



Montgomery County's Advocates for Better Transportation

P.O. Box 7074, Silver Spring MD 20907 • admin@actfortransit.org

August 10, 2018

Maryland Department of Transportation (MDOT)
Sheilah Brous
7201 Corporate Center Drive
3rd Floor, Mailstop 210
Hanover MD 21075

Dear Ms. Brous:

The Action Committee for Transit ("ACT") submits this 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.

SUMMARY OF REQUEST

ACT requests copies of public records in the possession of the Department of Transportation ("MDOT"), State Highway Administration ("SHA") or Maryland Transportation Authority ("MdTA") relating to the I-495 & I-270 Managed Lanes Study and MDOT's "Traffic Relief Plan." ACT makes this request in order to promote the public's understanding of this 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.

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 Department 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 Id. § 4-103(b).

SPECIFIC RECORDS REQUESTED

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

- 1) The documents which Lisa Choplin of SHA said it would be “irresponsible” to release at the July 18, 2018 meeting of the Maryland-National Capital Park And Planning Commission.
- 2) All documents relating to the decision not to release the documents requested in Specific Request (3) above, including drafts, correspondence, and notes of meetings and conversations.
- 3) All documents relating to the decision to exclude the portion of I-270 north of I-370 from the scope of the I-495 & I-270 Managed Lanes Study, including drafts, correspondence, and notes of meetings and conversations.
- 4) All documents relating to the study limits of the I-495 & I-270 Managed Lanes Study, including drafts, correspondence, and notes of meetings and conversations.
- 5) All documents relating to the Purpose and Need Statement for the I-495 & I-270 Managed Lanes Study, including drafts, correspondence, and notes of meetings and conversations.
- 6) All documents relating to toll rates that might or will be charged on facilities constructed under the I-495 & I-270 Managed Lanes Study or the Maryland Dept. of Transportation’s “Traffic Relief Plan,” including drafts, correspondence, and notes of meetings and conversations.
- 7) All renderings, drawings, sketches, or illustrations of alternatives under consideration or potentially under consideration in the I-495 & I-270 Managed Lanes Study, including drafts, correspondence, and notes of meetings and conversations.
- 8) All documents relating to access ramps for managed lanes for the I-495 & I-270 Managed Lanes Study, including renderings, drawings, sketches, and illustrations as well as documents, correspondence, and notes of meetings and conversations discussing the number or location of such ramps.

REQUEST FOR WAIVER OF ALL FEES

ACT requests, and is entitled to, a waiver of all fees for this MPIO 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.

The Commission 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 its 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.

While the "other relevant factors" are not set forth in the MPIA, 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

Requests for fee waivers must be decided without regard to the requestor's viewpoint on the matter under consideration. As the Maryland Court of Special Appeals has stated, "the First Amendment's guarantee of free expression of speech protects persons from the imposition of financial burdens based upon the content of their speech." *Action Committee for Transit, Inc., et al., v. Town of Chevy Chase*, 229 Md.App. 540 (2016).

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.

REQUEST PROCEDURES

The MPIA 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 we 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 a electronic format, that is acceptable to us.

In particular, please allow us to inspect the documents responsive to Specific Request (1) without delay, even if additional time is needed to respond to other Specific Requests.

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

²Federal 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).

If this request is unclear in any way, please contact me at admin@actfortransit.org 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.³ 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,

Cindy Snow

³*Office of Attorney Gen. v. Gallagher*, 359 Md. 341, 345, 753 A.2d 1036, 1038 (2000).