

**IN THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY**

**AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF MARYLAND,**

3600 Clipper Mill Rd., Ste. 350
Baltimore, Maryland 21211;

JACQUELINE IRENE ALLSUP

7370 Anon Lane
Glen Burnie, Maryland 21060;

LEWIS A. BRACY

7725 Harmans Road
Hanover, Maryland 21076;

KARLA R. HAMNER

265 Forsythe Road,
Valencia, PA. 16059;

JOAN M. HARRIS

8256 Ahearn Road
Millersville, Maryland 21108;

MARVENISE V. HARRIS

400 Starwood Drive, Apartment F
Glen Burnie, Maryland 21061;

EUGENE PETERSON

3534 Ripling Way
Laurel, Maryland 20724;

THOMAS W. REDMOND, SR.

8232 Baltimore Annapolis Boulevard
Pasadena, Maryland 21122;

ERIC LIONEL MARTIN SCOTT

7813 Mallow Court
Pasadena, MD 21122;

MIKE SHAY

1392 West River Road
Shady Side, Maryland 20764;

Civil Case No.02-C-12-174465

FIRST AMENDED COMPLAINT

JOHN M. SINGLETON
1447 York Road, Suite 508
Luthersville, Maryland 21093; and

CARL O. SNOWDEN
230 Garden Gate Lane
Annapolis, Maryland 21403,

Plaintiffs,

v.

JOHN R. LEOPOLD
8626 Houlton Harbour
Pasadena, MD 21122-2570;

ANNE ARUNDEL COUNTY, MARYLAND
44 Calvert Street
Annapolis, Maryland 21404

LARRY W. TOLLIVER, in his Official
Capacity as Anne Arundel County Police Chief,
8495 Veterans Highway
Millersville, Maryland 21108 and

JAMES TEARE, SR.
1808 Wharf Creek Court
Pasadena, Maryland 21122-4884

Defendants.

FIRST AMENDED COMPLAINT

Plaintiffs American Civil Liberties Union Foundation of Maryland (“ACLU-MD”), Jacqueline Irene Allsup, Lewis A. Bracy, Karla R. Hamner, Joan M. Harris, Marvenise V. Harris, Eugene Peterson, Thomas W. Redmond, Sr., Eric Lionel Martin Scott, Mike Shay, John M. Singleton, and Carl O. Snowden, by and through their undersigned counsel, and for their complaint against Defendant John R. Leopold (“Leopold”), Defendant Anne Arundel County (“County Executive” and “County Police”), Defendant Larry W. Tolliver (“Chief Tolliver”) and Defendant James Teare, Sr. (“Teare”), allege as follows:

INTRODUCTION

1. This is an action for declaratory, injunctive, and monetary relief arising from Defendants' violation of several provisions of the Maryland Public Information Act ("MPIA"), Md. Code Ann., State Gov't §§ 10-611-630, which prohibits inappropriate creation, compilation, use, and dissemination of government records containing personal information about private citizens, and which requires governmental custodians to permit any person to inspect any public record that is subject to disclosure.

2. On March 2, 2012, John R. Leopold, then-County Executive of Anne Arundel County, Maryland, was indicted by the State of Maryland on charges of misconduct in office ("the Leopold indictment," attached as Ex. 1).

3. The indictment included allegations that Leopold misused on-duty executive protection officers ("EPOs"), provided to him through the Anne Arundel County Police Department, to investigate perceived political adversaries. The Leopold indictment states at paragraph 24 that "Leopold directed on-duty executive protection officers to create dossiers on persons he viewed as political challengers, including but not limited to, Joanna Conti and Carl Snowden. The EPOs did not consider these people to be security risks."

4. Based on the Leopold indictment and other evidence detailed below, the individual Plaintiffs feared that Leopold (or other employees of the County Executive and the Police Department) may have directed, requested, or encouraged county police officers or other county employees to investigate them and improperly use or disseminate information about them, as well as about other unknown persons, despite the fact that none of the people were suspected of any crime, nor considered a security risk to the County Executive, and there was no legitimate reason for the police or any other county employee to be collecting information about them. Accordingly, each Plaintiff, assisted by the American Civil Liberties Union of Maryland

(“ACLU-MD”), made requests under the MPIA (attached as Exs. 2-8) for Defendants to release information concerning the compilation of information about the Plaintiffs and other persons (“the dossiers”¹).

5. Plaintiffs have filed this lawsuit based both on Defendants’ improper creation, compilation, use, and dissemination of government records containing their personal information and on Defendants’ improper denials of Plaintiffs’ repeated requests for information under the MPIA.

6. Defendants’ creation, compilation, use, and dissemination of government records containing personal information about Plaintiffs or others for political reasons, and unrelated to any suspicion of criminal activity or suspicion that the subjects were a threat to the County Executive, or any other legitimate purpose, violates the MPIA.

7. To the extent that any Plaintiff is the subject of any record sought, that individual Plaintiff is a “person in interest” as defined by the MPIA. Md. Code Ann., State Gov’t § 10-611(f).

8. Despite Plaintiffs’ interested status and their various MPIA requests, Defendants have withheld, and continue to withhold, requested information in further violation of the MPIA.

THE PARTIES

9. Plaintiff American Civil Liberties Union Foundation of Maryland (“ACLU-MD”) is a non-profit organization dedicated to the defense of civil rights and civil liberties. As part of

¹ This Complaint uses the term “dossiers” as shorthand to refer to all of the documents requested in Plaintiffs’ MPIA requests, though the requests sought records beyond those compiled into a formal “dossier,” and sought to broadly discover any information that had been collected about Plaintiffs or other political opponents, how and why the information was collected, who collected it, and what was done with it. The requests explicitly sought electronically stored information in addition to hard copy files.

its work, ACLU-MD disseminates information to the public through newsletters, news briefings, “Know Your Rights” documents, and other educational and informational materials. ACLU-MD also disseminates information to individuals, tax exempt organizations, not-for-profit groups, and members through its website, www.aclu-md.org. In addition, ACLU-MD shares information with the national office of the American Civil Liberties Union (“ACLU”). The national ACLU publishes information through multiple outlets including newsletters, action alerts, videos, and other media. National ACLU publications are disseminated across the country to individuals and organizations. The national ACLU also publishes an electronic newsletter, which is distributed to subscribers by email, and maintains a website of civil rights and civil liberties information at www.aclu.org. ACLU-MD maintains its principal office in Baltimore, Maryland.

10. Plaintiff Carl O. Snowden is a longtime civil rights activist in Anne Arundel County and the State of Maryland. Mr. Snowden was injured, and suffered actual damages due to emotional distress caused by Defendants’ actions, as set forth below.

11. On information and belief, Snowden is perceived as a political opponent by Leopold, due in part to Snowden’s history of civil rights activism.

12. Snowden is a “person in interest” under the MPIA with respect to all information Defendants collected about him. Plaintiffs know such information exists with respect to Mr. Snowden, in part because the County Police produced some records pertaining to Snowden in its March 13, 2012 response to the ACLU-MD’s March 6, 2012 MPIA request. In addition, correspondence from the Maryland State Police, dated April 27, 2012 (attached as Ex. 8), and correspondence from the Department of Public Safety and Correctional Services, dated April 30, 2012 (attached as Ex. 9), both received in response to the ACLU-MD’s March 27, 2012 MPIA request seeking information about recent criminal searches performed on selected Plaintiffs and

others (*see* Ex. 5), indicate that Snowden was the subject of CJIS searches and an NCIC search, all of which may have been improperly conducted at Leopold's request.²

13. Plaintiff Thomas W. Redmond Sr. is a former member of the Anne Arundel County Council and was a Republican candidate for the Council in 2010. Mr. Redmond was injured, and suffered actual damages due to emotional distress caused by Defendants' actions, as set forth below.

14. On information and belief, Redmond is perceived as a political opponent by Leopold, in part because of Redmond's past involvement on the Anne Arundel County Council and in Republican party politics.

15. Redmond is a "person in interest" under the MPIA with respect to all information Defendants collected about him. Plaintiffs know such information exists with respect to Mr. Redmond, in part because the County Police produced some records collected about Redmond in its March 13, 2012 response to the ACLU-MD's March 6, 2012 MPIA request. In addition, correspondence from the Maryland State Police, dated April 27, 2012 (attached as Ex. 8), and correspondence from the Department of Public Safety and Correctional Services, dated April 30, 2012 (attached as Ex. 9), both received in response to the ACLU-MD's March 27, 2012 MPIA request seeking information about recent criminal searches performed on selected Plaintiffs and others (*see* Ex. 5), indicate that Redmond was the subject of CJIS searches that may have been

² Maryland's Criminal Justice Information System ("CJIS") is established under the Criminal Procedure Article, §§ 10-201 through 10-2341. It includes a central database that receives, maintains, and disseminates Maryland's criminal history records. NCIC is the National Crime Information Center, which houses a Federal Bureau of Investigation database of criminal history information submitted by each state. It is accessible to law enforcement officers only for legitimate law enforcement purposes. *See, e.g.*, www.fas.org/irp/agency/doj/fbi/is/ncic.htm.

improperly conducted at Leopold's request. Moreover, a cover letter to the March 13, 2012 response (attached as Ex. 10) indicates that some records about Redmond, which were obtained through CJIS, were withheld.

16. Upon information and belief, Plaintiffs aver that Defendants disseminated the information collected about Redmond to others in the County Executive's Office, who, acting on behalf of Defendant Leopold, further disseminated the same information to certain prominent Anne Arundel County residents in an effort to harm Redmond's campaign for County Council in 2010. At least three such persons contacted Redmond to let him know of the communications from the County Executive's staff.

17. Plaintiff Lewis A. Bracy is a retired National Security Agency law enforcement officer and a community activist in Anne Arundel County. Mr. Bracy was injured, and suffered actual damages due to emotional distress caused by Defendants' actions, as set forth below.

18. Bracy is a "person in interest" under the MPIA with respect to all information Defendants collected about him. Plaintiffs reasonably suspect such information may exist with respect to Mr. Bracy, in part because County Police Department's March 30, 2012 supplemental response (attached as Ex. 11) to ACLU-MD's March 16, 2012 MPIA request, states that "[w]ith regard to the named individuals listed in [the ACLU-MD's three (3) previous MPIA] requests" (including Bracy), the Police Department had located no responsive records "other than those that pertain to the pending criminal proceedings undertaken by the State Prosecutor's Office, which likely constitute evidence in that matter, and which will not be released at this time...." In addition, correspondence from the Maryland State Police, dated April 27, 2012 (attached as Ex. 8), and correspondence from the Department of Public Safety and Correctional Services, dated April 30, 2012 (attached as Ex. 9), both received in response to the ACLU-MD's March 27, 2012

MPIA request seeking information about recent criminal searches performed on selected Plaintiffs and others (*see* Ex. 5), indicate that Bracy was the subject of improper CJIS searches that may have been conducted at Leopold's request. Furthermore, in February of 2013, defendants informally indicated, through counsel, that Mr. Bracy was the subject of yet another criminal background check, the details of which remain unknown at this time, but which Plaintiffs fear was conducted without valid justification.

19. Plaintiff Marvenise V. Harris is a Maryland state employee who filed a complaint in May 2009 alleging that Leopold insulted and sexually harassed her in the cafeteria line at her workplace. Ms. Harris was injured, and suffered actual damages due to emotional distress caused by Defendants' actions, as set forth below.

20. Marvenise Harris is a "person in interest" under the MPIA with respect to all information Defendants collected about her. Plaintiffs reasonably suspect such information exists with respect to Ms. Harris, in part because Deputy Police Chief Emerson Davis testified before the Anne Arundel County Council that shortly after Ms. Harris's complaint was made public, Defendant James Teare was in possession of a file containing documents on Ms. Harris, and indicated to Davis that the file had been compiled because of Harris's complaint against Leopold.

21. Plaintiff Jacqueline Irene Allsup is president of the Anne Arundel County Branch of the NAACP. Ms. Allsup was injured, and suffered actual damages due to emotional distress caused by Defendants' actions, as set forth below.

22. Allsup is a "person in interest" under the MPIA with respect to all information Defendants collected about her. Plaintiffs reasonably suspect such information may exist with respect to Ms. Allsup, in part because the County Police Department's March 30, 2012

supplemental response (attached as Ex. 11) to ACLU-MD's March 16, 2012 MPIA request, stated that "[w]ith regard to the named individuals listed in [the ACLU-MD's three (3) previous MPIA] requests" (including Allsup), the Police Department had located no responsive records "other than those that pertain to the pending criminal proceedings undertaken by the State Prosecutor's Office, which likely constitute evidence in that matter, and which will not be released at this time...." Moreover, in February of 2013, defendants informally indicated, through counsel, that Ms. Allsup was the subject of a criminal background check, the details of which remain unknown at this time, but which Plaintiffs fear was conducted without valid justification.

23. Plaintiff Karla R. Hamner is a former member of Leopold's staff. Ms. Hamner was injured, and suffered actual damages due to emotional distress caused by Defendants' actions, as set forth below.

24. Hamner is currently suing Leopold for sex discrimination and retaliatory termination in an unrelated federal action. *See Hamner v. Leopold*, No. 1:10-cv-2485 (D. Md. filed Sept. 9, 2010).

25. Hamner is a "person in interest" under the MPIA with respect to all information Defendants collected about her. Plaintiffs reasonably suspect such information may exist with respect to Ms. Hamner, in part because the County Police Department's March 30, 2012 supplemental response (attached as Ex. 11) to ACLU-MD's March 16, 2012 MPIA request, stated that "[w]ith regard to the named individuals listed in [the ACLU-MD's three (3) previous MPIA] requests" (including Hamner), the Police Department had located no responsive records "other than those that pertain to the pending criminal proceedings undertaken by the State Prosecutor's Office, which likely constitute evidence in that matter, and which will not be

released at this time....” Additionally testimony from Anne Arundel County Police Corporal Howard Brown -- taken in March 2011 but only released recently to the plaintiffs, and described at greater length in paragraphs 99-101 below -- indicates that Brown was ordered by Leopold to create a dossier on Ms. Hamner, and further, that Leopold Chief of Staff Erik Robey led an investigation of Ms. Hamner after she filed her lawsuit alleging sex discrimination and retaliatory termination by Leopold.

26. Plaintiff Joan M. Harris is a former member of Leopold’s staff. Ms. Harris was injured, and suffered actual damages due to emotional distress caused by Defendants’ actions, as set forth below.

27. Joan Harris is currently suing Leopold for sex discrimination and retaliatory termination in an unrelated federal action. *See Harris v. Leopold*, No. 1:12-cv-829 (D. Md. filed Mar. 16, 2012).

28. Joan Harris is a “person in interest” under the MPIA with respect to all information Defendants collected about her. Plaintiffs reasonably suspect such information may exist with respect to Ms. Harris, in part because the County Police Department’s March 30, 2012 supplemental response (attached as Ex. 11) to ACLU-MD’s March 16, 2012 MPIA request, stated that “[w]ith regard to the named individuals listed in [the ACLU-MD’s three (3) previous MPIA] requests” (including Joan Harris), the Police Department had located no responsive records “other than those that pertain to the pending criminal proceedings undertaken by the State Prosecutor’s Office, which likely constitute evidence in that matter, and which will not be released at this time....” Additionally, Ms. Harris has heard from sources within the police department that Leopold may have collected documents pertaining to her after she filed her lawsuit alleging sex discrimination and retaliatory termination by Leopold.

29. Plaintiff Eugene Peterson is a former member of the Anne Arundel County Board of Education. Mr. Peterson was injured, and suffered actual damages due to emotional distress caused by Defendants' actions, as set forth below.

30. Peterson is a "person in interest" under the MPIA with respect to all information Defendants collected about him. Plaintiffs reasonably suspect such information may exist with respect to Mr. Peterson, in part because the County Police Department's March 30, 2012 supplemental response (attached as Ex. 11) to ACLU-MD's March 16, 2012 MPIA request, stated that "[w]ith regard to the named individuals listed in [the ACLU-MD's three (3) previous MPIA] requests" (including Peterson), the Police Department had located no responsive records "other than those that pertain to the pending criminal proceedings undertaken by the State Prosecutor's Office, which likely constitute evidence in that matter, and which will not be released at this time...."

31. Plaintiff Eric Lionel Martin Scott is a retired Sergeant of the Anne Arundel County Police Department. Sgt. Scott is an African-American, and as an officer in for the County Police took a leadership role in raising concerns about the need for increased diversity within the Department and about discriminatory treatment suffered by minority officers. Sgt. Scott was injured, and suffered actual damages due to emotional distress caused by Defendants' actions, as set forth below.

32. Sgt. Scott is a "person in interest" under the MPIA with respect to all information Defendants collected about him. Plaintiffs reasonably suspect such information may exist with respect to Sgt. Scott, in part because the County Police Department's March 30, 2012 supplemental response (attached as Ex. 11) to ACLU-MD's March 23, 2012 MPIA request, stated that "[w]ith regard to the named individuals listed in [the ACLU-MD's three (3) previous

MPIA] requests” (including Scott), the Police Department had located no responsive records “other than those that pertain to the pending criminal proceedings undertaken by the State Prosecutor’s Office, which likely constitute evidence in that matter, and which will not be released at this time....”

33. Plaintiff Mike Shay was the Green Party’s candidate in 2010 for Anne Arundel County Executive. Mr. Shay was injured, and suffered actual damages due to emotional distress caused by Defendants’ actions, as set forth below.

34. Shay is a “person in interest” under the MPIA with respect to all information Defendants collected about him. Plaintiffs reasonably suspect such information may exist with respect to Mr. Shay, in part because the County Police Department’s March 16, 2012 supplemental response (attached as Ex. 11) to ACLU-MD’s March 23, 2012 MPIA request, stated that “[w]ith regard to the named individuals listed in [the ACLU-MD’s three (3) previous MPIA] requests” (including Shay), the Police Department had located no responsive records “other than those that pertain to the pending criminal proceedings undertaken by the State Prosecutor’s Office, which likely constitute evidence in that matter, and which will not be released at this time....”

35. Plaintiff John M. Singleton is a Towson, Maryland attorney representing Joan Harris and Karla Hamner in their lawsuits against Leopold. Mr. Singleton was injured, and suffered actual damages due to emotional distress caused by Defendants’ actions, as set forth below.

36. Singleton is a “person in interest” under the MPIA with respect to all information Defendants collected about him. Plaintiffs reasonably suspect such information may exist with respect to Mr. Singleton, in part because the County Police Department’s March 16, 2012

supplemental response (attached as Ex. 11) to ACLU-MD's March 23, 2012 MPIA request, stated that "[w]ith regard to the named individuals listed in [the ACLU-MD's three (3) previous MPIA] requests" (including Singleton), the Police Department had located no responsive records "other than those that pertain to the pending criminal proceedings undertaken by the State Prosecutor's Office, which likely constitute evidence in that matter, and which will not be released at this time...." Additionally, Singleton believes that Leopold may have collected documents pertaining to him after Singleton filed sex discrimination and retaliatory termination lawsuits on behalf of Joan Harris and Karla Hamner.

37. Defendant John R. Leopold, was, from December 2006 until February 2013, the County Executive for Anne Arundel County, Maryland. On January 29, 2013 Leopold was criminally convicted of misconduct in office, and suspended from office as County Executive. Three days later, he formally resigned. Nevertheless, at times relevant to plaintiffs' claims in this lawsuit, Leopold was both a custodian and *de facto* custodian of public records, as well as a public official and executive officer for Anne Arundel County, within the meaning, and subject to the requirements of the MPIA. Moreover, as County Executive, Leopold bears responsibility under §10-626 of the MPIA for violations of § 10-624 carried out at his direction and/or with his consent.

38. Defendant Anne Arundel County, Maryland is a political subdivision of the State of Maryland. Both the Office of the County Executive of Anne Arundel County and the Anne Arundel County Police Department are agencies of the County government for which the County itself bears responsibility. At times relevant to plaintiffs' claims in this lawsuit, Defendant Anne Arundel County was both a custodian and *de facto* custodian of public records, as well as a political subdivision of the State of Maryland within the meaning, and subject to the

requirements of the MPIA. The County is sued as the parent of both the Office of the County Executive (“County Executive”) and the Anne Arundel County Police Department (“County Police”) each of which possesses its own set of records, and each of which has responded separately to plaintiffs’ MPIA requests.

39. Defendant Larry W. Tolliver is Police Chief for the Anne Arundel County Police Department, a law enforcement agency with its headquarters at 8495 Veterans Highway, Millersville, Maryland 21108. Defendant Tolliver took office in August 2012, to fill the position opened by the departure of Defendant James Teare, Sr. As the current Police Chief, Tolliver is both the custodian and *de facto* custodian of public records maintained by the County Police, as well as being a public official and executive officer for Anne Arundel County, within the meaning, and subject to all requirements of the MPIA.

40. Defendant James Teare, Sr. was Anne Arundel County Police Chief from 2006 until August 2012, when his retirement was announced by the Maryland State Prosecutor in conjunction with the State’s criminal prosecution of Defendant John Leopold. Teare was appointed as Chief, and served at the pleasure of, Leopold, and his tenure at the Police Department coincided with the events giving rise to this action. At times relevant to Plaintiffs’ claims in this lawsuit, Defendant Teare was both a custodian and *de facto* custodian of public records, as well as a public official and executive officer for Anne Arundel County, within the meaning, and subject to all requirements of the MPIA. Moreover, as Police Chief, Teare bears responsibility under §10-626 of the MPIA for violations § 10-624 carried out at his direction and/or with his consent.

JURISDICTION AND VENUE

41. This Court has jurisdiction over this action pursuant to Md. Code Ann, Cts. & Jud. Proc. § 1-501.

42. Venue is proper in this Court pursuant to Md. Code Ann., State Gov't § 10-623(a)(2).

FACTUAL BACKGROUND

First MPIA Request

43. On March 2, 2012, the State of Maryland filed an indictment against then-Anne Arundel County Executive John R. Leopold (Ex. 1). The indictment alleges at paragraph 24 that “Leopold directed on-duty executive protection officers to create dossiers on persons he viewed as political challengers, including but not limited to, Joanna Conti and Carl Snowden. The EPOs did not consider these people to be security risks.”

44. On March 6, 2012, the ACLU-MD served its first MPIA request for the Leopold dossiers upon the County Executive and the County Police (Ex. 2). The request was made on behalf of the ACLU-MD and Plaintiff Carl Snowden.

45. Among other things, the March 6, 2012 MPIA Request sought “[a]ny record relating or referring to Carl Snowden ... or any other perceived political challengers to or adversaries of John Leopold, regardless of the source of such information or identity of the person or persons compiling or preparing it... .”

46. On March 13, 2012, the Police Department provided an initial, partial response to the March 6, 2012 MPIA request (*see* Ex. 10, the cover letter for that response).

47. The documents produced in the Police Department’s March 13, 2012 response were largely information that one might expect to find in a politician’s “opposition research” file,

and came mostly from public record sources. However, the documents also included confidential police reports from 2002 and 2005 charges against Mr. Snowden, which Plaintiffs aver, upon information and belief, were not publicly available. There was no lawful purpose for members of the County Police to have collected any of the Snowden records produced.³

48. The Police Department's March 13, 2012 response also included some records collected about Plaintiff Thomas Redmond, but cover correspondence (Ex. 10) indicated that certain records obtained through CJIS about Mr. Redmond were being withheld. Multiple documents within the produced Redmond records are marked with the handwritten note "copy to JRL 10/15/08," referring John R. Leopold. The produced Redmond records were largely information that one might expect to find in a politician's "opposition research" file, and came mostly from public record sources. However, the CJIS records withheld by the County Police were not publicly available.

Second MPIA Request

49. On March 16, 2012, the ACLU-MD served a second MPIA request for the Leopold dossiers upon Defendants. (Ex. 3.) This request supplemented the March 6, 2012 request and was made on behalf of the ACLU-MD and several additional individuals who were not included in the earlier request, including Plaintiffs Redmond, Bracy, Allsup, Hamner, Joan Harris, Peterson, Shay, and Singleton.

³ The police reports appear to have been properly created at their inception, during the investigation of a criminal case. However, their subsequent collection and inclusion in records compiled for a non-criminal justice purpose was improper, as was any dissemination outside of the Police Department, other than for legitimate law enforcement purposes.

50. Among other things, the March 16, 2012 MPIA Request sought “[a]ny record relating or referring to ..., Lewis Bracy, ..., Eugene Peterson, Joan M. Harris, Karla Hamner, John Singleton, Jacqueline Boone Allsup, Mike Shay, or any other perceived political challengers to or adversaries of John Leopold, regardless of the source of such information or identity of the person or persons compiling or preparing it... .”

51. On March 19, 2012, Defendant James Teare Sr., then-Chief of the Anne Arundel County Police Department, sent a letter to Colonel Marcus Brown, Superintendent of the Maryland State Police. (Ex. 12.) Teare’s letter requested assistance from the Maryland State Police to review files maintained by the County Executive.

52. According to Defendant Teare’s March 19 letter, the files maintained by the County Executive were discovered as part of a state prosecutor’s investigation. Based on a review of the files by the Anne Arundel County Office of Law in response to the ACLU-MD’s March 6, 2012 request for the Leopold dossiers, Teare admitted that “there was information in the files which possibly violates Anne Arundel County Police Department rules and regulations, *as well as Federal and State law.*” (Emphasis added.) Defendant Teare’s correspondence nowhere disclosed that he had previously been aware of, and involved in, the creation, use, and dissemination of the dossiers. Rather, it implied the opposite.

Third MPIA Request

53. On March 23, 2012, the ACLU-MD served a third MPIA request for the Leopold dossiers upon Defendants. (Ex. 4.) The third request supplemented the March 16 request and was made on behalf of other additional individuals who were not included in the earlier requests, including Plaintiff Scott.

54. The March 23rd request stated that the “additional requesters join in the March 16 MPIA request with respect to all elements of that request.”

Fourth MPIA Request

55. On April 3, 2012, the ACLU-MD served a fourth MPIA request for the Leopold dossiers upon Defendants. (Ex. 6.) The fourth request also supplemented the March 16 request, and was made on behalf of one additional individual who was not included in the earlier request: Plaintiff Marvenise V. Harris.

Fifth MPIA Request

56. On August 15, 2012, the ACLU-MD served a fifth MPIA request seeking records regarding Anne Arundel County Police Department officers' searches of local criminal history databases for information about the individual Plaintiffs. (Ex. 7.) The fifth request was made on behalf of Plaintiffs Snowden, Redmond, Bracy, Allsup, Hamner, Joan Harris, Marvenise Harris, Peterson, Scott, Shay, and Singleton.

Denial of Access to Certain Records

57. On March 30, 2012, the Office of the County Executive responded to the ACLU-MD and Plaintiffs' March 6, 16, and 23 requests, claiming not to have any records or dossiers on the individuals identified in the requests. (Ex. 13.)

58. Despite the County Executive's denial, credible evidence suggests that responsive records were and are in the custody of the County Executive's office, and/or its officials or former officials, that have not been produced. For example, as discussed below, in his ruling convicting Defendant Leopold of criminal misconduct, Judge Dennis Sweeney found that Leopold ordered EPOs to create dossiers on Joanna Conti, Carl Snowden, and Thomas Redmond, and that those dossiers were disseminated by and to Leopold and his political campaign manager Erik Robey for use in his political campaign. Consistent with this finding, the Police Department's March 13, 2012 response to the ACLU-MD included records pertaining to Plaintiff Redmond that contained the handwritten annotation, "copy to JRL 10/15/08," thus

indicating that the records had been copied to County Executive John R. Leopold. As such, these records should have been produced by the County Executive and/or Leopold in response to Plaintiffs' information requests.

59. Also despite the County Executive's denial, Defendant Teare's March 19, 2012 letter to the Superintendent of the Maryland State Police described "a collection of files that were maintained in an office located in the County Executive's suite." (Ex. 12.) The files were discovered as part of a Maryland State Prosecutor's investigation and appeared to be responsive to the ACLU-MD's March 6, 2012 MPIA request (Ex. 2). Based on a review of the files by the Anne Arundel County Office of Law, Teare stated that there was information in the files that possibly violates Anne Arundel County Police Department rules and regulations as well as Federal and State law.

60. Also on March 30, 2012, the County Police provided another partial response to the ACLU-MD's requests of March 6, 16, and 23. (Ex. 11.) The letter from Lieutenant Scott Davis, an officer in the Police Department, included the following admissions:

- a. "With regard to the named individuals listed in your three requests, we have located no additional records or files (additional to those already produced) that were created or maintained by the police officers while performing their duties on behalf of the Executive, *other than* those that pertain to the pending criminal proceedings undertaken by the State Prosecutor's Office, which likely constitute evidence in that matter, and *which will not be released* at this time pursuant to § 10-618(f) of the MPIA." (Emphasis added.)
- b. "We have located no records of directions given with regard to the creation or maintenance of this category of records, *other than* what may appear on the records created by the drivers themselves or in records that pertain to pending criminal proceedings undertaken by the State Prosecutor's Office, which likely constitute evidence in that matter, and *which will not be released* at this time pursuant to § 10-618(f) of the MPIA." (Emphasis added.)

61. In other words, the Police Department acknowledged having responsive records regarding the individual Plaintiffs, but refused to disclose them based on speculation that the

records “likely constitute evidence” in the criminal case against Mr. Leopold, and erroneously claiming that this meant they constitute “investigatory records” that may be withheld pursuant to the MPIA.

62. On information and belief, Plaintiffs aver that the State Prosecutor never interposed any objection to Defendants releasing the responsive records.

63. Even if the Police Department’s speculation that the records constituted evidence in the State Prosecutor’s case against Mr. Leopold was correct, that fact would not transform the responsive records into “investigatory records” properly withheld under the MPIA.

64. Rather, if the Defendants wished to temporarily withhold documents responsive to a request on grounds that their release might negatively impact the public interest, they were required to do so in accordance with the temporary withholding procedures set forth in §10-623(d)(2) of the MPIA. They failed to do so.

65. Additionally, all Defendants have failed to produce electronically stored information responsive to Plaintiffs MPIA requests, although each of the MPIA requests explicitly includes a request for electronic information. Initially, Plaintiffs were told that production of the electronic information would take longer than the 30 days allotted for an MPIA response, and consented to Defendants’ reasonable extension request. In April 2012, Defendants contacted Plaintiffs to say this production was on track and that the electronic information would be produced by April 23, 2012, the extended due date. But then on April 23, Defendants said a problem had occurred, and that while some responsive information had been found, the information was incomplete, and so the entire process for collection of the electronic information had to be started all over, meaning that the information could not be produced until some unspecified later date. Months passed, with no further mention of the electronic information.

Then, in early October, Defendants informed Plaintiffs that production of the electronic information would not occur unless Plaintiffs altered their request somehow. As a result, no electronic information whatsoever has been produced by Defendants to date.

The Leopold Dossiers Were Not Created for a Legitimate Governmental Purpose or to Meet a Clearly Established Need

66. Defendants have not asserted a valid governmental purpose, nor any clearly established need, for the initial creation, compilation, use, or dissemination of government records containing personal information about the individual Plaintiffs (nor about other subjects).

67. On information and belief, Plaintiffs aver that at least some of the persons who created or contributed information to the dossiers at the direction of the Defendants were not active police officers at the time the information was acquired.

68. On information and belief, Plaintiffs aver that at least some officers acquired information for the Leopold dossiers at the direction of Defendants County, Leopold and/or Teare, without first determining whether the information was relevant to any ongoing criminal investigation, and without establishing that there was a clearly established governmental need for the information.

Improper Searches of Criminal History Databases

69. On information and belief, Plaintiffs aver that certain individuals, working at the direction and/or with consent of Defendants Leopold, Anne Arundel County, and Teare, obtained confidential criminal history records on several Plaintiffs.

70. Sgt. Timothy P. Phelan, an officer of the County Police, supervising Leopold's EPO detail, searched CJIS on September 12, 2008, for information about Plaintiff Redmond.

(Ex. 9.)

71. The date of the CJIS search on Redmond matches the date that several of the documents in the Leopold dossier on Redmond were printed, as shown in the footer on the printouts provided to the ACLU-MD as part of the Police Department's March 13, 2012 response (Ex. 10, the cover letter for that response) to the ACLU-MD's March 6, 2012 MPIA request.

72. The date of the CJIS search on Redmond also closely corresponds to the "10/15/08" date when the Redmond records were "cop[ied] to JRL."

73. On information and belief, there was no legitimate law enforcement purpose for Sgt. Phelan to execute a CJIS search on Redmond because Redmond was not suspected of any criminal offense at the time, and the search did not coincide with any arrest or legitimate investigation.

74. On information and belief, at least one officer of the County Police also searched the FBI's NCIC database for information about Plaintiff Snowden.

75. On July 28, 2009, Patrick A. Donohue, a detective in the Police Department, accessed Snowden's NCIC record. (Ex. 8.)

76. On information and belief, by typing the code "PUR/C," Detective Donohue falsely asserted a criminal justice purpose for accessing information about Snowden on the NCIC database.

77. On information and belief, there was no legitimate law enforcement purpose for the July 28, 2009 NCIC search on Snowden, as Snowden was not suspected of any criminal offense at the time, and the search did not coincide with any arrest or legitimate investigation.

78. CJIS access logs obtained by the ACLU-MD also show that on October 30, 2008, William H. Hyers, a retired officer of the Police Department working on contract with Anne Arundel County, searched CJIS for information on Plaintiff Lewis Bracy. (Ex. 9.)

79. On information and belief, there was no legitimate law enforcement purpose for Hyers's CJIS search on Bracy, as Bracy was not suspected of any criminal offense at the time of the search and it did not coincide with any arrest or legitimate investigation.

80. Hyers's search for CJIS records on Bracy also was improper because Hyers was no longer an Anne Arundel County police officer at the time he conducted the search.

81. On information and belief, Hyers retired from the Police Department in 2007 and at the time of the search was working as a part-time civilian contract employee with the County.

82. CJIS records from the Department of Public Safety and Correctional Services show that Hyers's account access information was last changed on December 24, 1986, indicating that his access was not terminated when he retired from law enforcement. (Ex. 9.)

83. On November 17, 2009, Detective Donohue searched CJIS for information on Plaintiff Lewis Bracy. (*See* Police Department's cover letter to its June 28, 2012 supplemental response to ACLU-MD's March 6, 2012 MPIA Request, including a Bracy search log provided in that response, both attached as Ex. 14.)

84. On information and belief, there was no legitimate law enforcement purpose for Detective Donohue's CJIS search on Bracy, as Bracy was not suspected of any criminal offense at the time of the search and it did not coincide with any arrest or legitimate investigation.

Events Since Filing of this Lawsuit Bearing Upon Plaintiffs' Claims

A. Defendant Leopold Prosecuted and Convicted of Criminal Misconduct in Office

85. This lawsuit was originally filed in this Court on December 12, 2012.

86. In January of 2013, Defendant John Leopold was tried on criminal charges of misconduct in his capacity as Anne Arundel County Executive. The trial took place before, and was decided by, the Honorable Dennis Sweeney, following Leopold's waiver of his right to a jury trial.

87. After a 10-day trial, Leopold was convicted of two counts of misconduct in office, a common law crime defined as "corrupt behavior by a public officer in the exercise of the duties of his office or while acting under the color of his office." *Duncan v. State*, 282 Md. 385, 387 (1978). Judge Sweeney ruled that to convict Leopold of such misconduct, the prosecution was required to, and did ultimately prove, that he acted "corruptly and in violation and perversion of his duties' as County Executive ... and that Defendant committed each count 'knowingly, willfully, and intentionally.'" *State v. Leopold*, No. K-12-415, memorandum opinion and verdict at 6 (Anne Arundel Co. Cir. Ct. Jan. 29, 2013), *available at* <http://www.baltimoresun.com/news/maryland/crime/blog/bal-judge-rules-leopold-violated-law-document-20130129,0,4592615.html>page, attached as Ex. 15 (hereinafter "Sweeney Opinion").

88. One of the factors contributing to Leopold's conviction on misconduct charges, as alleged in paragraph 24 of the indictment, was his direction that EPOs compile dossiers on perceived political adversaries for his use and dissemination for personal and political reasons.

89. In his findings on this charge, Judge Sweeney ruled:

The credible evidence shows that Defendant [Leopold] did direct Officer [Howard] Brown while on duty to create files on Joanna Conti, Carl Snowden and [Thomas] Redmond based on information he could discover by research or investigation. Officer Brown conducted computer research and prepared a file

about Ms. Conti, her background, her properties, and the business of her husband. *The file was given to the Defendant and Erik Robey for their use in the reelection campaign.* Officer Brown testified that he spent 10 to 15 hours preparing the file. This was time spent while he was on duty and being paid by the County. There was also testimony that similar files were prepared on Mr. Snowden and Mr. Redmond].

Sweeney Opinion, at 22 (emphasis added.)

90. Based upon these findings and other evidence that Defendant Leopold misused his office for political purposes, Judge Sweeney ruled:

Defendant was his own campaign manager and Defendant was alerted on several occasions by his staff and by the officers themselves that having the officers conduct such activity while on duty was questionable, not wise or potentially illegal. After such warnings it appears that Defendant not only ignored the warnings of those close to him, but continued the wrongful activity and accelerated it.

...

Defendant seems to argue that it was incumbent on the police officers to tell him unequivocally that the conduct was wrong and then refuse to perform the services before he could have any culpability and that he had no obligation to desist in his demands until they did so. Defendant believes that absent the officers taking such a stand he was free to demand their services for his campaign and places the entire responsibility on their shoulders and the command staff at the Police Department. The court does not find that argument persuasive.

Sweeney opinion, at pp. 23-24.

91. Although former Anne Arundel County Chief James Teare was not a witness or defendant in Leopold's criminal trial, Judge Sweeney had harsh words concerning Teare's performance with respect to this matter, saying it was "apparent from the evidence presented in this case that the leadership of the Police Department was derelict in protecting their officers from the pressures exerted by the County Executive." Laying blame squarely at Defendant Teare's feet, Judge Sweeney stated:

This whole sad chapter might have been avoided or greatly ameliorated if the then Police Chief had sat down early on with [Leopold] and laid out what his officers should and should not do and then insist on adherence to those standards. Instead,

it appears from this record, that the chain of command repeatedly chose not to protect their officers or the integrity of the Anne Arundel County Police Department but merely gave directions to the officers that indicated that they should keep [Leopold] satisfied.

Sweeney Opinion, at p. 25 and n. 7.

92. In the immediate aftermath of his conviction for misconduct in office, facing the threat of forcible removal, Defendant Leopold resigned his position as County Executive in early February 2013, enabling him to retain his governmental pension.

B. New Information Discovered Since Defendant Leopold's Resignation

93. Following Defendant Leopold's criminal conviction and resignation as Anne Arundel Executive, the County offered certain new information to the Plaintiffs relevant to this lawsuit.

94. First, Defendants orally informed Plaintiffs that, in addition to the unlawful criminal background checks concerning Plaintiffs Snowden, Redmond, and Bracy detailed above, the Defendants also conducted, in 2009, criminal background checks on Plaintiffs Jacqueline Alsup and Lewis Bracy, related somehow to their work with the NAACP in sponsoring a speech in Anne Arundel County by the Rev. Jeremiah Wright. Although this information was covered by Plaintiffs' MPIO requests and should have been produced more than a year ago, Plaintiffs have still not been given details of these checks or responsive documents.

95. Third, Defendants released to the Plaintiffs, in March 2013, two audiotapes of interviews conducted in March 2011 -- a full year in advance of Defendant Leopold's 2012 indictment by the State Prosecutor's Office -- by Anne Arundel County Police Major Edward Bergin with Executive Protection Officers Howard Brown and Mark Walker, concerning improper use of the Executive Protection Detail for political and personal reasons. These tapes

were covered by Plaintiffs' MPIA requests and should have been produced more than a year ago. Instead, Defendants elected to temporarily withhold the tapes from the Plaintiffs on grounds that they might be relevant to Defendant Leopold's prosecution, without satisfying the requirements of §10-619 of the MPIA, which requires custodians to petition a Court to approve any temporary withholding on generalized "public interest" grounds.

96. During the interviews, Cpl. Brown and Det. Walker discussed the full range of improper activities they were required to engage in by Defendant Leopold in order to keep their jobs, including improper collection, use, creation and dissemination of government records containing personal information about the Plaintiffs. They also discuss the role played in this unlawful activity by Defendant James Teare, in his capacity as Anne Arundel County Police Chief, as well as that of Defendant Leopold's Chief of Staff, Erik Robey. As to Defendant Teare, the EPOs said the general direction they got from the Chief was to do whatever was necessary to "keep Leopold happy."

97. Both Cpl. Brown and Det. Walker detailed in their statements to Maj. Bergin that Defendant Teare was fully aware of and complicit in Defendant Leopold's unlawful demands upon the EPOs. Indeed, Cpl. Brown told Maj. Bergin that Defendant Teare had directed that a copy of each dossier collected at Leopold's demand be given to Teare before a copy was given to Defendant Leopold. Cpl. Brown also informed Maj. Bergin that Defendant Teare himself assisted in gathering information for certain of the dossiers, specifically including the dossier compiled by Brown on Plaintiff Thomas Redmond.

98. Cpl. Brown's description of Defendant Teare's role in this unlawful activity is consistent with sworn testimony given before the Anne Arundel County Council in May 2012 by retired Deputy Police Chief Emerson Davis, who told the Council he happened upon Chief Teare

in his office in May of 2009, holding and reviewing a dossier compiled by Defendants about Plaintiff Marvenise V. Harris.

99. Although Defendants denied, as recently as February 2013, that any dossier was ever compiled on plaintiff Karla Hamner, Cpl. Brown told a very different story to Maj. Bergin in his official interview. Specifically, Brown informed Bergin that after Ms. Hamner's discrimination lawsuit was filed, Defendant Leopold directed him to compile a dossier on Ms. Hamner, and he began to do so. After he had begun this project, however, and collected some initial information, Brown told Bergin he "found out from Mr. Robey" that the Defendants were doing their own investigation, calling employees in to provide information about Ms. Hamner. Through this process, Brown said, Robey had learned that Lt. Jeffrey Silverman was "friends" with Ms. Hamner on Facebook, and that they were going to try to use Lt. Silverman to obtain private information about Ms. Hamner through this social media site. Brown said he had discussed this information with Defendant Teare, as well as with Maj. Bergin.

100. Given that the Bergin tapes were recorded in March 2011, they were in Defendants' custody at the time of Plaintiffs' 2012 MPIA requests, and were indisputably covered by those requests. Defendants' withholding of the tapes from March 2012 until March 2013 had consequences. For example, it enabled the Defendants to keep the public from learning of EPO contentions that Defendant Teare had full knowledge of, and even direct involvement in, Leopold's unlawful collection, use, creation and dissemination of government records containing personal information about the plaintiffs, until after Teare left office as Chief.

101. In regard to Plaintiff Karla Hamner, the defendants' withholding of the Bergin tapes also denied Ms. Hamner an important piece of evidence relevant to the gender discrimination she is pursuing against Anne Arundel County in federal court.

102. Given that no MPIA exemption permits Defendants to withhold documents responsive to Plaintiffs' requests because they "might be relevant" to another law enforcement agency's criminal prosecution of John Leopold, Plaintiffs submit that the Defendants were required to comply with §10-619 of the MPIA if they wished to withhold documents based on a generalized claim that their release might harm the public interest. This provision enables a custodian to temporarily withhold information if he believes release would do "substantial injury to the public interest." In such circumstances, the custodian must, within 10 days of the denial, file an action in the appropriate circuit court seeking an order to permit the continued denial of access. Failure to do so – as occurred here -- subjects the custodian to liability for damages pursuant to State Gov't. Art. §10-623(d)(2). Notably, the official custodian of these tapes at the time of Plaintiffs' MPIA requests was Defendant James Teare Sr. – himself a subject of the tapes with incentive to wrongfully withhold them.

Equitable Relief

103. Unless Defendants are required and ordered by this Court to provide the requested relief, Plaintiffs will suffer immediate, substantial and irreparable injury.

104. The benefits to the Plaintiffs in obtaining injunctive relief are equal to or outweigh the potential harm that Defendants would incur if this Court grants the requested relief.

105. The public interest is best served by granting the requested relief.

106. There exists no adequate remedy at law.

COUNT ONE

Improper Collection, Use, Creation and Dissemination of Government Records Containing Personal Information

(Defendants Leopold, Anne Arundel County, and Teare)

107. Plaintiffs incorporate by reference the allegations made in the preceding paragraphs as if each were separately restated herein.

108. The records created, compiled, used, and disseminated by Defendants about the Plaintiffs are “personal records” as defined by the MPIA, Md. Code Ann., State Gov’t. § 10-624(a).

109. There was no legitimate governmental purpose, nor any clearly established need, for Defendants to create government records of personal information about any Plaintiff, and the compilation, use, and dissemination of these records by Defendants Leopold, Anne Arundel County, and Teare violated the MPIA, Md. Code Ann., State Gov’t. § 10-624(b), which provides that “[p]ersonal records may not be created unless the need for the information has been clearly established by the unit collecting the records.”

110. Defendants’ violations of Md. Code Ann., State Gov’t. § 10-624, give rise to claims against the Defendants pursuant to Md. Code Ann., State Gov’t. § 10-626.

COUNT TWO

Improper Denial of Access to Public Records

(All Defendants)

111. Plaintiffs incorporate by reference the allegations made in paragraphs 1 through 106 above as if each were separately restated herein.

112. The records requested by Plaintiffs are public records under Defendants’ possession, custody, and control, at times pertinent to this action.

113. The requested records do not fall within any of the exceptions in the MPIA.

114. The requested records are not otherwise protected from disclosure by any other provision of law.

115. Defendants have violated, and continue to violate, the MPIA by failing to adequately search for responsive records, thus avoiding disclosure of responsive information.

116. Defendants have violated the MPIA by invoking inapplicable exemptions to the MPIA as a basis for denying or temporarily denying plaintiffs' requests.

117. Defendants have further violated the MPIA by simply failing to respond to some aspects of Plaintiffs' requests, specifically including Plaintiffs' requests for electronically stored information.

118. As set forth in paragraphs 115, 116, and 117, Defendants have violated the MPIA by improperly withholding records responsive to Plaintiffs' MPIA requests, giving rise to this claim for relief under Md. Ann. Code, State Gov't Art., §10-623 (d)(1).

COUNT THREE

Failure to Timely Petition for Continuance of a Temporary Denial (Defendants Anne Arundel County and Teare)

119. Plaintiffs incorporate by reference the allegations made in paragraphs 1 through 106 above as if each were separately restated herein.

120. Defendants Anne Arundel County and James Teare, Sr. have violated Md. Ann. Code, State Gov't. Art., §10-619 by withholding information responsive to Plaintiffs' MPIA requests – purportedly on a temporary basis – without timely petitioning the appropriate Court for approval to continue the denial, thereby injuring the Plaintiffs and giving rise to a claim for relief pursuant to Md. Ann. Code, State Gov't Art., §10-623(d)(2).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Enter a declaratory judgment in favor of Plaintiffs that Defendants have violated Md. Ann. Code, State Gov't Art. § 10-624, as informed by §10-602, by improperly creating, compiling, permitting inspection, using, and disseminating government documents containing personal information about Plaintiffs without a legitimate and clearly established governmental need;

B. Enter a declaratory judgment in favor of Plaintiffs that Defendants have violated Md. Ann. Code, State Gov't Art. §10-623, by failing to conduct an adequate search for documents, invoking inapplicable exemptions, and improperly withholding records responsive to Plaintiffs' MPIA requests;

C. Enter a declaratory judgment in favor of Plaintiffs that Defendants have violated Md. Ann. Code, State Gov't Art. §10-619 by temporarily denying Plaintiffs access to documents responsive to their MPIA requests, without timely petitioning an appropriate court for approval of the denial;

D. Order Defendants to conduct a complete and thorough search for information responsive to Plaintiffs' MPIA requests;

E. Order Defendants to produce all records responsive to Plaintiffs' MPIA Requests, including all electronically stored information;

F. Order Defendants to provide the originals of any improperly collected or created records to Plaintiffs, to inform Plaintiffs about any and all dissemination of such records, and to destroy any copies of such records in Defendants' possession and control;

G. Award each Plaintiff their actual compensatory or nominal damages for Defendants' violation of Plaintiffs' rights under the MPIA, pursuant to Md. Ann. Code, State Gov't Art. §§ 10-623(d) and 10-626(a);

H. Award Plaintiffs all costs incurred, including attorneys' fees, in maintaining this action, as authorized by Md. Ann. Code, State Gov't Art., §§ 10-623(f) and 10-626(b); and

I. Grant Plaintiffs such other relief as is just and proper.

Dated: April 25, 2013

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