



March 16, 2012

**VIA ELECTRONIC AND CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

Mr. John Leopold  
(Or Custodian of Records)  
Office of the County Executive  
The Arundel Center  
44 Calvert Street  
Annapolis, MD 21404

Chief James Teare  
(Or Custodian of Records)  
Anne Arundel County Police Department  
8495 Veterans Highway  
Millersville, MD 21108

RE: Public Information Act Request

To Whom It May Concern:

This letter constitutes a request under the Maryland Public Information Act (“MPIA”), Maryland Code Annotated, State Government Article, §§10-611 to 628 and all other applicable regulations on behalf of the American Civil Liberties Union of Maryland, G. James Benoit, Daryl Jones, Alan H. Legum, Lewis A. Bracy, Dr. Kevin M. Maxwell, Eugene Peterson, Joan M. Harris, Karla Hamner, John Singleton, Jacqueline Boone Allsup, Mike Shay, Carl O. Snowden, and Thomas Redmond, each of whom we represent with respect to this request. This request supplements the earlier MPIA request filed by the ACLU and Carl Snowden on March 6, 2012, which remains open at this time.

I. The Requesters

The ACLU of Maryland is a branch of the American Civil Liberties Union, a national organization that works to protect civil liberties of all people, including the safeguarding of basic constitutional rights to privacy and free expression. The ACLU of Maryland is responsible for serving the population in the State of Maryland. The communications department of the ACLU of Maryland is a division of the ACLU of Maryland that is responsible for disseminating information to the public about issues of concern to the ACLU of Maryland.

G. James (Jamie) Benoit is an Anne Arundel County Councilman, representing District 4. Mr. Benoit is a “person in interest” as defined under the MPIA, with respect to all documents relating to him personally.

Daryl D. Jones was a member of the Anne Arundel County Council from 2006 to 2012, and is a past Chair of the Anne Arundel County Democratic Central Committee. Mr. Jones is a “person in interest” as defined under the MPIA, with respect to all documents relating to him personally. Mr. Jones is mentioned by name in handwritten notes in the dossier pertaining to Carl Snowden produced by the County under the MPIA on March 13, 2012.

Alan H. Legum is an Annapolis attorney and a former member of the Anne Arundel County Ethics Commission. Mr. Legum is a “person in interest” as defined under the MPIA, with respect to all documents relating to him personally. Mr. Legum is

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mentioned by name in handwritten notes in the dossier pertaining to Carl Snowden produced by the County under the MPIA on March 13, 2012.

Lewis A. Bracy is a retired National Security Agency law enforcement officer, and a community activist in Anne Arundel County. Mr. Bracy is a “person in interest” as defined under the MPIA, with respect to all documents relating to him personally.

Dr. Kevin M. Maxwell is Superintendent of Schools for Anne Arundel County. Dr. Maxwell is a “person in interest” as defined under the MPIA, with respect to all documents relating to him personally.

Eugene Peterson is a member of the Anne Arundel County Board of Education. Mr. Peterson is a “person in interest” as defined under the MPIA, with respect to all documents relating to him personally.

Joan M. Harris is a former employee on John Leopold’s staff, who is challenging her termination in a federal court lawsuit, filed on March 15, 2012. Ms. Harris is a “person in interest” as defined under the MPIA, with respect to all documents relating to her personally.

Karla R. Hamner is a former employee on John Leopold’s staff, who is challenging alleged sexual discrimination and retaliation she suffered on the job, through a federal court lawsuit. (*Hamner v. Leopold*, Civil Action No. CCB-10-2485). Ms. Hamner is a “person in interest” as defined under the MPIA, with respect to all documents relating to her personally.

John M. Singleton is a Towson attorney who is providing counsel to Joan Harris and Karla Hamner in their lawsuits alleging employment discrimination and retaliation by John Leopold. Mr. Singleton is a “person in interest” as defined under the MPIA, with respect to all documents relating to him personally.

Jacqueline Boone Allsup is President of the Anne Arundel County Branch of the NAACP. Allsup is a “person in interest” as defined under the MPIA, with respect to all documents relating to her personally.

Mike Shay was the Green Party candidate in 2010 for Anne Arundel County Executive. Mr. Shay is a “person in interest” as defined under the MPIA, with respect to all documents relating to him personally.

Carl O. Snowden is Director of Civil Rights for the Office of the Maryland Attorney General, and a longtime civil rights activist in Anne Arundel County and the State of Maryland. Mr. Snowden is a “person in interest” as defined under the MPIA, with respect to all documents relating to him personally. He joins this request to the extent it supplements his MPIA request of March 6, 2012.

Thomas Redmond is a former member of the Anne Arundel County Council, and a Republican candidate for County Council in 2010. A partial file was produced concerning Mr. Redmond in the County’s March 13, 2012 response to the ACLU’s March 6 MPIA request, however, it was noted that records obtained through the Maryland Criminal Justice Information System (CJIS) were withheld. Mr. Redmond is a “person in interest” as defined under the MPIA, with respect to all documents relating to

him personally, and as such he has a right to access all such records, including those gathered through the CJIS.

## II. Basis of this Request

On March 2, 2012, John R. Leopold was indicted by the State of Maryland on charges of political corruption and misuse of the security detail provided to him through the Anne Arundel County Police Department to arrange sexual liaisons and to investigate and defeat political adversaries. In regard to the latter charges, the indictment states, at paragraph 24:

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 [Executive Protection Officers] did not consider these people to be security risks.

The ACLU and the named requesters are deeply concerned about this misuse of government resources infringing upon the political freedoms of law-abiding Marylanders simply to further Mr. Leopold's personal political agenda. We demand disclosure of full information about these activities. We believe the conduct alleged in the indictment may violate Maryland law, enacted in the wake of the Maryland State Police spying scandal of 2008, that restricts police from conducting investigations into activities protected by the First Amendment, unless conducted for a legitimate law enforcement purpose. Md. Code Ann., Public Safety Art., §§3-701, *et seq.* Additionally, we believe that use of police resources such as CJIS to gather information for political dossiers would constitute a crime under Maryland law.

## III. Instructions

The Requesters seek disclosure of any and all records,<sup>1</sup> documents, file(s), communications, memoranda, orders, agreements and/or instructions, compiled from December 4, 2006 to the present, that were prepared, received, transmitted, collected and/or maintained by you, and/or any divisions, departments, components that you worked with. The recipients are requested to produce the data and documents as they are kept in the normal course of business.

If the recipients do not now have data or documents responsive to a particular request, but later obtain possession, custody, or control of such data or documents, the recipients are requested to furnish such data and/or documents immediately thereafter. If the recipients cannot respond to a request completely, the recipients are requested to provide the answer to the extent possible, explain why the recipients cannot respond to the request completely, and provide all information and knowledge in the recipients' possession, custody, or control regarding the incomplete response. If any data or

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<sup>1</sup> The term "records" as used herein includes all records or communications preserved in electronic or written form, including but not limited to correspondence, documents, data, e-mails, text messages, phone logs, message slips, computer logs, videotapes, audio tapes, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, technical specifications, training manuals or studies.

document responsive to any request is unavailable, the recipients are to identify the data or document, provide an explanation concerning why the data or document is unavailable, and state where the data or document can be obtained.

If, in the course of responding to these data requests, the recipients determine that any instruction, definition, or data request is ambiguous, please contact counsel for the ACLU for any necessary clarification. In any such case, the response should set forth the language you feel is ambiguous and the interpretation you are using in responding to the request. If the recipients know, or have reason to believe, that another agency, department, or government official in Anne Arundel County or the State of Maryland has information sought in a request, or information related to a request, the recipients are requested to disclose the name of the specific agency or department that has the information.

#### IV. Requests

1. Any record of information kept by, prepared by or for, or compiled by or for members of the Anne Arundel County Police Department's executive protection detail concerning any individual or group, whether or not at the explicit direction of John Leopold.

2. Any record relating to any request or directive to keep, prepare, or compile any of the information referred to in Question 1 above, including, but not limited to, records relating to how, why, by whom, and/or when persons were selected to be the subject of any information gathering.

3. Any records relating to where, how, by whom, and from whom information referred to in Question 1 was obtained or collected, or the source of any such information.

4. Any record reflecting or relating to any dissemination of the information referred to in Question 1 above to any person or entity (whether in writing or orally or by any other means).

5. Any record relating or referring to G. James Benoit, Daryl Jones, Alan Legum, Lewis Bracy, Dr. Kevin Maxwell, 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 (to the extent not already provided in response to Question 1 above).

6. Any record relating to any request or directive to keep, prepare, or compile any of the information referred to in Question 5 above, including, but not limited to, records relating to how, why, by whom, and/or when persons were selected to be the subject of any information gathering.

7. Any records relating to where, how, by whom, and from whom information referred to in Question 5 was obtained or collected, or the source of any such information.

8. Any record reflecting or relating to any dissemination of the information referred to in Question 5 above to any person or entity (whether in writing or orally or by any other means).

9. Any records relating to any review or access to Maryland Criminal Justice Information System (CJIS) or National Criminal Information Center (NCIC) information concerning G. James Benoit, Daryl Jones, Alan Legum, Lewis Bracy, Dr. Kevin M. Maxwell, Eugene Peterson, Joan M. Harris, Karla Hamner, John Singleton, Jacqueline Boone Allsup, Mike Shay, Carl Snowden, and Thomas Redmond, or any other person not suspected of criminal activity or not undertaken for a legitimate law enforcement purpose, including logs and/or information about the identity of the person accessing the information, date of access, reason for access, and identity of person(s) who directed that such information be accessed. As “persons in interest” under the MPIA, each of the individual requesters is entitled to disclosure of this information that would otherwise be exempt from disclosure under the law.

10. Any record of or related to any agreement between the Anne Arundel County Police Department and any agencies responsible for administering the Maryland Criminal Justice Information System, including, but not limited to, the agreement required by Md. Code, Crim. Proc. § 10-217, and any records related to the implementation of any responsibilities undertaken pursuant to that agreement, or any other agreements that may be responsive.

#### V. Waiver of Fees

The ACLU of Maryland requests a waiver of all fees pursuant to State Government Article §10-621(e), which allows the custodian to waive fees when the applicant requests a waiver and “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.” Moreover, under the Freedom of Information Act, 5 U.S.C. §552(a)(4)(A)(ii)II, “[d]ocuments shall be furnished without any charge ... if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” The ACLU of Maryland is a non-profit, tax-exempt organization dedicated to the public interest—protecting the civil liberties of the citizens of and visitors to Maryland. Disclosure of the requested information is in the public interest. This request will further public understanding of government conduct; specifically, the surveillance and collection of information about individuals on the basis of political views or affiliation, or the perception that these individuals are political adversaries. This type of government activity concretely affects many individuals and groups and implicates basic privacy, free speech, and associational rights protected by the Constitution. In addition, disclosure of the requested information will aid public understanding of the implications of governmental spying upon individuals without a threshold showing of suspected criminal activity. Understanding the current scope of the Anne Arundel County government’s surveillance of law-abiding individuals is, therefore, crucial to the public’s interest in understanding recent developments in the law vis-à-vis their rights.

As a nonprofit 501(c)(3) and 501(c)(4) organization, the ACLU of Maryland is well-situated to disseminate information it gains from this request to the general public as well as to immigrant, religious, politically active, and other targeted communities, and to

groups that protect constitutional rights. Because the ACLU of Maryland meets the test for a fee waiver under FOIA, fees associated with responding to FOIA requests are regularly waived for ACLU affiliates and should therefore be waived under MPIA.

VI. Expediting Processing Request.

Section 10-614(b) requires a response to this request within 30 days. Expedited processing is warranted in analogous federal situations where there is “an urgency to inform the public about actual or alleged federal government activity” by organizations “primarily engaged in disseminating information.” 28 C.F.R. § 16.5(d)(1)(ii).

This request implicates a matter of urgent public concern; namely, the surveillance of individuals by the government based upon their political activities and the perception that these individuals are political adversaries. Such government activity may infringe upon the public’s free speech, free association, and privacy rights, which are guaranteed by the First, Fourth, Fifth, and Fourteenth Amendments to the United States Constitution. In addition, as described above, the ACLU of Maryland is well situated to disseminate information it gains from this request to the general public as well as to immigrant, religious, politically active, and other targeted communities, and to groups that protect constitutional rights. Given the urgency of the matter and the ACLU’s nature, expedited processing is warranted here.

Finally, if you determine that some portions of the requested records are exempt from disclosure, we will expect, as the Act provides in § 10-614 (b)(3)(iii), that you provide us with “any reasonable severable portion” of the records sought. See Blythe v. State, 161 Md. App. 492, 870 A.2d 1246 (2005) (holding that “the denials of inspection that are permitted are not blanket denials for an entire record but are more narrowly focused denials of “a part of public record”).

If all or any part of this request is denied, please provide us with a written statement of the grounds for the denial, citing the law or regulation under which you believe you may deny access. If this is the case, we also request that you inform us of the available remedies for review of the denial.

In addition, we would like to call your attention to the discretionary nature of § 10-618(f)(1)(ii) exemptions to the duty to disclose. If such an exemption to the MPIA is asserted it will be construed narrowly by the courts, and the burden rests on the custodian of the records to show that such records should not be released. See Cranford v. Montgomery, 300 Md. 759, 777, 481 A.2d 221 (1984).

Thank you for your prompt attention to this matter. Please furnish all applicable records to me at the following address:

ACLU of Maryland  
3600 Clipper Mill Rd.  
Suite 350  
Baltimore, MD 21211

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief.

Sincerely,

Deborah A. Jeon  
Legal Director

Cc: Jonathan Hodgson, Esq.  
County Council Chairman Derek Fink  
County Council Vice Chairman Jerry Walker  
County Council Member John J. Grasso  
County Council Member G. James Benoit  
County Council Member Dick Ladd  
County Council Member Chris Trumbauer

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