



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

March 27, 2012

Carole J. Shelton  
Maryland Criminal Justice Information System Central Repository  
Department of Public Safety and Correctional Services  
6776 Reisterstown Road, Suite 205  
Baltimore, MD 21215

Jillian Watts  
Chief Terminal Officer  
Maryland State Police  
1201 Reisterstown Road  
Pikesville, MD 21208

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Dear Ms. Shelton and Ms. Watts,

This letter constitutes a request under the Maryland Public Information Act (“MPIA”), Md. Code, State Gov. §§ 10-611 to 628, and all applicable regulations, as well as pursuant to Md. Code, Crim. Proc. § 10-222 (allowing an individual or his or attorney to inspect criminal history record information [hereinafter CHRI]), COMAR § 12.15.01.05.A(1) (same), Md. Code, Crim. Proc. § 10-223 (allowing an individual who has inspected his or her CHRI to “challenge the completeness, contents, accuracy, or dissemination of this information”) (emphasis added), COMAR § 12.15.01.07.A (same), on behalf of Jacqueline Boone Allsup, G. James Benoit, Lewis A. Bracy, Joshua J. Cohen, Donald H. Dwyer, Laurie Garvey, Karla R. Hamner, Joan M. Harris, Alan H. Legum, Dr. Kevin M. Maxwell, Eugene Peterson, Thomas Redmond, Mike Shay, John Singleton, and Carl O. Snowden, each of whom we represent with respect to this request. This letter also serves as a formal request to preserve evidence, as detailed below.

Pursuant to the above statutes, we seek on their behalf, and as their attorneys and representatives, to inspect and/or copy and/or obtain copies of any logs, from December 4, 2006 to the present, indicating whether any member of the Anne Arundel County Police Department accessed criminal history record information (CHRI) about them (either through CJIS or NCIC), and, if so, any logs indicating the identity of the law enforcement officer accessing such information, and the date, time, location, and reason for such access (and any other information about such access as may be maintained). We have enclosed written authorizations from each individual regarding this request.

I. The Requesters

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.

OFFICERS AND DIRECTORS  
SARA N. LOVE  
PRESIDENT

SUSAN GOERING  
EXECUTIVE DIRECTOR

C. CHRISTOPHER BROWN  
GENERAL COUNSEL

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.

Joshua J. Cohen is the Mayor of Annapolis. Mayor Cohen is a “person in interest” as defined under the MPIA, with respect to all documents relating to him personally.

Donald H. Dwyer is a Maryland State Delegate from Anne Arundel County, representing Legislative District 31. Delegate Dwyer is a “person in interest” as defined under the MPIA, with respect to all documents relating to him personally.

Laurie Garvey is a former employee on John Leopold’s staff, who has claimed that she was subjected to gender discrimination and wrongfully terminated by Mr. Leopold, and has served as a witness for other women claiming discriminatory treatment. Ms. Garvey 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.

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.

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.

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.

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 Anne Arundel County Police Department’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.

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.

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.

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.

## 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 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 EPOs did not consider these people to be security risks.

On March 6, the ACLU filed a comprehensive request under the Maryland Public Information Act seeking records compiled by Leopold, the Office of the County Executive, or the Anne Arundel County Police on Mr. Snowden, Ms. Conti, or any other perceived political opponent of Mr. Leopold. See Attachment A. In a preliminary and partial response on March 13, the Police Department produced certain files on Mr. Snowden (including information concerning his son and ex-wife), Ms. Conti and her husband, and Thomas Redmond, a former Anne Arundel County Council member. In the cover letter accompanying the files, the Police Department noted that it was withholding documents from the dossier on Mr. Redmond that came from the CJIS database, as dissemination of those records to third parties would be unlawful. See Attachment B.

The Police Department’s response indicates to us that the CJIS database may have been improperly accessed for non-law enforcement purposes, and/or that the information obtained from the database may have been illegally disseminated to the County Executive, or other persons outside of the criminal justice agency. We have also heard from sources within the police department (who wish to remain anonymous due to fear of retaliation) that CJIS data was improperly accessed and disseminated. Additionally, Anne Arundel County Police Chief James Teare has informed the Maryland State Police, by letter dated March 19, 2012, that the County Office of Law had reviewed the dossiers collected by police for Mr. Leopold and “[b]ased on their review, it was determined 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.”

If CHRI was accessed for a non-law enforcement purpose, and/or disseminated to the County Executive, or other persons outside of the criminal justice agency, such access and/or dissemination would be unlawful. At a minimum, this conduct would constitute a violation of COMAR §§ 12.15.01.10.A and E (prohibiting criminal justice agencies from disseminating CHRI “except in accordance with federal and State laws and regulations.”

and providing that “The use of CHRI by an authorized agency or individual is limited to the specific purpose or purposes stated in this chapter and may not be disseminated further except with specific authorization”); 12.15.01.11.A(1) (allowing a criminal justice agency to request CHRI only if it has a need for the information in the performance of its function as a criminal justice agency); and 28 C.F.R. 20.33(a)(1) (limiting access to CHRI “[t]o criminal justice agencies for criminal justice purposes”); as well as Md. Code Crim. Proc. §§ 10-214(e)(2) (providing that “[a] criminal justice unit may disseminate criminal history record information maintained under paragraph (1) of this subsection only in accordance with § 10-219 of this subtitle.”) and 10-219(a) (providing that “[e]xcept in accordance with applicable federal law and regulations, a criminal justice unit and the Central Repository may not disseminate criminal history record information.”). In addition, the use of CJIS to compile dossiers about political opponents would be unlawful under Md. Code Ann., Public Safety Art., §§3-701.

### III. Instructions

The Requesters seek disclosure of any and all responsive records<sup>1</sup>, documents, file(s), communications, or data, 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 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 records (including, but not limited to CJIS or NCIC logs), from December 4, 2006 to the present, indicating whether any member of the Anne Arundel

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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, faxes, files, notes, orders.

County Police Department accessed criminal history record information (CHRI) about each requester (either through CJIS or NCIC), and, if so, any records indicating the identity of the law enforcement officer accessing such information, and the date, time, location, and reason for such access (and any other information about such access as may be maintained).

V. Waiver of Fees

We request 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.” 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, because some or all of the requestors will have the ACLU disseminate the information upon its release (of course the ACLU will not disseminate any information without the approval of the subject of the record). 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.

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As a nonprofit 501(c)(3) and 501(c)(4) organization, with regular print and web publications, the ACLU of Maryland is well-situated to disseminate information obtained from this request to the general public. In addition, the requestors are individuals who have been once victimized by the improper data collection effort. They should not be further victimized by being forced to bear the costs of exposing the extent of the governmental misconduct.

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 obtained from this request to the general public. This matter has also received considerable press attention since the County Executive’s indictment, generating almost daily press coverage, including extensive coverage of the precise

subject of this request, namely the improper utilization of the CJIS or NCIC databases. Given the urgency of the matter, expedited processing is warranted here.

In addition, 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 will 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, and generally describing the responsive record at issue. 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).

Finally, we also request that you preserve, for possible use as evidence in legal proceedings, any logs relating to access to CHRI through CJIS or NCIC by the Anne Arundel County Police Department beyond the 3 years specified in COMAR § 12.15.01.10.D, and to promptly notify us that such logs are or are not being preserved so that we may take appropriate action on our clients behalf to ensure such preservation. This request is not limited to logs related to access to information of the individuals named below, because information about other persons may have been improperly accessed (and disseminated), and such persons may seek our assistance regarding such improper access (and dissemination).

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

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

We 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

David R. Rocah  
Staff Attorney

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Encl.

cc: Stuart M. Nathan, Esq.  
Ronald M. Levitan, Esq.