

15004 Clopper Road
Boyd 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, 2014.
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