

September 21, 2009

FOIA Officer  
Office of the Secretary of Transportation, Room W94-122  
1200 New Jersey Avenue, SE.  
Washington, DC 20590

Dear FOIA Officer:

This is a request under the Freedom of Information Act.

I request a copy of the ARRA TIGER Grant Application submitted by Montgomery County, Maryland, for "Bethesda BRAC Multi-Modal Traffic Mitigation and Pedestrian Access Project." This document was submitted with a cover letter from County Executive Isiah Leggett to Secretary LaHood, dated September 15, 2009.

The county has made public a redacted version of this document, claiming that the missing pages are confidential business information of Clark Construction Group, LLC. The proposed project is labeled as promoting pedestrian access to the Bethesda Navy Hospital. However, as best as can be determined from the unredacted portions of the proposal, it is actually an underground roadway tunnel. The intent of the project seems to be to prevent pedestrians from crossing the street from the Medical Center Metro station as they do now, and instead force them to walk on an underground sidewalk next to the traffic.

For several reasons, we believe that the pages redacted by the county cannot be withheld by USDOT under the Freedom of Information Act:

- The county states, on the sheet that notifies the public of redactions, that "The project, if funded, will be subject to open bidding." Fair and open bidding is required in any case because it is anticipated that the project will be partially funded by the Defense Department. Bidding will not be fair and open if Clark Construction has superior knowledge about the project. If withholding the information now will give Clark a competitive advantage later, non-disclosure would be a violation of procurement rules; if non-disclosure will not create a competitive advantage, the information lacks commercial value and is not confidential under FOIA.
- The information being withheld includes such essential information as the location and dimensions of the proposed tunnel. Such information must be disclosed to the public in the environmental review process.
- CBI designation may not be misused to bypass planning processes required under USDOT rules. The Washington Metro did a detailed study of five options for improved pedestrian access at this location, none of them including a vehicle tunnel. At the last meeting of the Transportation Planning Board of MWCOG prior to the grant submission, [this project was described](#) to COG members as a pedestrian tunnel. We understand that this item was discussed and staff was instructed that the option of elevators down to the Metro should be kept open. The grant application as submitted included neither of these options and asked for a vehicle tunnel instead. At the next TPB meeting, after the application deadline, the regional planning body was handed a fait accompli, with the

information it needed to make an informed judgement still withheld.

- CBI designation may not be misused to bypass public participation. The Bethesda BRAC Implementation Committee, a broad-based advisory committee, devoted numerous meetings to the options studied by Metro. They learned of this proposal only after the fact, at a meeting on the evening of September 15.. Even the Navy was not consulted; its representative was [quoted in the Gazette newspaper](#) as saying that the county put the Navy's "backs against the wall."
- The county waived its claim by making a selective disclosure of information marked confidential just a few hours after the application was submitted. At the September 15 meeting, the county representative stated that the tunnel would cut directly through a certain hill. The location of the tunnel was marked confidential in the grant application.

These questionable secrecy claims are especially troublesome in view of the contentious history of proposed highway projects near Bethesda Navy Hospital. Proposals to widen the Beltway have been [highly controversial](#). Any project that would bring more traffic to this already congested roadway is sure to attract comment. If USDOT were to fund a highway project before the basic facts about its nature and location have been made public, unfounded suspicions could easily arise.

Finally, we request that any fees be waived. We are a not-for-profit membership organization.

Sincerely,

Ben Ross  
President

cc: Lt. Gov. Anthony Brown  
County Council President Phil Andrews