

Maryland State Conference of NAACP  
Braches,

Plaintiff

v.

Maryland State Police,

Defendant

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IN THE

CIRCUIT COURT

FOR

BALTIMORE COUNTY

Case No.: 03-C-07-011022

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### **OPINION AND ORDER**

#### **FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiff (NAACP) petitions this Court for an award of fees/costs incurred in its ultimately successful efforts to secure the disclosure of certain records from the Maryland State Police (MSP) related to what are known as “racial profiling complaint investigations.” The NAACP had sought these records through the Maryland Public Information Act (MPIA). Its petition is brought pursuant to Annotated Code, State Government § 10-623(f) of the MPIA.

After the Court of Appeals ruled in favor of the NAACP’s request for these records in redacted form, as originally ordered by this Court in its Order of August 11, 2008, the NAACP claims it is both eligible and entitled to these fees and costs under the statute and the applicable case law.

The MSP responds in opposition to the petition of the NAACP. Both parties have submitted memoranda in support of their respective positions. This Court conducted a hearing on February 27, 2014 and heard oral arguments. This court held this matter sub curia pending this opinion and order.

This Court has reviewed the very substantial file of this matter, its order of August 2008, the appellate opinions, the pleadings and memoranda submitted in the instant issue, the cases cited, and the Court's notes taken during the oral hearing.

### DISCUSSION

This Court appreciates the briefs and responses filed by both parties. They are well written and each contains arguments persuasive to this Court. This Court likewise appreciates the oral arguments made and each party had points which require reflection by this Court. The ultimate decision is truly difficult at best.

Initially we must begin with the applicable statute. Section 10-623(f). Costs – [I]f the court determines that the complainant has substantially prevailed, the court may assess against a defendant governmental unit reasonable counsel fees and other litigation costs that the complainant reasonably incurred. (Court's emphasis).

To this Court, it must first be determined if the NAACP is eligible for this award of fees and costs and, if so found, whether it is entitled thereto. This Court believes that, under the facts and circumstances of this case, the eligibility/entitlement issue must be addressed first without proceeding further.

Fortunately, the eligibility component is not difficult for this Court. The NAACP ultimately prevailed in its request for the redacted documents in the MSP's custody related to the MSP's investigation of racial profiling complaints against its troopers by motorists on Maryland highways. Frankly, had there been a contest, this Court would have unequivocally found the NAACP to have "substantially prevailed." As it is, the MSP has conceded the point . . . "the MSP is not contesting that the Plaintiff substantially prevailed in its PIA suit." See MSP's

Memorandum Opposing Plaintiff's Request for Attorney's Fees and Costs, p. 15. The NAACP is, indeed, eligible.

The difficult question is whether the NAACP is entitled to this relief. This Court has substantial discretion with respect to this inquiry and indeed may assess these fees. However, it is not mandated to do so. This Court is required to conduct a balancing test of various factors (not all inclusive) in order to make the determination.

This Court is to make the determination by weighing the balance of at least the three following factors: 1. The benefit to the public, if any, derived from the suit; 2. The nature of the NAACP's interest in the released information, and; 3. Whether the MSP's withholding of the information had a reasonable basis in the law. *See Stromberg Metal Works, Inc. v. University of Maryland*, 395 Md. 120 (2006); *Kirwan v. The Diamondback*, 352 Md. 74 (1998). These considerations are described as "very pertinent although not exclusive." Interestingly, no one factor is dispositive. *See Piper v. U.S. Department of Justice* cited by the NAACP. As no one factor weighs more than the others in this balancing test, all must be considered together.

(1) Public Benefit: This Court believes the NAACP has the better argument as to whether the public benefits from the disclosure of these documents. As the NAACP argues, the very disclosure of these records by the MSP demonstrates (or fails to demonstrate) whether the MSP is meaningfully investigating complaints of racial profiling against its troopers. (Court's emphasis). To this Court, this disclosure furthers the fundamental purpose of the public information statute. Also, to this Court, NAACP's efforts advance the cause of civil rights enforcement. But for the disclosure of these documents, no one could have effectively known if the MSP was doing or failing to do that which it was required to do under the spirit and intent of the consent order in the federal case as well as whether the MSP has abided by the constitutional

obligations placed on it. The NAACP's efforts have given the public the leverage to require the MSP to live up to its obligations.

Looking at this issue with a wider lens, the disclosures effect the transparency required of our governmental agencies and clearly further the broad purpose of the MPIA.

Additionally, the public is benefited by the unequivocal finding of the Court of Appeals that state agencies cannot refuse to apply the severability provisions of the MPIA with respect to documents they deem to be covered by a mandatory exemption. This is a significant point indeed.

Lastly, any public misgivings about the conduct of the Maryland State Troopers with respect to this issue are put to rest by disclosure of these documents which are created and intended to show the good faith efforts of the MSP to address and investigate these complaints. All in all, the efforts of the NAACP provide and have provided a substantial benefit to the public.

(2) The nature of the NAACP's Interest. This Court also believes that the NAACP is, in effect, a public interest organization. Its efforts to gain disclosure of the requested records were for the purpose of protecting the public good by shedding bright light on the MSP's efforts to investigate complaints of racial profiling by the troopers on our highways. To this Court, the NAACP had absolutely no commercial interest in obtaining these records. MSP's arguments that somehow the NAACP's efforts were to gain an advantage in "private litigation" are completely unpersuasive.

As the NAACP argues, its pursuit of these public records was an altruistic one *i.e.* to open up the MSP's conduct to more meaningful scrutiny. This point is persuasive and the Court finds that by balancing this point it is clearly in the NAACP's favor.

(3) Reasonable/Unreasonable? The MSP leans heavily on this consideration in the balancing test. This Court believes that very soon after this litigation was instigated, the NAACP took the position that it would accept redacted records and that redacted records would indeed satisfy the requirements of the statute. At the end of the day, it is true that only one issue was standing before this Court and this was the request for the records regarding the investigation by the MSP of the racial profiling complaints.

The MSP argues, with some merit, that the taxpayers of Maryland should not be ordered to pay each time the custodian is wrong with respect to the demand for disclosure. This makes certain sense to this Court. Certainly the number of judges who have addressed this issue in the instant litigation, the various rulings and discussions by appellate courts do not persuade this Court that the issue was an easy one or indeed that it was unexceptional. (Court's emphasis). On the contrary, to this Court it was indeed a difficult issue. The en banc hearing by the Court of Special Appeals, its discussion of the issue, the grant of certiorari by the Court of Appeals, and the mandatory nature of the statute in question vis-à-vis not releasing personal records are important. Additionally, the issue of severability, taken collectively, do not lead this Court to the easy conclusion that the MSP was conclusively unreasonable.

The NAACP has the burden of proving to this Court the unreasonableness of the MSP actions. There is indeed substantial importance in protecting the confidentiality of certain records of each individual state trooper. To this Court, the MSP's approach, paraphrased by this Court, *i.e.* that the custodian was between a rock and a hard place, has merit. This Court certainly does not feel that the MSP acted in bad faith, or with obduracy, or was recalcitrant. See *Nw. Coal. for Alts. to Pesticides v. EPA.*, 421 F. Supp. 2d 123, 126-27 (D.D.C. 2006). At the same time, the arguments of the NAACP have merit. In the exercise of this Court's discretion,

and with the Court's belief that it is indeed a very close call, this Court does not find that the MSP acted unreasonably in its steadfast position to wait for the ultimate decision by the ultimate decision maker. Although arguments can be made supporting both positions, this Court feels that the fulcrum is tipped ever so slightly in favor of the MSP on this point. The MSP did not act unreasonably.

Having said the above, the Court feels compelled to add additional comments. Although anyone who reads this may feel it simply augments this Court's statements regarding the first balancing test *i.e.* the public benefit, this Court believes there is more to consider.

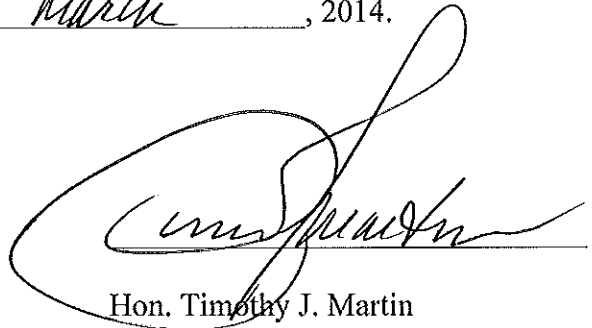
This consideration is the extraordinarily important concept of the enhancement of civil rights in the state of Maryland. The very subject matter contained in the documents by the custodian of the MSP are singularly important and, to this Court, crucial in the determination of whether the MSP took its role seriously and meaningfully in investigating the complaints of racial profiling. This enhances civil rights. To require the NAACP to incur expenses and costs in seeking and acquiring these documents over some six years of litigation is significant to this Court. The very philosophy of fee sharing as indicated in the cases is clearly involved in the instant dispute.

The long and exhausting battle in the enforcement of civil rights in this country and in this state is of paramount importance to all citizens. To require the NAACP to underwrite on its own the expenses to secure performance by the MSP of providing these documents ordered by this Court six years ago and ultimately ordered by the Court of Appeals is a discomforting concept to this Court. (Court's emphasis).

Additionally, as said before, the extreme importance of the Court of Appeals' ruling regarding the severability of these documents into disclosable and non-disclosable parts

potentially affects multiple agencies in this state and extends to the United States. There is significant value here. It is value that inures to the citizen of the State of Maryland. This tips the scale in favor of the NAACP. In considering the balancing test above, and for the reasons stated, this Court finds that the NAACP is entitled to fees and costs. This Court will conduct a hearing on the amount, reasonableness, and appropriateness of these fees and costs and the parties are directed to contact the assistant of this Court, Cheryl Dively, to establish a hearing date thereupon.

It is so ORDERED this 18<sup>th</sup> day of March, 2014.

A handwritten signature in black ink, appearing to read "Timothy J. Martin", is written over a horizontal line. The signature is stylized with a large, looping initial "T".

Hon. Timothy J. Martin