

Exhibit O

Benjamin Ross
4710 Bethesda Ave. #819
Bethesda, MD 20814

December 17, 2014

VIA HAND DELIVERY

Ron Bolt, Esq.
Town Attorney
Town of Chevy Chase
4301 Willow Lane
Chevy Chase, MD 20815

Re: Maryland Public Information Act Request

Dear Mr. Bolt:

I am submitting the following 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.

I am withdrawing the request letter I submitted earlier this morning.

I am submitting the following request as a member of the media. I am a published author who writes on issues of public interest, such as chemical pollution and urban development. I have written extensively on issues regarding the Purple Line in both print and electronic media. For the last 14 years, I have regularly contributed articles and (in more recent years) blog posts to *Dissent* magazine and I have written there on issues regarding the Purple Line. I also write at Greater Greater Washington blog. The purpose of this blog is to provide information about elected officials, development, traffic, and other matters impacting the Greater Washington area, including Montgomery County, Maryland.

SUMMARY OF REQUEST

I am requesting copies of public records relating to contracts, agreements, and communications between the Town of Chevy Chase (“Town”) and four firms that the Town retained to provide services in relation the Purple Line public transit project. I am also requesting 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. I am making this request as a member of the news media in order to promote the public’s understanding of the Town and the actions of its public officials in conducting public business relating to a major public infrastructure project. I intend to distribute the requested information to the public through blogs and/or in print in order to contribute to the public’s understanding of the issues related to the Purple Line.

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 Town 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 requests the inspection.” *Id.* § 4–103(b).

SPECIFIC RECORDS REQUESTED

I respectfully request copies of—or an opportunity to inspect—the following records:

Agreements and contracts

1. All agreements and contracts (including any drafts) between or among the Town of Chevy Chase and the firm of Buchanan Ingersoll & Rooney, from February 8, 2014 to present.
2. All agreements and contracts (including any drafts) between or among the Town of Chevy Chase and the firm of Chambers Conlon & Hartwell, from February 8, 2014 to present.
3. All agreements and contracts (including any drafts) between or among the Town of Chevy Chase and the firm of Alexander & Cleaver, from February 8, 2014 to present.
4. All agreements and contracts (including any drafts) between or among the Town of Chevy Chase and the firm of Xenophon Strategies, including representatives David A. Fuscus, Julie Chlopecki, or Mark Hazlin, from November 1, 2013 to present.
5. All agreements and contracts (including any drafts) between or among the Town of Chevy Chase and the firm of Sam Schwartz Engineering, from February 8, 2014 to present.

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 present.
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 present.
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 present.

4. All invoices or bills (paid or unpaid) from the firm of Xenophon Strategies, including representatives David A. Fuscus, Julie Chlopecki, or Mark Hazlin, from November 1, 2013 to present.
5. All invoices or bills (paid or unpaid) from the firm of Sam Schwartz Engineering to the Town of Chevy Chase, from January 16, 2014 to present.

Correspondence

1. All correspondence between or among the firm of Buchanan Ingersoll & Rooney (or its representatives) and the Town of Chevy Chase, the Town Council, or individual Town Council members from February 20, 2014 to present, as well any information predating February 20, 2014 that was not open to inspection under ACT's previous MPIA request dated February 4, 2014.
2. All correspondence between or among the firm of Chambers Conlon & Hartwell (or its representatives) and the Town of Chevy Chase, the Town Council, or individual Town Council members from February 20, 2014 to present, as well any information predating February 20, 2014 that was not open to inspection under ACT's previous MPIA request dated February 4, 2014.
3. All correspondence between or among the firm of Alexander & Cleaver (or its representatives) and the Town of Chevy Chase, the Town Council, and/or individual Town Council members from February 20, 2014 to present, as well any information predating February 20, 2014 that was not open to inspection under ACT's previous MPIA request dated February 4, 2014.
4. All correspondence between or among the Town of Chevy Chase, the Town Council, or individual Town Council members about or related to the firm of Xenophon Strategies, including representatives David A. Fuscus, Julie Chlopecki, or Mark Hazlin, from November 1, 2013 to present.
5. All correspondence between or among the firm of Xenophon Strategies, including representatives David A. Fuscus, Julie Chlopecki, or Mark Hazlin and the Town of Chevy Chase, the Town Council, or individual Town Council members, from November 1, 2013 to present.
6. All correspondence between or among the firm of Sam Schwartz Engineering (or its representatives) and the Town of Chevy Chase, the Town Council, and/or individual Town Council members from February 20, 2014 to present.

Meeting Records

1. All meeting minutes—including minutes not previously disclosed to the public—from all closed sessions held by the Town Council from November 1, 2013 to present.
2. All minutes and notes of all meetings between or among the firm of Buchanan Ingersoll & Rooney (or its representatives) and the Town of Chevy Chase, the Town Council, or individual Town Council members from February 20, 2014 to present, as well any information predating February 20, 2014 that was not open to inspection under ACT's previous MPIA request dated February 4, 2014.
3. All minutes and notes of all meetings between or among the firm of Chambers Conlon & Hartwell (or its representatives) and the Town of Chevy Chase, the Town Council, or individual Town Council members from February 20, 2014 present, as well any information predating February 20, 2014 that was not open to inspection under ACT's previous MPIA request dated February 4, 2014.
4. All minutes and notes of all meetings between or among the firm of Alexander & Cleaver or its representatives and the Town of Chevy Chase, the Town Council, or individual Town Council members from February 20, 2014 to present, as well any information predating February 20, 2014 that was not open to inspection under ACT's previous MPIA request dated February 4, 2014.
5. All minutes and notes of all meetings between or among the firm of Xenophon Strategies, including representatives David A. Fuscus, Julie Chlopecki, or Mark Hazlin, and the Town of Chevy Chase, the Town Council, or individual Town Council members from November 1, 2013 to present.
6. All minutes and notes of all meetings between or among the firm of Sam Schwartz Engineering (or its representatives) and the Town of Chevy Chase, the Town Council, or individual Town Council members from February 20, 2014 present.

REQUEST FOR WAIVER OF ALL FEES

I am requesting a waiver of all fees for this MPIA 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. I am not seeking this information for any commercial purpose.

The Town 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). I am requesting a waiver.

As to the second factor, the consideration of “other relevant factors” merits a fee waiver. These factors include the fact that this information involves an area of public interest aspect and a request on behalf of a member of the media. The information requested is undoubtedly in the public interest because it concerns the expenditure of public funds in regards to a public transportation project.

Additionally, my status as a member of the media supports a fee waiver. I frequently write books and articles on issues impacting the public. The subject of my work includes developments regarding the Purple Line. Under an analogous fee waiver provision in the Freedom of Information Act, a “representative of the news media” is defined broadly, to include “‘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.”¹ This is consistent with other federal case law, which has refused to draw lines between “traditional” press and those who distribute information on matters of public concern to the public via the internet.² The Purple Line debate—including, specifically, the Town’s expenditure of funds on lobbyists—*has* garnered coverage in mainstream news outlets, as well.³

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 Manual notes that a fee waiver is appropriate where information is sought “for a public purpose,” as opposed to a “narrow personal or commercial interest.”^{4,5}

¹ 5 U.S.C. § 552(a)(4)(A)(ii).

² *See, e.g., Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 352 (2010) (“With the advent of the Internet and the decline of print and broadcast media, moreover, the line between the media and others who wish to comment on political and social issues becomes far more blurred.”); *Obsidian Fin. Grp., LLC v. Cox*, 740 F.3d 1284, 1291 (9th Cir. 2014) (noting, in defamation action against bloggers, that “[t]he protections of the First Amendment do not turn on whether the defendant was a trained journalist, formally affiliated with traditional news entities, engaged in conflict-of-interest disclosure, went beyond just assembling others’ writings, or tried to get both sides of a story.”).

³ *See, e.g., Katherine Shaver, Purple Line advocates question Town of Chevy Chase hiring congressman’s brother*, WASHINGTON POST (Jan. 23, 2014).

⁴ Office of the Attorney General (Maryland), *Maryland Public Information Act Manual*, at 7-1 (12th Ed. 2011).

⁵ Federal 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

I am not seeking the information for a commercial purpose. Instead, my 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—a project that will impact residents’ lives and well-being by providing faster, more reliable transportation to homes, businesses, and recreational spaces—and to the Town’s conduct in opposing the same.⁶

REQUEST PROCEDURES

The MPIO 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 I 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 an electronic format, that is acceptable.

If this request is unclear in any way, please contact me 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.⁷ 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,

Benjamin Ross

cc: Todd Hoffman, Town Manager

significantly to such public understanding.” *Judicial Watch, Inc. v. Dep’t of Justice*, 365 F.3d 1108, 1126 (D.C. Cir. 2004).

⁶ See, e.g., Katherine Shaver, *Purple Line Advocates Question Town of Chevy Chase Hiring Congressman’s Brother*, WASHINGTON POST (Jan. 23, 2014).

⁷ *Office of Attorney Gen. v. Gallagher*, 359 Md. 341, 345, 753 A.2d 1036, 1038 (2000).