IN THE MARYLAND COURT OF SPECIAL APPEALS

ACTION COMMITTEE FOR TRANSIT et al.,
Appellants

v.

TOWN OF CHEVY CHASE et al.,
Appellees

No. 01204, September Term, 2015

APPELLANTS' REPLY BRIEF

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ON APPEAL FROM THE CIRCUIT COURT FOR MONTGOMERY COUNTY,
Judge Cheryl A. McCally

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INTRODUCTION

The Town of Chevy issued perfunctory, blanket denials of fee waiver requests from Appellants Action Committee for Transit ("ACT") and Benjamin Ross, without identifying any specific reasons for the denials. During the course of this litigation, the Town tried to justify the denials after the fact by explaining its distaste for the public interest organization and Mr. Ross's association with it. These denials were unlawful under the Maryland Public Information Act ("MPIA"), and this Court should reverse the decision below and order that judgment be entered in favor of ACT and Mr. Ross.

The Town improperly denied fee waivers to two different public information applicants, one a nonprofit public interest organization (ACT), the other a journalist and blogger (Mr. Ross). The Town originally offered no basis for denying ACT's fee waiver request, stating that the request was "considered" and "denied." The Town disregarded Mr. Ross as a member of the media and presumed that he was acting as a front for ACT. The Town, thus, collapsed Mr. Ross's separate and distinct request into ACT's request, treating its denial of one as sufficient to deny the other.

The Town volunteered, when briefing before the Circuit Court, that its denials were motivated by ACT's publicly expressed views. The Circuit Court recognized the Town's reason—the only reason the Town has articulated—when it noted the Town's consideration of ACT's "past negative comments." The Circuit Court, however, did not appreciate the significance of the Town's admission. Despite the Town's efforts in its Brief before this Court, the Town cannot now retract it.

Fee waiver provisions in public information laws are designed to prevent the very situation in this case: the use of the fee provision against those who are critical of the government. In fact, the purpose of the fee waiver provision in the Freedom of Information Act ("FOIA"), which is analogous to the provision in the MPIA, is to permit broader access to public information for requesters who hold dissenting viewpoints:

> Indeed, experience suggests that agencies are most resistant to granting fee waivers when they suspect that the information sought may cast them in a less than flattering light or may lead to proposals to reform their practices. Yet that is precisely the type of information which the FOIA is supposed to disclose, and agencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information to learn about what Government is not doing, as well as what it is doing.

132 Cong. Rec. 14,298 (Sept. 30, 1986) (statement of Sen. Patrick Leahy). Similarly, the First Amendment and the Maryland Declaration of Rights protect an organization's right to criticize the government and an individual's right to associate with such an organization without fear of retribution. This protection extends to MPIA requests and prohibits a government from assessing fees for access to public documents based on an organization's speech and an individual's association.

CLARIFICATION OF FACTUAL ISSUES

The Town has muddled or mischaracterized several facts in the record that warrant clarification.

First, ACT requested documents and a fee waiver on October 15, 2014. Mr. Ross separately requested documents and a fee waiver on November 10, 2014. Those two requests and the related fee waiver denials are the only ones at issue before this Court on

appeal. Contrary to the Town's representation, there is no "relevant context." Two requests were made. They were both denied—one because (through the Town's own admission) the Town did not want to accommodate an antagonist; the other because, notwithstanding his journalist credentials, the requester was associated with the antagonist.

The October 15 and November 10 MPIA requests did not encompass the information that the Town previously had provided to ACT, which was very little. Instead, ACT and Mr. Ross narrowly tailored those requests to cover only new records that had been created after previous records had been produced. (*See* E. 53-58, 119-24 (requesting only documents from February 2014 to the present)). Thus, there is no basis for the Town's suggestion that ACT or Mr. Ross tried to segment requests artificially to benefit from two free hours of research.

Second, the Town misrepresents and exaggerates the information it previously made available, and it suggests that earlier provisions of information relieved it of any obligation to provide more. The Town did not, as it claims, provide ACT with "ample access to public records" totaling "hundreds of pages of documents." (Town Br. 2, 14). The Town produced fewer than 100 pages of documents in response to one MPIA request on February 4, 2014. When the Town learned that those documents had been used in press releases critical of the Town, the Town began demanding down payments for all future requests. Regardless, the release of records in response to one request does not affect whether a requester is entitled to fee waivers for other requests.

Third, contrary to the Town's claim in its Brief, the Town never estimated fees for the production of documents. The Town demanded "deposits" "before research begins," advising ACT that its October 15 request "will not be processed before the deposit disclosed herein [$879.00] has been delivered." (Town Br. 7, 11; E. 59). Before this Court, the Town insists repeatedly that $879.00 was the "estimated" fee, emphasizing the sum to make this dispute sound petty. That amount, however, was only the down payment on unspecified potential fees over which the Town asserted unbridled discretion. As the Town acknowledged in its demand for the initial $879.00 deposit, 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." (E. 59).

Fourth, the Town has no basis for its claim that ACT and Mr. Ross were seeking information for "a narrow personal or commercial interest." Both ACT and Mr. Ross stated in their MPIA requests that they wanted to make the requested information available to the public in order to inform discussions on public transit. The Town, from the first request, had reason to know that the information would be disseminated. ACT, as a nonprofit organization, has no profit motive whatsoever in the information.

CLARIFICATION OF STANDARD OF REVIEW

The Town advocates for an "arbitrary and capricious" standard of review, but in MPIA appeals, this Court reviews all legal determinations *de novo*. *See, e.g.*, *City of Balt. Dev. Corp. v. Carmel Realty Assocs.*, 910 A.2d 406, 415 (Md. 2006) (conducting *de novo* review of grant of summary judgment under MPIA); *Prince George's Cnty. v. The Wash. Post Co.*, 815 A.2d 859, 868 (Md. Ct. Spec. App. 2003) (same). The MPIA does

not specify a separate standard of review for fee waiver denials, and ACT and Mr. Ross are unaware of any reported decision of a Maryland court directly addressing the issue.

In interpreting the MPIA, Maryland courts look to FOIA for guidance. *Fioretti v. Md. State Bd. of Dental Exam'rs*, 716 A.2d 258, 263 (Md. 1998) (finding FOIA to be "persuasive" in analyzing analogous provisions of MPIA); *Wash. Post Co.*, 815 A.2d at 868 (explaining that the MPIA "was modeled after the federal Freedom of Information Act"). In FOIA cases, some federal courts many years ago did employ an arbitrary and capricious standard of judicial review for fee waiver denials but, in 1986, Congress amended the statute to clarify that *de novo* review was required for courts reviewing fee waiver denials. 5 U.S.C. § 552(a)(4)(A)(vii) ("In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter *de novo*."). That *de novo* standard has applied federally for three decades. The Town ignores it and instead cites a 1979 case, *Eudey v. C.I.A.*, 478 F. Supp. 1175 (D.D.C. 1979), that applied the obsolete arbitrary and capricious standard. *Eudey* was decided prior to the 1986 amendment and is no longer good law.[1]

The Circuit Court should have conducted a *de novo* review of the Town's fee waiver denials. Instead, it deferred to the Town without enunciating any standard. That

[1] Similarly, this Court's citation to *Eudey* in *Mayor and City Council of Baltimore v. Burke*, 506 A.2d 683 (Md. Ct. Spec. App. 1986), occurred prior to the enactment of the 1986 change in the federal standard and, thus, no longer carries weight. Moreover, while *Burke* mentioned in passing that the fee waiver denial at issue in that case was "arbitrary and capricious," it did not hold that "arbitrary and capricious" was the appropriate standard for reviewing fee waiver determinations. *See id.* at 688.

excessive deference was legal error, and this Court must now review *de novo* the legal questions raised in this appeal. *E.g.*, *Balt. Dev. Corp.*, 910 A.2d at 415..

In conducting *de novo* review, there is no basis for this Court to afford the Town broad deference as if the Town were an administrative agency. The Town cites *Salisbury University v. Joseph M. Zimmer, Inc.*, 20 A.3d 838 (Md. Ct. Spec. App. 2011), but the exercise of discretion in that case did not concern the MPIA, nor did it concern a municipality. The Town is a municipal corporation, *see* Charter of the Town of Chevy Chase, art. I § 103, which is not an "agency." MPIA decisions by a municipality are not exercises of broad discretion under administrative law. *See, e.g.*, *Plummer v. City of Fruitland*, 89 P.3d 841, 846 n.4 (Idaho 2003) ("The City is not an administrative agency . . . for which this statutory deference is intended.").

ARGUMENT

The Town thinks its judgments—that ACT is an unworthy nonprofit organization because it has criticized the Town, and Mr. Ross is not a legitimate journalist because he is a member of ACT—are permissible and defensible reasons for denying fee waiver requests. They are not. The MPIA allows a government to consider a requester's identity for the purpose of assessing a requester's ability to pay and assessing whether the request is for a commercial or public purpose. The MPIA, like the First Amendment, does not permit consideration of a requester's past criticisms of the government, association with advocacy organizations, or positions on political issues as "other relevant factors" when denying a fee waiver.

Contrary to the Town's contention, the imposition of significant fees caused by an unwarranted denial of a fee waiver request constitutes a denial of access to public information. *See State of Haw. Org. of Police Officers v. Soc'y of Prof'l Journalists–Univ. of Haw. Chapter*, 927 P.2d 386, 400-01 (Haw. 1996) ("Access is withheld, and a person aggrieved thereby, not only by an agency's outright denial of access, but also, for example, by the agency's . . . imposition of unauthorized or excessive fees as a condition of access"). The purpose of the fee waiver provision is to aid those without a commercial purpose to access documents informing them about the government. For this reason, courts interpret fee waiver provisions liberally and do not permit the government to use fees as "toll gate[s] on the public access road to information." *Better Gov't Ass'n v. Dep't of State*, 780 F.2d 86, 94 (D.C. Cir. 1986) (citation omitted); *see also, e.g.*, *Schoenman v. F.B.I.*, 604 F. Supp. 2d 174, 192 (D.D.C. 2009) ("FOIA's fee waiver provisions should be liberally construed in favor of fee waivers").

I. THE TOWN'S DENIAL OF ACT'S FEE WAIVER REQUEST WAS UNLAWFUL

The Town did not meet its obligation under the MPIA to consider a fee waiver request merely by stating that "the request for waiver has been considered and is denied." *See Mayor and City Council of Balt. v. Burke*, 506 A.2d 683, 688 (Md. Ct. Spec. App. 1986) (holding that a blanket rejection of a fee waiver violates the MPIA). Nor did the Town ultimately think it was enough. When the Town briefed the Circuit Court, it referred to "other factors" and specified only one—ACT's past criticism of the Town. The First Amendment, which protects a person's or organization's right to criticize the

government, bars consideration of this factor. By requiring ACT to pay for access to public information on account of public statements, the Town violated both the MPIA and ACT's First Amendment rights.

The Town had an affirmative obligation to state its reasons for denying ACT's request. *See Samuel Gruber Educ. Project v. U.S. Dep't of Justice*, 24 F. Supp. 2d 1, 11 (D.D.C. 1998) (holding that a government body "is obliged to explain its refusal to waive fees."). "Absent such an explanation, the court cannot intelligently review the case and may properly order the agency to either grant the fee waiver or provide an explanation for the denial." *Judicial Watch, Inc. v. Gen. Servs. Admin.*, No. 98-2223 (RMU), 2000 WL 35538030, at *4 (D.D.C. Sept. 25, 2000); *see also Schoenman*, 604 F. Supp. 2d at 192 (rejecting government's claim that "a blanket denial of a fee waiver request is appropriate"); *Prison Legal News v. Office of Open Records*, 992 A.2d 942, 949 (Pa. Commw. Ct. 2010) (remanding case when government body "gave no explanation at all for why it declined to grant . . . a public interest fee waiver, merely stating that the request for a fee waiver was denied"). Here, the Town offered no specific reasons for denying ACT's fee waiver request in its response to ACT's October 15, 2014 MPIA request. (E. 58A-59). As the Town's own Brief acknowledges, its letter to ACT referred only to "other relevant factors" but did not name any of them.

A generic statement that a request was considered and denied, without further explanation, cannot be reconciled with the principles of transparency that animate the MPIA and other public records laws. *E.g.*, *Judicial Watch, Inc. v. U.S. Dep't of Homeland Sec.*, 880 F. Supp. 2d 105, 112-13 (D.D.C. 2012) (holding that the failure to

provide a "detailed justification" for denying access to documents violates FOIA). As one court has explained, "[C]ontrary to the [government's] contention that it does not need to explain why it denied the fee request, it must articulate some non-discriminatory reason for not waiving the fee." *Prison Legal News*, 992 A.2d at 948. Failure to provide any explanation frustrates judicial review and would permit a government to hide behind unlawful considerations in making decisions.

The Town, in its Brief, attempts to retract its admission below that it considered ACT's "past negative comments," and now offers three justifications for its fee waiver denial: (1) invocation of unspecified "other factors; (2) unsupported speculation about ACT's ability to pay; and (3) a contention that release of the records would not be in the public interest. All three justifications fail.

First, the Town claims to have considered "other factors" in denying ACT's fee waiver request, but it offers no evidence that it considered any permissible factor. Instead, the Town relies on conclusory assertions and nothing else. It argues that it "obviously" considered the merits of the fee waiver request because it stated that it had considered them. This reasoning is logical fallacy: a government's unsupported claim that it undertook a proper review does not prove that it actually undertook such a review.

Second, the Town insinuates that ACT had the ability to pay the fees, but rather than identify any explanation in the record, the Town wrongly compares ACT with the Town, stating they are both nonprofits. The Town, unlike ACT, is an incorporated municipality with the authority to levy taxes and an operating budget in the millions of dollars. Providing access to public records is part of the Town's obligation to conduct the

public business. *See* MD. CODE ANN., GEN. PROV. § 4-103(a) ("All persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees."). The Town is not similarly situated to a private, nonprofit, public interest organization operated by volunteers. Moreover, the Town could not gauge ACT's ability to pay without knowing what the Town ultimately would charge ACT for identifying documents. Without ever indicating what the final bill might be, the Town could not ascertain ACT's ability to pay it.[2]

Third, the Town now claims, for the first time, that public release of the information requested by ACT and Mr. Ross, which would expose the Town's expenditure of public funds, is not in the public interest. There is no record evidence showing how or why the Town came to this conclusion.[3] ACT is a nonprofit public interest group advocating for rail transit in the Washington, D.C. metropolitan area. Thus, its burden of proof in showing that it works in the public interest is low. *Cause of Action v. F.T.C.*, 799 F.3d 1108, 1117 (D.C. Cir. 2015). "[T]he legislative history of the fee waiver provision reveals that it was added to FOIA 'in an attempt to prevent government agencies from using high fees to discourage certain types of requesters, and

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[2] For similar reasons, absent a determination of any final total, the Town cannot claim, as it does in its brief, the fees demanded were "reasonable."

[3] In fact, the Town itself identified information about the Purple Line debate to be "in the public interest" when the Town made an MPIA request of its own to the Maryland Transit Administration ("MTA"). In that request, the Town sought records of communications between ACT and the MTA, and it relied on the "public interest" factor in seeking, and obtaining, a fee waiver. (E. 68-70).

requests,' in particular those from journalists, scholars and nonprofit public interest groups." *Better Gov't Ass'n*, 780 F.2d at 89 (citation omitted).

The Town did not and could not explain why it believed ACT would not use information it received to inform the public on a public issue. It knew the opposite to be true. When pressed for the reason it denied ACT's fee waiver request, the Town explained to the Circuit Court that ACT was using information it had obtained through the MPIA to criticize the Town harshly through press releases—speech that the Town believed to be "smear tactics" and harassment. (E. 100). The Circuit Court found that ACT's "past negative statements" motivated the denial. (E. 158-59).

The Town now seeks to disclaim this basis for denying ACT's fee waiver request, but it still has offered no legitimate reasons for the denial. The First Amendment guarantees a right to be free of a government's imposition of discriminatory financial burdens based on the content of an organization's speech. *Rosenberger v. Rector and Visitors of the U. Va.*, 515 U.S. 819, 828 (1995). ACT, therefore, should be free to bring to light the Town's expenditures for lobbying against the Purple Line; announce, based on a finding of the Open Meetings Compliance Board, that the Town violated the Open Meetings Act; and criticize the Town for its self-interested opposition to the Purple Line, without fear of discrimination.[4] The Town might not like ACT, but it is unlawful and unconstitutional for the Town to express its dislike through a denial of First Amendment rights.

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[4] The Town argues that it, too, has a First Amendment right to engage in government speech on a public issue. This statement is irrelevant to the question before the Court. The denial of a fee waiver request is not "speech."

II. THE TOWN'S DENIAL OF MR. ROSS'S FEE WAIVER REQUEST WAS UNLAWFUL

The Town's reason for denying Mr. Ross's fee waiver request, like its blanket denial of ACT's request, cannot withstand constitutional scrutiny or the language and purpose of the MPIA. The Town, again in its Brief, ascribes to Mr. Ross unproven nefarious motives in order to deny him access to public documents as a member of the media. After treading on ACT's First Amendment free speech rights, the Town tramples Mr. Ross's First Amendment rights of freedom of association.

The First Amendment prohibits the Town from denying Mr. Ross's fee waiver request on the basis of his association with ACT. *See, e.g.*, *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984) ("[W]e have long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends."). Regardless of his association, Mr. Ross is a journalist publishing on the subject matter of the requested documents in the public interest.

The Town seeks to substantiate its distrust of Mr. Ross by labeling bloggers as unworthy of journalistic credentials. This argument is contradicted by the MPIA, which defines "news media" to include "any . . . electronic means of disseminating news and information to the public." MD. CODE ANN., GEN. PROV. § 4-101(e)(9). A blog is an electronic means of disseminating news to the public. FOIA similarly contemplates that bloggers are "representatives of the media," stating that "as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through

telecommunications services), such alternative media shall be considered to be news-media entities." 5 U.S.C. § 552(a)(4)(A)(ii). Congress has clarified that this definition would "ensur[e] that anyone who gathers information to inform the public, including freelance journalists and bloggers, may seek a fee waiver when they request information under FOIA." 153 Cong. Rec. S10,986, S10,987 (2007) (Statement of Sen. Leahy).[5] Courts, too, have recognized that "many blogs and bloggers will fall within the broad reach of 'media.'" *Comins v. Vanvoorhis*, 135 So. 3d 545, 559 (Fla. Dist. Ct. App. 2014).

Mr. Ross submitted an MPIA request in his personal capacity as a member of the media.[6] His book, published by Oxford University Press, includes six pages about the Purple Line. He is a regular contributor to *Dissent* magazine. His articles are featured on *Dissent*'s blog, and contrary to the Town's representation, Mr. Ross does not himself own the blog that is devoted to regional politics. There is no record evidence that the Town made any inquiry into Mr. Ross's *bona fides* as a journalist and author commenting on local and regional politics and transit. Instead, the Town ignored his status as a journalist

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[5] Senator Leahy, one of the drafters of the FOIA amendments, also clarified that the amended definition of "a representative of the news media" covers "Internet blogs and other Web-based forms of media . . . free newspapers and individuals performing a media function who do not necessarily have a prior history of publication." Senator John Cornyn echoed these statements, calling FOIA "proInternet" and stating that the amended statute "grants the same privileged FOIA fee status currently enjoyed by traditional media outlets to bloggers and others who publish reports on the Internet." 153 Cong. Rec. S10,989 (Aug. 3, 2007) (statement of Sen. Cornyn).

[6] Though the Town complains that Mr. Ross submitted an initial request that was later withdrawn and amended, it is clear from the text of both the initial and amended requests that Mr. Ross sought the information in his personal capacity to inform his articles and blog posts discussing issues regarding the Purple Line. (E. 118-24).

and used his affiliation with ACT as a pretext to deny a fee waiver. The Town had no basis for denying his credentials as a journalist, nor the legitimacy of his fee waiver request. The Town, consequently, cannot distinguish *Burke* on that basis.[7]

In considering Mr. Ross's fee waiver request, the Town here, like the City of Baltimore in *Burke,* failed to consider the public interest value of the information. As the Town itself has claimed, information regarding advocacy for the Purple Line is a matter of public interest. (E. 68-70). The information Mr. Ross requested related to the Town's efforts to derail the Purple Line. The Town's success could have a significant impact on the citizens of the D.C. metropolitan area—much like the operation of the wastewater treatment plant that was the subject of the MPIA request in *Burke*. Mr. Ross, like the journalist in *Burke*, desired to make this information public and disseminate it to the tens of thousands of people who read *Dissent* magazine's online content.

III. MULTIPLE MPIA REQUESTS DO NOT CONSTITUTE HARASSMENT

The Town argues that ACT and Mr. Ross submitted MPIA requests to the Town in order to harass. Not so, but regardless, the MPIA does not condone rejecting requests based on a subjective belief that their purpose is to harass. MD. CODE ANN., GEN. PROV.

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[7] In *Burke*, this Court admonished the City of Baltimore for denying a journalist's fee waiver request without assessing the public interest value of the information sought by the journalist. The City violated the MPIA when it denied the fee waiver based solely on the cost of providing the information and the ability of the newspaper to pay. 506 A.2d at 688. The Court instructed that a government must consider the bigger picture, including the MPIA's purpose of "permitting inspection of a public record, with the least cost and least delay to the person . . . [who] requests the inspection," when evaluating a fee waiver request. *Id.* The failure to do so, especially in the context of charging a member of the media for public information, can result in an under-informed populace and "a chilling effect on free exercise of freedom of the press." *Id.*

§ 4-203(c)(2) ("A custodian may not ignore an application to inspect public records on the grounds that the application was intended for purposes of harassment.").

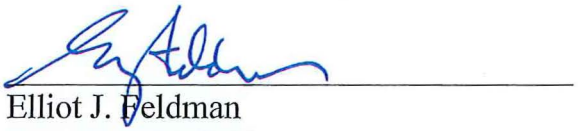
ACT's MPIA requests cannot reasonably be construed as harassment. That there was more than one request is the product of the Town's concerted efforts to frustrate ACT and to hide from the public the public's business. ACT may not have been fluent in the vocabulary of the MPIA, which is why it sought legal counsel in the only form it could afford. The Town has mocked ACT for whatever errors ACT might have made, instead of providing the public services citizens have a right to expect from their municipalities.

CONCLUSION

In order to uphold the Town's denial of the fee waiver requests at issue here, the Court would have to find either that the Town's consideration of ACT's and Mr. Ross's criticism of the Town's opposition to the Purple Line is a permissible basis to deny a fee waiver request, or that the Town's actions regarding the Purple Line are not a matter of public interest. Neither alternative is permitted by the MPIA or the First Amendment. The record before the Court cannot support a finding that the Town complied with either the MPIA or the First Amendment. The Court should reverse the Circuit Court's ruling and order that judgment be entered in favor of ACT and Mr. Ross.

March 7, 2016

Respectfully submitted,



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RELEVANT CONSTITUTIONAL & STATUTORY PROVISIONS

U.S. Const. amend. I

Congress shall make no law . . . abridging the freedom of speech, or of the press . . . .

Maryland Constitution, Declaration of Rights

We, the People of the State of Maryland, . . . declare:

. . .

Art. 40. That the liberty of the press ought to be inviolably preserved; that every citizen of the State ought to be allowed to speak, write and publish his sentiments on all subjects, being responsible for the abuse of that privilege.

5 U.S.C. § 552
("Freedom of Information Act")

(a)(4)(A)(ii) Such agency regulations shall provide that—

. . .

(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media . . .

. . . .

In this clause, the term "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. In this clause, the term "news" means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of "news") who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication

contract would present a solid basis for such an expectation; the Government may also consider the past publication record of the requester in making such a determination.

(a)(4)(A)(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo: *Provided,* That the court's review of the matter shall be limited to the record before the agency.

Maryland Code, General Provisions § 4-101
Definitions

News media
(e) "News media" means:
(1) newspapers;
(2) magazines;
(3) journals;
(4) press associations;
(5) news agencies;
(6) wire services;
(7) radio;
(8) television; and
(9) any printed, photographic, mechanical, or electronic means of disseminating news and information to the public.

Maryland Code, General Provisions § 4-103
General right to information

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

Maryland Code, General Provisions § 4-203
Timeliness of decision on application

Procedure for denial
(c)(2) A custodian may not ignore an application to inspect public records on the grounds that the application was intended for purposes of harassment.

Maryland Code, General Provisions § 4-206

Fees

Definitions

(a)(1) In this section the following words have the meanings indicated.

. . .

(3) "Reasonable fee" means a fee bearing a reasonable relationship to the recovery of actual costs incurred by a governmental unit.

Charging reasonable fee

(b)(1) Subject to the limitations in this section, the official custodian may charge an applicant a reasonable fee for:

(i) the search for, preparation of, and reproduction of a public record prepared, on request of the applicant, in a customized format; and

(ii) the actual costs of the search for, preparation of, and reproduction of a public record in standard format, including media and mechanical processing costs.

(2) The staff and attorney review costs included in the calculation of actual costs incurred under this section shall be prorated for each individual's salary and actual time attributable to the search for and preparation of a public record under this section.

. . .

Waiver

(e) The official custodian may waive a fee under this section if:

(1) the applicant asks for a waiver; and

(2) (i) the applicant is indigent and files an affidavit of indigency; or

(ii) 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.

RULE 8-504(a)(9) CERTIFICATE

This document complies with Rule 8-112(c)(1) because it was prepared with 13-point, Times New Roman, proportionally spaced typeface.

CERTIFICATE OF SERVICE

I certify that, on this 7th day of March 2016, two copies of the foregoing Appellants' Reply Brief were served by first-class mail, postage prepaid, to:

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