempted information. The undersigned will be the town employee who will work on the request, and my rate, as well as the attorney's rate, are as follows:

Todd Hoffman, Town Manager: \$78.00 per hour
Attorney: \$215.00 per hour

As for your request, there are five (5) subjects that form the basis of your requests. They are as follows:

1. Agreements and Contracts;
2. Invoices and Bills;
3. Correspondence;

4. Minutes;
5. Waiver of Costs for Responding to Requests

The Town is prepared to respond to the request for meeting minutes "from all closed sessions held by the Town Council from November 1, 2013 to present." Pursuant to § 4-301(2)(i) of the Act, a custodian shall deny inspection of a public record or any part of a public record if disclosure would be contrary to a State statute. Accordingly, the request for closed session minutes is being denied pursuant to § 3-306(3)(ii) of the General Provisions Article of the Annotated Code of Maryland, which prohibits disclosure of closed session minutes.

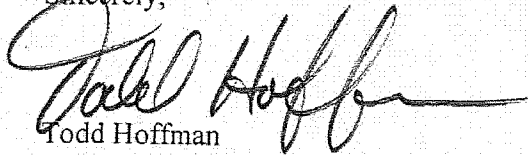
As for the remaining items in your request, the Town Manager will have to conduct research to see if any records are responsive to the request. Further, the undersigned will review any and all records potentially responsive to the request for possible confidential, privileged, or exempted information. It is anticipated that the research conducted by the Town Manager will be at least three (3) hours, which does not include my fee for review. It is anticipated the review by counsel will be at least three (3) hours. Accordingly, we would request that a deposit of \$879.00 be provided to the Town before research begins.

Moreover, any and all copies of these documents will be charged the standard rate. The Town charges .50 cents per page for photocopying. Please note that your request will not be processed before the deposit disclosed herein has been delivered. Based on the previous requests made by an organization you are affiliated with relating to the same general topic, we will not provide the first two (2) hours of research free of charge. Please be advised the description of charges herein are estimates and the Town reserves the right to request additional deposits, and to revise the cost based on actual time spent and actual photocopying costs incurred, as it deems necessary.

Pursuant to § 4-203(c)(iii), we must provide you notice of the remedies under the Act. Pursuant to § 4-362, you are entitled to pursue judicial enforcement remedies.

Upon receipt of the deposit, we will begin the process of researching to determine if any public records are responsive to your request. Please contact me with any questions you may have.

Sincerely,



Todd Hoffman
Town Manager

EXHIBIT Q



Patricia Burda, *Mayor*
Kathy Strom, *Vice Mayor*
Al Lang, *Secretary*
David Lublin, *Treasurer*
John Bickerman, *Community Liaison*

April 16, 2014

Honorable Robert L. Smith, Administrator
Maryland Transit Administration
William Donald Schaefer Tower
6 Saint Paul Street
Baltimore, MD 21202-1614

Dear Administrator Smith:

Under the Maryland Public Information Act § 10-611 et seq., I am requesting copies of all public records, including electronic communications, between the Maryland Transit Administration (MTA) and the Action Committee for Transit (ACT), between the MTA and Purple Line Now (PLN), and between MTA and The Purple Rail Alliance (PRA).

Action Committee for Transit

We hereby request all public records, including electronic communications, between the MTA and ACT from October 1, 2013 through April 15, 2014. This request should be understood to include all records and communications with ACT including, but not limited to, the named staff and officers listed below. For the named individuals, we request all communications regardless of whether they were intended in an official ACT capacity or in some other capacity.

- Nick Brand, ACT President
- Ronit Dancis, ACT Vice President, campaigns
- Tina Slater, ACT Vice President, Purple Line
- Jim Clarke, Vice President, legislative
- Tracey Johnstone, ACT Secretary
- John Fay, ACT Treasurer
- Dan Reed, ACT Board Member
- Cavan Wilk, ACT Board member
- Miriam Schoenbaum, ACT Ex Officio Board member
- Ben Ross, ACT Ex Officio Board member
- Kurt Raschke, ACT Ex Officio Board member
- Wendy Leibowitz, ACT Ex Officio Board member.
- Cindy Snow, ACT Staff

- Quon Kwan, ACT Staff
- Jeri Roth Lande, ACT Staff

Purple Line Now

We hereby request all public records, including electronic communications, between the MTA and PLN from October 1, 2013 through April 15, 2014. This request should be understood to include all records and communications with PLN including, but not limited to, the named staff and officers listed below. For the named individuals, we request all communications regardless of whether they were intended in an official PLN capacity or in some other capacity.

- Christine Scott, PLN Executive Director
- Ralph Bennett, PLN Board President
- Nancy Soreng, PLN Board Vice President
- Wayne Phyllaier, PLN Board Treasurer
- Greg Sanders, PLN Board Secretary
- Miti Figueredo, PLN Board Member
- Ilaya Hopkins, PLN Board Member
- Bryan Arias, PLN Board Member
- Jim Clarke, PLN Board Member
- Mark Coles, PLN Board Member
- Andy Fellows, PLN Board Member
- John Gallagher, PLN Board Member
- G. Keith Haller, PLN Board Member
- Tony Hausner, PLN Board Member
- Ginanne Italiano, PLN Board Member
- Jackie Jeter, PLN Board Member
- Erwin Mack, PLN Board Member
- Eddie Pounds, PLN Board Member
- Jane Redicker, PLN Board Member
- Brad Stewart, PLN Board Member
- Victor Weissberg, PLN Board Member
- Jeremy Crandall, Ex Officio PLN Board Member
- Chris Gillis, Ex Officio PLN Board Member
- Tom Hucker, Ex Officio PLN Board Member
- George Leventhal, Ex Officio PLN Board Member
- Heather Mizeur, Ex Officio PLN Board Member
- Eric Olson, Ex Officio PLN Board Member
- Barbara Sanders, Ex Officio PLN Board Member

The Purple Rail Alliance

We hereby request all public records, including electronic communications, between the MTA and PRA from October 1, 2013 through April 15, 2014. This request should be understood to

include all records and communications with PRA including, but not limited to, the named staff and officers listed below. For the named individuals, we request all communications regardless of whether they were intended in an official PRA capacity or in some other capacity.

- Thomas M. Farasy, PRA Officer
- Keith Haller, PRA Officer
- Emily Vaia, PRA Officer
- Elyse Brown Force, PRA Officer
- Andre Banks, PRA Officer
- F. Hamer Campbell, Jr., PRA Board Member
- Tawanna Gaines, PRA Board Member
- Lisa Jackson, PRA Board Member
- David C. Harrington, PRA Board Member
- Jane Mulliken, PRA Board Member
- Craig M. Muckle, PRA Board Member
- William Shipp, PRA Board Member
- Carl Williams, PRA Board Member

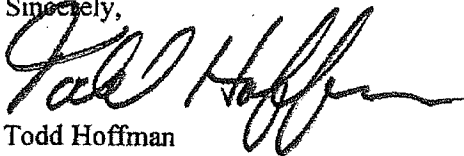
If there are any fees for searching or copying these records, please inform me if the cost will exceed \$250. However, I request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of MTA's relationship with ACT, PLN and PRA. This information is not being sought for commercial purposes.

The Maryland Public Information Act requires a response to this request within 30 days. If access to the records I am requesting will take longer than this amount of time, please contact me with information about when I might expect copies or the ability to inspect the requested records.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Should you have any questions about this request, please contact me at 301-654-7144.

Sincerely,



Todd Hoffman
Town Manager

EXHIBIT R



MARYLAND TRANSIT ADMINISTRATION

MARYLAND DEPARTMENT OF TRANSPORTATION

Martin O'Malley, Governor • Anthony G. Brown, Lt. Governor
James T. Smith, Jr., Secretary • Robert L. Smith, Administrator

May 13, 2014

2014.05.12.0338

Mr. Todd Hoffman
Town Manager
Town of Chevy Chase
4301 Willow Lane
Chevy Chase MD 20815

Re: Public Information Act Request: Purple Line

Dear Mr. Hoffman:

This letter is in response to your request dated April 16, 2014. On behalf of the Maryland Transit Administration (MTA), I am responding to your request pursuant to the Maryland Public Information Act, Annotated Code of Maryland, State Government Article (SG) §§10-611 et seq., ("Act").

Specifically, you requested electronic communications from October 1, 2013 through April 15, 2014 between the MTA and the Action Committee for Transit (ACT), between MTA and the Purple Line Now (PLN), and between MTA and the Purple Line Rail Alliance (PRA). In accordance with the Act, we have compiled and enclosed a set of documents that are responsive to your request, including emails for both MTA employees and consultant project staff.

Email records for MTA employees are maintained for 90 days before they are removed from the email server and archived. Because the time period of your request extends beyond 90 days there may be additional emails in the archive.

Pursuant to SG §10-621(b), a custodian of records may charge a reasonable fee beyond the first two hours for search and preparation of the records and copying. While this initial search likely exceeded the two hours, MTA waives search and preparation costs for the documents attached hereto. However, there will be a charge to have MTA restore and search emails going back more than 90 days. The cost for restoring and searching those emails to complete your entire request would be at least \$100. If you wish to pursue the additional restore and search effort, please contact us to discuss providing a \$100 deposit and to begin the process necessary to fulfill your request. If you wish you may identify a limit to expenditures.

Pursuant to SG § 10-622, you may seek an administrative review of a decision to deny access to documents. If requested, such review will be conducted in accordance with SG § 10-205 through 221 and the hearing regulations of the agency published at COMAR 00.00.01. You may also seek judicial review under SG § 10-623.

Mr. Todd Hoffman
Page Two

Sincerely,

A handwritten signature in black ink, appearing to read "H. Kay", written over the printed name.

Henry M. Kay
Executive Director for Transit Development and Delivery

Attachment(s)