

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

ACTION COMMITTEE FOR TRANSIT,
4709 Bradley Blvd. #312
Chevy Chase, Maryland 20815

and

BENJAMIN ROSS,
4710 Bethesda Ave. Apt. 819
Bethesda, Maryland 20814

Plaintiffs,

vs.

TOWN OF CHEVY CHASE,
4301 Willow Lane
Chevy Chase, Maryland 20815

Resident Agent:

Ronald M. Bolt, Esq.
Thomas Schild Law Group, LLC
401 North Washington Street, Suite 500
Rockville, Maryland 20850

and

TOWN COUNCIL OF CHEVY CHASE,
4301 Willow Lane
Chevy Chase, Maryland 20815

Resident Agent:

Ronald M. Bolt, Esq.
Thomas Schild Law Group, LLC
401 North Washington Street, Suite 500
Rockville, Maryland 20850

Defendants.

RECEIVED

JAN 30 2015

Clerk of the Circuit Court
Montgomery County, Md.

CASE NO.

400312-V

COMPLAINT

Plaintiffs Action Committee for Transit (“ACT”) and Benjamin Ross, by their undersigned counsel and pursuant to Maryland Code, General Provisions, § 4-362, file this Complaint against Defendants Town of Chevy Chase (“Town”) and Town Council of Chevy Chase (the “Town Council”) and state as follows:

NATURE OF ACTION

1. This case involves a challenge to the actions of a public governing body that has denied its constituents and members of the media access to important public information concerning a public infrastructure project in an effort to keep the public in the dark regarding the expenditure of public resources and the establishment of public policy.

2. The public infrastructure project involved in this matter is known as the Purple Line. The Purple Line is a proposed 16-mile east-west light rail that will connect New Carrollton to Bethesda and provide 21 total stops, including stations in Silver Spring, Langley Park, and College Park. This project will connect four Metro and three MARC train lines, providing a faster alternative than travel by car or bus.

3. Plaintiff ACT is a Maryland non-stock corporation dedicated to increasing public transportation options for Maryland residents. Because of the public transportation benefits the Purple Line offers, ACT supports its construction and operation.

4. Plaintiff Benjamin Ross is a member of the media who writes regularly about issues regarding the Purple Line. He also is a Montgomery County resident. As a member of the media he relies on information about the activities of local governments concerning the Purple Line.

5. The Purple Line will traverse the boundary of the Town, and thus has drawn

opposition from some private individuals. In the dispute for and against the Purple Line, the Town Council has sided with opponents and has spent significant public resources – upwards of \$29,000 of public funds per month – funding lobbyists and law and public relations firms in its campaign against the project.

6. The Town’s opposition strategy and decision to expend significant public resources has been developed behind closed doors in secretive Town Council meetings that improperly have barred ACT and the public from understanding and participating in public matters. The Town has also prohibited ACT from accessing public records unless it pays unjustified and excessive fees.

7. The Town has prohibited journalist Benjamin Ross from accessing public records related to the Purple Line by refusing to disclose this information unless he pays unjustified and excessive fees.

PARTIES

8. Plaintiff ACT is a non-profit organization that advocates for public transportation in Montgomery County, Maryland. It is a non-stock corporation run by volunteers, and its charter requires any assets to be donated to a 501(c)(3) organization in the event the organization dissolves. ACT is not eligible for 501(c)(3) tax status because of its advocacy work.

9. Plaintiff Benjamin Ross is a published author who has written extensively in print and electronic media about issues regarding the Purple Line. Mr. Ross is a resident of Bethesda, Maryland.

10. Defendant the Town is a municipal corporation under Maryland law, with the power to sue and be sued under Maryland Code, Local Gov. § 4-103(a).

11. Defendant the Town Council holds all of the powers of the Town and is

responsible for making legislative decisions that affect the Town. The Town Council consists of five council members who serve two-year terms.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction pursuant to Md. Code Ann., Cts. & Jud. Proc. § 1-501. The Court has personal jurisdiction over Defendants pursuant to Md. Code Ann., Cts. & Jud. Proc. § 6-102 and 6-103(b).

13. Venue in this Court is proper pursuant to Md. Code Ann., Cts. & Jud. Proc. § 6-201.

ALLEGATIONS

14. Upon information and belief, in or about 2008, the Maryland Transit Administration released a Draft Environmental Impact Statement (DEIS) regarding the Purple Line. The Town retained the law firm Sidley Austin to analyze the report, and hired Sam Schwartz, a New York engineer, to create a separate report on the Purple Line. Upon information and belief, the Town spent approximately \$434,000 in the hiring of Sidley Austin and Mr. Schwartz and in the payment of their expenses.

15. In December 2013 and again in January 2014, the Town entered into a \$20,000-per-month agreement with the law firm Buchanan Ingersoll & Rooney to evaluate strategy regarding the proposed Purple Line, according to a January 9, 2014 article in the Washington Post. Robert L. Shuster, an attorney with Buchanan Ingersoll & Rooney, is the brother of Rep. Bill Shuster, the Chairman of the Transportation and Infrastructure Committee of the U.S. House of Representatives. The article alleged that Buchanan Ingersoll & Rooney was being chosen because of this relationship. Federal funding is expected to be used to partially fund the Purple Line. The Town opposes the funding.

16. On or about February 4, 2014, ACT officer Ronit Dancis filed a public information request under the Maryland Public Information Act (“PIA”) for the Town’s agreements, contracts, invoices, bills, correspondence, and meeting minutes related to Buchanan Ingersoll & Rooney. Ex. A. On or about March 6, the Town made the retention agreement, invoices, bills and non-privileged communications available for inspection. Ex. B. It denied the request for meeting minutes, in part, because the meeting between the Town Council and Buchanan Ingersoll & Rooney was held in a closed-executive session on January 8, 2014. Instead, the Town allowed for inspection of an executive session summary that was included in the minutes of the public meeting. The Town did not charge Ms. Dancis for responding to this request because it did not spend more than two hours searching for and preparing the documents. The first two hours spent responding to a public information request are to be free of charge under the PIA. *See* Maryland Code, General Provisions § 4-206(c)

17. On March 14, 2014, the Town and Buchanan Ingersoll & Rooney entered into an engagement agreement by which the firm would represent the Town in “federal and Maryland state government relations matters.” The monthly retainer was for \$29,000 beginning February 24, 2014. Chambers, Conlon & Hartwell, LLC and Alexander & Cleaver were listed as subcontractors in the agreement. Ex. C. Upon information and belief, Town Council Secretary Al Lang questioned the process that was used for selecting Buchanan Ingersoll & Rooney and claimed that Town Mayor Pat Burda provided information to the firm to strengthen its bid but did not provide the same information to other firms being considered for the contract.

18. On April 1, 2014, Miriam Schoenbaum on behalf of ACT filed a request under the PIA for the Town’s agreements, contracts, invoices, bills, correspondence, and meeting minutes related to Buchanan Ingersoll & Rooney, Chambers, Conlon & Hartwell, LLC and Alexander &

Cleaver. Ex. D. The purpose of this request was to obtain information relevant to the new agreements and contracts entered into by the Town of Chevy Chase after the previously-submitted PIA request. Ms. Schoenbaum on behalf of ACT also filed a PIA request on April 1, 2014 for records regarding the Town's compliance with the training requirements in the Open Meetings Act. On April 6, 2014, Ms. Dancis on behalf of ACT submitted a PIA request for Town records about the public relations firm Xenophon Strategies, who upon information and belief was retained by the Town to work on issues regarding the Purple Line. Ex. E. Each ACT request under the PIA involved different documents and different events, and each was occasioned by the secrecy with which the Town was conducting all business related to the Purple Line.

19. On April 17, 2014, the Town responded to ACT's PIA requests, declining to treat them separately, with a demand for \$700 for research and review to provide the documents requested regarding the law and lobbying firms and \$250 for research and review to provide documents about the public relations firm. Exs. F and G. The Town stated it would not provide the first two hours of research free for the request related to the law and lobbying firms because of a previous request ACT had made allegedly "relating to the same general topic." Ex. F. ACT, a non-profit volunteer organization, would have to pay these deposits before Town officials would ~~start looking~~ for the documents.

20. The PIA does not prohibit a requester from making multiple requests. The Town should not have compiled ACT requests in order to increase fees, hindering release of documents that should have been in the public domain. Moreover, the demanded fees did not include the additional amounts the Town would require for review by the Town's attorney prior to releasing the documents.

21. On April 18, 2014, ACT responded and requested fee waivers because it was seeking the information for public, not commercial purposes, and because the requested information would contribute to the public understanding of government operations. Additionally, ACT is a non-profit organization with a limited budget. Exs. H and I.

22. On April 23, 2014, the Town denied the waiver request on the grounds that the Town would spend a significant amount of time researching and processing the requests. Ex. J.

23. On May 21, 2014, Ms. Schoenbaum requested, on behalf of ACT and herself as an individual, agreements, invoices, bills, correspondence and the minutes of all meetings between the Town and Buchanan Ingersoll & Rooney, Chambers Conlon & Hartwell, Alexander & Cleaver, and Xenophon Strategies (and specific individuals affiliated with Xenophon Strategies) through the date of the request such that she would receive documents created or obtained after the date of her previous requests for similar records. Ex. K.

24. As part of her request, Ms. Schoenbaum requested a waiver of all fees. The request stated its purpose was “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.” Ex. K.

25. Ms. Schoenbaum’s PIA request specifically stated that the fee waiver was requested because “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).” Ms. Schoenbaum stated that neither she nor ACT was seeking the information for a commercial purpose, and she was seeking the information also as a media representative. Ms. Schoenbaum regularly writes for Greater Greater Washington, a website that publishes articles about D.C., Maryland and Virginia. She explicitly stated in her PIA request that she expected the information she obtained in response to the PIA request would be published through a news media outlet.

26. The Maryland Public Information Act Manual, § 4-206(e) (13th ed., October 2014) states that a custodian may waive a fee if the applicant asks for a waiver; and “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.”

27. The Maryland Public Information Act Manual § 4-206(c) also states that the custodian cannot charge a fee for the first two hours needed to search for a public record and prepare it for inspection.

28. On June 20, 2014, the Town responded to Ms. Schoenbaum’s PIA request. Ex. L. It made available for inspection the engagement agreement dated March 14, 2014 between Buchanan Ingersoll & Rooney and the Town, and with invoices dated March 17, April 9, and May 12, 2014 from Buchanan Ingersoll & Rooney to the Town. Ms. Schoenbaum traveled to the Town office to inspect and copy the documents. Although the Town claimed that responding to the request had been “very time-consuming and expensive,” the Town provided only a non-redacted copy of the engagement agreement, and two-page, non-itemized invoices with minimal redactions.

29. The Town did not provide correspondence between the Town and the four law and public relations firms. In the same June 20, 2014 letter, the Town estimated that the time to

research the request for the correspondence would be five hours, and review by the Town's attorney would take three hours. It requested a deposit of \$1,345 before it would even begin conducting the research. It did not provide two free hours of research. *See Maryland Public Information Act Manual § 4-206(c)*. Instead, the Town claimed that Ms. Schoenbaum's request involved "the same general topic" as her previous request and therefore did not qualify for two free hours. In addition, the Town indicated it would charge \$.50 per page for photocopying. The previous PIA requests had been made on behalf of ACT, whereas the May 21, 2014 request was made by Ms. Schoenbaum on behalf of ACT and *in her individual capacity*. The Town could not use previous requests by ACT to deny Ms. Schoenbaum of the two free hours.

30. The Town denied Ms. Schoenbaum's request for a waiver of fees, but provided no explanation to support its decision. It simply stated: "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 denied. Accordingly, the Town will expect payment in full for all fees associated with your request." Ex. L.

31. Dissatisfied with the Town's previous response, on October 15, 2014, ACT, this time through counsel, submitted a new PIA request to the Town for contracts, agreements, invoices and communications between the Town and Buchanan Ingersoll & Rooney, Chambers Conlon & Hartwell, Alexander & Cleaver and Xenophon Strategies. Ex. M. ACT also sought the 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 requested the waiver of fees because the PIA request served the public interest and because the Town Council minutes, by law, were supposed

to have been made public pursuant to the Open Meetings Act, Maryland Code, General Provisions, §§ 3-101 et. seq.

32. On October 27, 2014, the Town responded to the PIA request through outside counsel, Alexander & Cleaver. Ex. N. Upon information and belief, responding to PIA requests is outside Alexander & Cleaver's scope of representation of the Town. Therefore, the Town either paid Alexander & Cleaver compensation above and beyond what it received as a subcontractor under the Town's \$29,000/month contract with Buchanan Ingersoll & Rooney, or it diverted Alexander & Cleaver from performing government relations services it was hired to provide under the contract.

33. The Town, through outside counsel, denied ACT's request for closed session minutes pursuant to §3-306(3)(ii). It also denied ACT's request for a waiver of fees, and requested a deposit of \$879 before it would begin research for the other documents ACT had requested. It stated it would not provide the first two hours of research free of charge because ACT had made a previous request related to the same general topic. The Town reserved the right to request additional fees and revise the cost based on the actual amount of time spent and actual photocopying costs. The Town's denials were arbitrary and capricious, and upon information and belief they were being reached through an apparent misuse of public funds.

34. On November 10, 2014, Benjamin Ross, a published author who writes on urban development issues and who has written extensively in print and electronic media on issues regarding the Purple Line, filed a PIA request for the same documents ACT requested in its October 15, 2014 PIA request. Ex. O. Mr. Ross requested a waiver of fees because the information requested is in the public interest and because he is a member of the media.

35. On November 12, 2014, the Town Council voted to enter into a closed session – over the objection of Ms. Schoenbaum of ACT – allegedly to “consult with counsel to obtain legal advice regarding issues related to a Maryland Public Information Act request.” Upon information and belief, the Town Council decided to respond to the PIA request submitted by Mr. Ross with a denial of the request for a waiver of fees.

36. On or about November 21, 2014, the Town denied Mr. Ross’s request for a waiver of the fees on the basis that it did not believe his request was made in his capacity as a member of the media, although it did not explain the basis for its contrary belief. Ex. P. The Town denied Mr. Ross’s request for minutes of closed meetings, and requested \$879 before it would begin searching for the other documents requested. The Town also did not provide two free hours of research, based on Mr. Ross’s affiliation with an organization that had made previous requests “relating to the same general topic.” The Town cannot use previous requests by another entity to deny Mr. Ross of the two free hours of research.

37. Although it has been resistant to providing public documents regarding the Purple Line, the Town filed its own PIA request regarding proponents of the Purple Line. On April 16, 2014, the Town submitted a request to the Maryland Transit Administration for all copies of public records from October 1, 2013 through April 15, 2014 between the Maryland Transit Administration and ACT and two other organizations that support the construction of the proposed Purple Line, Purple Line Now and the Purple Rail Alliance. The Town also requested communications with ACT and 15 individuals affiliated with ACT, including Benjamin Ross, regardless of whether the communications were intended in their official capacity with ACT. The Town also requested communications with several individuals affiliated with Purple Line Now and the Purple Rail Alliance.

38. Despite its refusal to waive fees for ACT and for Mr. Ross, the Town requested a waiver of all fees for communications between organizations supporting the Purple Line “in that the disclosure of the requested information is in the public interest and will contribute significantly to the public’s understanding of [the Maryland Transit Administration’s] relationship with ACT, [Purple Line Now and the Purple Rail Alliance].” Ex. Q. Although the Town did not consider the Plaintiffs’ requests for documents regarding the Purple Line to warrant a waiver of fees, it did consider its own request for documents regarding the Purple Line to warrant a waiver of fees.

COUNT I
VIOLATION OF MARYLAND PUBLIC INFORMATION ACT
(by Plaintiffs against the Town)

39. Plaintiffs incorporate and re-allege paragraphs 1 through 38 of this Complaint, as if fully set forth herein.

40. ACT and Mr. Ross filed public information requests for the Town’s agreements, contracts, invoices, bills, correspondence, and meeting minutes related to law, lobbying and public relations firms.

41. The Town violated the Public Information Act by denying Plaintiffs’ requests for the minutes of closed meetings.

42. The Town violated the Public Information Act by denying Plaintiffs’ requests for waivers of fees.

43. The Town violated the Public Information Act by denying Plaintiffs two hours of free research.

44. Plaintiffs have been damaged as a result of the Town’s actions.

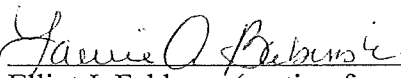
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment against Defendants as follows:

1. Order the Town to provide the documents requested in Plaintiffs' public information requests;
2. Grant Plaintiffs' requests for fee waivers;
3. Enjoin the Town from requesting further fees to respond to Plaintiffs' public information requests;
4. Grant Plaintiffs their attorneys' fees and costs as permitted under the Maryland Public Information Act; and
5. Order such further relief as the Court deems just and proper.

Respectfully submitted,


BAKER HOSTETLER LLP

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*Attorneys for Plaintiffs Action Committee
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ATTORNEY CERTIFICATIONS

I hereby certify, pursuant to Rule 1-313 of the Maryland Rules, that I am admitted to practice law in the State of Maryland.


Laurie A. Babinski


James F. Romoser