

IN THE CIRCUIT COURT OF BALTIMORE CITY, MARYLAND

**American Friends Service Committee,
Middle Atlantic Region**
4806 York Road
Baltimore, MD 21212

Case No. 24-C-08-003590

Baltimore Emergency Response Network,
325 East 25th Street
Baltimore, MD 21218

Baltimore Pledge of Resistance,
325 East 25th Street
Baltimore, MD 21218

Jonah House,
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Baltimore, MD 21216

Janine Maria Allwine,
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Ellen E. Barfield,
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Jay Gillen,
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Max J. Obuszewski,
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Ardeth Platte, O.P.,
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Levanah Ruthschild,
2615 Ailsa Avenue
Baltimore, MD 21214

Plaintiffs,

v.

Department of State Police,
1201 Reisterstown Road
Pikesville, MD 21208

Defendant.

FIRST AMENDED COMPLAINT

Plaintiffs American Friends Service Committee, Middle Atlantic Region, Baltimore Pledge of Resistance, Baltimore Emergency Response Network, and Jonah House, on behalf of their individual members, as well as the above named individual members of these groups, (collectively, “Plaintiffs”), by and through their undersigned counsel, and for their complaint against Defendant Department of State Police (“MSP”), state, claim, and allege as follows:

INTRODUCTION

1. This action is brought to enforce Plaintiffs’ rights under the Maryland Public Information Act (“MPIA”), Maryland Code Annotated, State Government Article §§ 10-611 *et seq.* Prior to the commencement of this action, Defendant represented that only a single record responsive to Plaintiffs’ MPIA request existed and further represented that no portion of this

document was subject to disclosure under the MPIA, even in redacted form. As a result, Plaintiffs filed this lawsuit on June 12, 2008.

2. After forcing Plaintiffs to pursue litigation to secure their rights under the MPIA, MSP reversed its position and agreed that it would produce the “one record” that had been withheld.

3. On July 15, 2008, the State produced documents that included summaries of surveillance logs or reports made on twenty separate occasions between March 15, 2005, and May 15, 2006 revealing extensive surveillance and covert infiltration of several lawful political protest organizations involved in protesting the death penalty and militarism, including Plaintiff Pledge of Resistance, other organizations in which Plaintiff Max Obuszewski was an active participant, and records of meetings held at the offices of Plaintiff American Friends Service Committee; and a printout of two separate “Case Reports” entered into the “Washington/Baltimore High Intensity Drug Trafficking Area Case Explorer” database that describe Plaintiff Max Obuszewski, Plaintiff Pledge of Resistance (an organization that includes many of the Plaintiffs in this case) and a meeting at the offices of Plaintiff American Friends Service Committee, and that show that the Pledge of Resistance and Mr. Obuszewski are linked in the database to two asserted crimes: “Terrorism –Anti Govern” and “Terrorism – Anti-War Protestors,” (despite the complete absence of any facts in any of the documents to support such a linkage), and that further label the Pledge of Resistance as a “Security Threat Group.”

4. The belated production of these documents – and the indications below that there may well be other responsive documents – is a matter of utmost concern to both Plaintiffs and the public. Indeed, the surveillance activities revealed by the records already produced have

been characterized at a press conference held by defendant Maryland State Police as “very concerning” and “disconcerting,” and as having “continued for fourteen months even though no criminal activity or nexus to criminal activity was determined in the beginning.”

5. Because it is apparent that the Defendant has engaged in substantial surveillance of constitutionally-protected speech activity – and has maintained records stating that some of the participating individuals and/or organizations are being criminally investigated for “terrorism” based on these protected activities – it is essential that Plaintiffs determine the scope of these records and ensure that MSP fully complies with its obligations under the MPIA.

6. As set forth below, the records, produced only after litigation was filed, contain significant indications that other records responsive to the MPIA request were prepared and/or maintained. This is also suggested by recent statements by MSP officials since the publication of these records.

7. Just as it originally refused to provide *any* records under the MPIA, the MSP now asserts through counsel that it was not required by the requests to search for documents that did not contain the names of the organizations and individuals listed in Plaintiffs’ initial request (and indeed asserts that the MPIA requests did not seek records related to surveillance of individuals), but which are relevant to the operations targeting them. This assertion, which flatly contradicts the plain language of the requests, indicates that the MSP’s search for documents was too narrow and violated the MPIA. The MSP has refused to consider additional searches that are consistent with the original MPIA requests.

8. It is well established that the Maryland Public Information Act is to be liberally construed to effectuate the Act’s broad remedial purposes and assure broad access to public

records. This policy is of paramount importance where the constitutionally-protected speech activities of both individuals and lawful organizations have resulted in the creation and maintenance of government records characterizing them as potential terrorists and security threats. Plaintiffs bring this action to seek relief that will ensure the MSP's full and complete compliance with the requirements of the law in responding to Plaintiffs' MPIA request.

PARTIES

9. Plaintiffs are groups and individual activists who work for peace and justice through non-violent civil resistance, including efforts to educate the public. Among other activities, Plaintiffs have periodically traveled to the National Security Agency's ("NSA") facilities in Fort Meade, Maryland to protest the NSA's activities and petition for changes in NSA policies and practices. Plaintiffs collectively filed an MPIA request, through counsel, with the MSP seeking, in part, the records now at issue in this case.

10. Defendant MSP is a law enforcement agency of the Maryland state government whose headquarters is located at 1201 Reisterstown Road, Pikesville, Maryland 21208. Defendant MSP has, prior to the filing of this lawsuit, refused to permit Plaintiffs to inspect records responsive to their MPIA request, and upon information and belief continues to do so.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this action pursuant to Md. Code Ann., Cts. & Jud. Proc. § 1-501. Venue is proper in this Court pursuant to Md. Code Ann., State Gov't § 10-623.

STATEMENT OF CERTAIN BACKGROUND FACTS

12. On several occasions in 2003 and 2004, Plaintiffs and individual members of the Plaintiff organizations traveled together to protest the Iraq war at the headquarters of the

National Security Agency at Fort Meade. During the course of one of these peaceful demonstrations, several individuals were arrested and charged with criminal trespass and disorderly conduct. While defending themselves against these charges (of which they were acquitted), the individuals obtained discovery documents suggesting that Plaintiffs had been the target of surveillance activity. For example, one document indicated that a “Baltimore Intel Unit” had monitored Plaintiffs’ activities as they gathered at the American Friends Service Committee in Baltimore, and then traveled to the NSA for the protest. *See* Exh. A.

13. Concerned that their civil liberties may have been violated by the surveillance, on August 29, 2006, Plaintiffs filed requests under the federal Freedom of Information Act with several federal agencies and under the MPIA, Md. State Code Ann., State Gov’t § 10-611 *et seq.*, with six state agencies, including the MSP. The MPIA requests sought disclosure of records documenting “*any* monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration and/or collection of information” relating to Plaintiffs or their individual members (emphasis added). The requests sought disclosure of such records generally and specifically as they related to arrests of individual members of Plaintiffs’ organizations in connection with protest activities in Maryland. *See* Exh B.

14. On January 10, 2007, the MSP responded that it had “one record” in its custody that was responsive to Plaintiffs’ MPIA requests, a record that the MSP stated “pertains to one of the requesters.” The MSP declined to disclose the record, citing the confidential source and investigative technique exemptions to the MPIA. The MSP did not provide any details regarding the record or its contents, the requestor to whom it pertained, what type of investigation it related to, why it was created, or what promises of confidentiality had been made.

Nor did the MSP provide any details about why the responsive record could not be redacted to avoid disclosure of confidential information. *See* Exh. C

15. Plaintiffs sent a letter to the MSP on September 7, 2007, requesting that Defendant MSP reconsider its decision to withhold the record. Plaintiffs set forth in detail why Defendant MSP's decision was contrary to the letter and spirit of the MPIA. Plaintiffs suggested that in order to protect the identities of any confidential sources or to prevent the disclosure of confidential police methods, Defendant MSP could redact such information. Finally, Plaintiffs sought further descriptive information about the withheld record that could have helped Plaintiffs evaluate the legal merits of Defendant MSP's position. *See* Exh D.

16. On December 18, 2007, the MSP rejected Plaintiffs' request that it reconsider its position regarding the withheld record, produce a redacted version of the record or provide further descriptive detail as to the record. *See* Exh. E.

17. Plaintiffs filed this lawsuit on June 12, 2008, seeking a judgment that the MSP violated the MPIA and ordering the record that Defendant had represented to be the only responsive document and/or to provide further information describing it. Plaintiffs also sought costs and attorneys' fees in connection with this lawsuit.

18. After steadfastly refusing to produce any portion of the "one record," MSP reversed its position after litigation was filed and agreed to produce the record in redacted form.

19. On July 15, 2008, the MSP produced the following documents:

- A summary of surveillance logs or reports made on twenty separate occasions over a fourteen month period on March 15, 2005; March 16, 2005; April 7, 2005; May 25, 2005; June 10, 2005; June 23, 2005; July 6, 2005; August 3,

2005; August 24, 2005; September 1, 2005; September 5, 2005; September 21, 2005; October 10, 2005; October 20, 2005; November 17, 2005; November 28, 2005; December 21, 2005; January 13, 2006; February 20, 2006; and May 15, 2006. The logs reflect 288 hours of activity by the officer's own reports, and document the infiltration and surveillance of several peaceful anti-death penalty groups (in which plaintiff Max Obuszewski was an active and regular participant) by at least one undercover state police officer posing as an activist. These logs contain no mention of any illegal activity, repeatedly note how peaceful and law-abiding the participants are, and extensively report on the groups' and individuals' political views and plans. Exh. F.

- A printout of a "Case Report" entered on July 13, 2005 into the "Washington/Baltimore High Intensity Drug Trafficking Area database that describes Plaintiff Max Obuszewski, Plaintiff Pledge of Resistance (an organization that includes many of the individual plaintiffs in this case) and details the discussion at a meeting the Pledge of Resistance held at the offices of Plaintiff American Friends Service Committee, and asserts that the Pledge of Resistance and Mr. Obuszewski are being investigated for "Terrorism" and "Anti Govern" criminal activity. (including discussion of a meeting the group had with then-Congressman Benjamin Cardin). The database printouts indicate that Mr. Obuszewski and/or the Pledge of Resistance are linked in the database to two asserted crimes: "Terrorism – Anti-Govern" and "Terrorism – Anti-War Protestors (without the slightest evidence in any of the documents connecting Mr. Obuszewski or the Pledge to any violent act whatsoever, much less any form of terrorism). The Pledge of Resistance is also described in the same database as a "Security Threat Group." Exh. G.
- A printout of a second "Case Report" entered on August 15, 2005 into the same database that pertains to Mr. Obuszewski and the Pledge of Resistance, which again classifies the organization as a "Security Threat Group" and again identifies the "crime" being investigated as "Terrorism." The narrative portion of the report describes a peaceful rally that the group had at Johns Hopkins University to commemorate the dropping of the atomic bomb on Nagasaki, and to protest the weapons research at the University's Applied Physics Laboratory, and notes that the event consisted of songs, speeches, and a poetry reading. Exh. H.

20. As this production reveals, the MSP's representation that only "one record" was being withheld was not true. Indeed, it appears that the MSP's characterization of the withheld documents as a single record may have been designed to create an impression that minimal information was being withheld and thereby discourage Plaintiffs from assuming the burden and expense of pursuing litigation over only "one record."

21. The records that have now been produced also demonstrate that the MSP's repeated assertions of the confidential source and investigative technique exemptions to the MPIA lacked any basis, as the documents (as redacted) neither revealed the identity of a confidential source nor disclosed any investigative techniques that were properly withheld from disclosure. Indeed, none of the redactions actually made relate in any way to any law enforcement technique, confidential or otherwise. By the time these documents were produced, Plaintiffs had expended considerable time and money in connection with their MPIA requests and this lawsuit.

22. The records that were first produced after litigation was filed reveal a surveillance operation against peaceful activist groups in which certain individual Plaintiffs were members or participants, and against one of the Plaintiff organizations itself. This operation was conducted for at least 14 months by undercover state police troopers. The surveillance operation potentially violated Plaintiffs' and others' constitutional rights. This operation received enormous attention from government officials and legislators, as well as local, state, and national media. Even the MSP has acknowledged in public statements that this surveillance had "no nexus to criminal activity" or any "threat to public safety" and "continued for fourteen months even though no criminal activity or nexus to criminal activity was determined in the beginning."

23. The substance of these records also pointed to the likely existence of additional responsive documents that were not produced by the MSP. For example, although the records consisted of troopers' reports from their infiltration operations directed against activist groups, the MSP produced no records relating to how or by whom the operations were initiated; any follow-up by superiors in the chain of command; how or whether the operation was concluded; or with what other state, local, or federal agencies information from the operation was shared.

That such an extensive operation could have existed with no documentation outside of the summaries of reports from the individual troopers involved is extremely unlikely.

25. There are other significant indications in these documents that other responsive records exist. For example:

- The twenty database entries now produced by MSP are described as a “Supplement to Intelligence Report Initiated by Analyst Sparwasser.”
- The March 16, 2005 entry states that “[t]he above information was relayed to MSP Executive Protection Section and Baltimore City Policy Intelligence Section on 3/15/05 ...”
- The April 7, 2005 entry states that the author “contacted [redacted] from the Baltimore City Policy Intelligence Unit who is currently working domestic terrorism cases for the Joint Terrorism Task Force. [Redacted] was advised of the intelligence gathered by MSP ...”
- The May 25, 2005 entry states that “The MSP Annapolis Barrack, Department of General Services Police, Baltimore City Police Department Intelligence Unit and the Annapolis City Police were informed about the above events.”
- [Redacted] contacted Baltimore City Police Intelligence Division via fax concerning the events being held in Baltimore City.”
- The August 24, 2005 entry states that “[t]he above information was forwarded to MSP commanders to facilitate planning for the Annapolis hearing and to analysts preparing a threat assessment for the event.”
- The October 10, 2005 entry states that “[i]nformation about the above events was relayed via e-mail by [redacted] to detectives from the intelligence division of Baltimore City Police Department and the Baltimore County Police Department.”
- The November 28, 2005 entry indicated that “this information was sent to the Baltimore City Police’s Intelligence Division.”

26. MSP has also not disclosed any of the responsive documents that were likely prepared in connection with the twenty entries prepared over a 14 month period. The content of

those entries clearly suggests that they were being sent to a supervisor, presumably in a separate or revised document each time an entry was prepared. Indeed, many of the entries – entered on specific dates – specifically request approval of continued surveillance. And yet MSP has not produced these separate communications or requests, nor has it produced any of the responses of authorizations that were being requested.

27. In addition, statements by MSP officials since the publication of the records point to additional documents that likely exist in the MSP's files. For example, the chief of the MSP, Colonel Sheridan, distributed a document at a press conference that he stated described why the MSP began its infiltration operation. This document is clearly responsive to Request No. 3 of Plaintiffs' MPIA request, which seeks "[a]ny records relating or referring to how, why or when [Plaintiffs] were selected to be a subject of [surveillance.]" Yet the document was not included in the MSP's production to Plaintiffs.

28. The MSP now asserts that it was required by the requests only to search for documents containing the names of the organizations and individuals listed in Plaintiffs' initial requests, not for documents that are, as plainly described in each of the requests, *relating* to surveillance directed against Plaintiffs (even if Plaintiffs' names are not included in the documents). This assertion indicates that the MSP's search for documents was too narrow and violated the MPIA.

29. The MSP refuses to consider additional searches that are consistent with the original MPIA requests.

COUNT ONE

Improper Denial of Access to Records

30. Plaintiffs incorporate by reference the allegations made in paragraphs 1 through 10 above as if each were separately restated herein.

31. Under the MPIA, Md. State Code Ann., State Gov't § 10-613, "[e]xcept as otherwise provided by law, a custodian shall permit a person or governmental unit to inspect any public record at any reasonable time."

32. The records requested by Plaintiffs are public records under the MSP's possession, custody and control.

33. For the reasons set forth above, there is substantial reason to believe that the MSP has not identified or produced other documents responsive to the MPIA request, has declined to look for documents that fall within the plain language of the requests, and has engaged in a search that is not legally sufficient under the MPIA. The MSP has violated the MPIA by refusing to conduct a thorough and complete search for documents sought by Plaintiffs' MPIA requests.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

(1) Enter a declaratory judgment in favor of Plaintiffs that Defendant MSP has violated the MPIA and that the documents at issue are properly subject to disclosure under the MPIA;

(2) Order the MSP to conduct a thorough and complete search for documents that are responsive to the MPIA request and subject to disclosure under applicable law.;

(3) Award Plaintiffs all costs incurred, including attorneys' fees, in maintaining this action, as authorized under the MPIA, Md. Code Ann., State Gov't § 10-623(f); and

(4) Grant Plaintiffs such other relief as is just and proper.

Respectfully submitted,

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