

IN THE CIRCUIT COURT FOR WICOMICO COUNTY, MARYLAND

AMERICAN CIVIL LIBERTIES :  
UNION FOUNDATION OF :  
MARYLAND, *et al.*, :  
  
Plaintiffs, :  
  
v. : Case No.: C-22-CV-17-000440  
  
CITY OF SALISBURY, *et al.*, :  
  
Defendants. :  
  
: : : : : : : : : : : :

**PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT**

Plaintiffs American Civil Liberties Union of Maryland and The Real News Network, by and through undersigned counsel, pursuant to Maryland Rules 2-311 and 2-501, move for summary judgment and an order requiring Defendants to produce any non-privileged public records within their possession or control and within the scope of Plaintiffs’ request under the Maryland Public Information Act, for the reasons set forth in the Court’s May 31, 2018 order and the memorandum of law attached hereto, incorporated herein, and filed contemporaneously herewith.

Date: July 19, 2018

Respectfully Submitted,

\_\_\_\_\_  
/s/

Charles D. Austin  
Lauren H. Williams  
CROWELL & MORING LLP  
1001 Pennsylvania Avenue NW  
Washington, DC 20004  
(202) 624-2500 (tel)  
(202) 628-5116 (fax)  
caustin@crowell.com  
lwilliams@crowell.com



**IN THE CIRCUIT COURT FOR WICOMICO COUNTY, MARYLAND**

**AMERICAN CIVIL LIBERTIES** :  
**UNION FOUNDATION OF** :  
**MARYLAND, *et al.*,** :  
  
    **Plaintiffs,** :  
  
    **v.** :           **Case No.: C-22-CV-17-000440**  
  
**CITY OF SALISBURY, *et al.*,** :  
  
    **Defendants.** :  
  
:   :   :   :   :   :   :   :   :   :   :   :   :

**PLAINTIFFS’ MEMORANDUM OF LAW  
IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

Plaintiffs American Civil Liberties Union (“ACLU”) of Maryland and The Real News Network (“TRNN”), by and through undersigned counsel, submit this Memorandum of Law in support of Plaintiffs’ Motion for Summary Judgment and request for an order requiring Defendants to produce any non-privileged public records within their possession or control and within the scope of Plaintiffs’ request under the Maryland Public Information Act (“MPIA”), and further state as follows:

**FACTUAL BACKGROUND**<sup>1</sup>

In November 2016, Plaintiffs submitted a request under the MPIA, Md. Code, Gen. Provisions §§4-101 *et seq.*, to the City of Salisbury (the “City”), the Salisbury Police Department, and the City’s Public Information Officer, Christopher Demone. The request sought documents related to the settlement of a federal civil rights police brutality lawsuit between four Salisbury University students and the City of Salisbury. Through

---

<sup>1</sup> The full factual background of this action has been set forth in Plaintiffs’ prior filings and in the Court’s May 31, 2018 opinion denying Defendants’ Motion to Dismiss or, in the alternative, for Summary Judgment. Plaintiffs set forth here only a brief summary of the facts.

various correspondences with Plaintiffs, Mr. Demone, on behalf of the City and its police department, stated that the City did not have possession of any responsive documents and referred Plaintiffs to the City's insurer, the Local Government Insurance Trust ("LGIT"), an entity not independently covered by the MPIA.

In June 2017, Plaintiffs filed this action asserting that Defendants improperly denied Plaintiffs' November 2016 MPIA request. In response, Defendants filed various motions seeking dismissal of the action on procedural grounds and asserting purported defenses for not producing any responsive documents. After the Circuit Court for Baltimore City transferred this action to this Court, Defendants moved for dismissal on procedural grounds and, alternatively, on the merits. As to the merits, Defendants argued they did not have in their possession any responsive documents and thus that they were entitled to judgment. On May 24, 2018, this Court held oral argument on Defendants' Motion to Dismiss or, in the alternative, for Summary Judgment.

In its May 31, 2018 memorandum opinion, this Court denied each of Defendants' arguments for dismissal or summary judgment. The Court rejected Defendants' arguments that (1) this action should be dismissed for lack of joinder and (2) Defendants are not obligated to produce responsive documents drafted and possessed by the City's insurer, which acted on the City's behalf in defending and settling the federal litigation relevant to Plaintiffs' MPIA request. This Court determined that, at least for the purposes of resolving the federal litigation relevant to Plaintiffs' MPIA request, LGIT was an agent or instrumentality of the City. As a result, Defendants' MPIA obligations extend to responsive documents created by and within the possession of LGIT.

## ARGUMENT

Summary judgment is required where “there is no genuine dispute as to any material fact” and “the party in whose favor judgment is entered is entitled to judgment as a matter of law.” Md. Rule 2-501(f). As this Court noted, the underlying facts are not in dispute. Op. & Order at 4. This Court’s wholesale rejection of Defendants’ summary judgment arguments demonstrates Plaintiffs’ entitlement to judgment as a matter of law.

In its May 31, 2018 opinion, this Court rejected each of Defendants’ legal arguments for not producing any documents responsive to Plaintiffs’ MPIA request. First, this Court rejected Defendants’ contention that they were not obligated to produce records over which they lacked physical possession. Op. & Order at 7-8. The order explained it is “apparent that LGIT is an instrumentality of the City of Salisbury because LGIT is an agent of the City,” and thus Defendants were not entitled to summary judgment on the basis that LGIT, and not the City or its employees, exercised physical possession of any public records, including the federal settlement agreement. *Id.* at 8. Second, this Court rejected Defendants’ claim that this matter should be dismissed for lack of joinder. *Id.* at 8-11. Third, the purported confidentiality clause in the federal settlement agreement did not justify Defendants’ failure to produce the settlement agreement. *Id.* at 12. Fourth, Defendants did not demonstrate that any privilege applied to prevent disclosure of any responsive documents. *Id.* at 12-13. Fifth, this Court concluded that fees and costs are available under the MPIA. *Id.* at 13-14.

Summary judgment for Plaintiffs is appropriate now because Defendants have acknowledged the existence of at least one responsive document—the federal settlement agreement—and have not offered any sufficient basis for withholding that or any other

responsive document at this time. The Court's May 31, 2018 opinion explained that Defendants' legal bases are insufficient to support judgment in their favor. Defendants did not assert that the executed settlement agreement was protected by any privilege, and the Court acknowledged that the work product privilege does not prevent disclosure of that document. *See Op. & Order* at 12-13. Indeed, the attorney-client privilege cannot apply to a signed settlement agreement viewed and executed by parties other than the City and its counsel. Furthermore, Defendants have not established that any privilege prevents disclosure of the settlement agreement or any other responsive document.<sup>2</sup> *See Op. & Order* at 13.

An order entering summary judgment for Plaintiffs and requiring Defendants to produce any responsive, non-privileged document, such as the federal settlement agreement, may resolve the merits of this dispute without the time and expense required by trial or any other hearings on the merits. *See Whitcomb v. Horman*, 244 Md. 431, 443 (1966) ("One of the beneficent purposes of the Summary Judgment Rule is to prevent the necessity and expense of preparing for trial on the merits when there is no genuine dispute of fact in the case . . . ."). In support of this Motion, Plaintiffs' hereby incorporate both the arguments in their Opposition to Defendants' Motion to Dismiss or, in the alternative, for Summary Judgment, and the reasoning of this Court's May 31, 2018 Opinion and Order denying Defendants' Motion to Dismiss or, in the alternative, for Summary Judgment. For the reasons stated here and in those documents, the Court should require Defendants to produce the settlement agreement and any other responsive,

---

<sup>2</sup> As the Court noted, Defendants' privilege assertions for documents not yet identified specifically are premature. *Op. & Order* at 13. Plaintiffs reserve their rights to challenge the validity of any privilege assertion as to documents Defendants have yet to identify. If Defendants identify with specificity any withheld documents and a potentially applicable privilege, the Court may address those privilege claims upon an appropriate motion.

non-privileged documents, whether in the physical possession or control of the City, its employees, or its agents as determined by law or the Court's May 31, 2018 Opinion and Order. If they intend to withhold any responsive documents, Defendants should be required to provide a privilege log or "*Vaughn* index" that identifies all purportedly privileged documents and the asserted privilege for each document. *See Blythe v. State*, 161 Md. App. 492, 521 (2005).

## CONCLUSION

For the foregoing reasons, set forth explicitly or by incorporation, summary judgment for Plaintiffs is appropriate here. Plaintiffs respectfully request that this Court order Defendants to produce the settlement agreement (and any other responsive, non-privileged documents) within ten (10) days of the Court's order. Upon entry of such an order, Plaintiffs reserve their right to move for an award of costs and attorneys' fees pursuant to Md. Code G.P. § 4-362(f).

Date: July 19, 2018

Respectfully Submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
\_\_\_\_\_

Charles D. Austin  
Lauren H. Williams  
CROWELL & MORING LLP  
1001 Pennsylvania Avenue NW  
Washington, DC 20004  
(202) 624-2500 (tel)  
(202) 628-5116 (fax)  
caustin@crowell.com  
lwilliams@crowell.com

Deborah A. Jeon  
Nicholas T. Steiner  
ACLU Foundation of Maryland  
3600 Clipper Mill Road Suite 350  
Baltimore, MD 21211  
(410) 889-8555  
jeon@aclu-md.org  
steiner@aclu-md.org

*Counsel for Plaintiffs  
ACLU of Maryland and TRNN*



**CERTIFICATE OF COMPLIANCE WITH RULE 20-201**

Pursuant to Maryland Rule of Civil Procedure 20-201, I hereby certify that the foregoing filing does not contain any restricted information under Rule 1-322.1.

/s/  
\_\_\_\_\_  
*Counsel for Plaintiffs*  
*ACLU of Maryland and TRNN*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 19th day of July 2018, a copy of the foregoing was sent via First Class United States Mail, postage prepaid, with electronic notice to:

Mr. E.I. Cornbrooks, IV  
Karpinski, Colaresi & Karp, P.A.  
120 East Baltimore Street  
Suite 1850  
Baltimore, Maryland 21202

*Counsel for Defendants*

/s/  
\_\_\_\_\_  
*Counsel for Plaintiffs*  
*ACLU of Maryland and TRNN*

IN THE CIRCUIT COURT FOR WICOMICO COUNTY, MARYLAND

AMERICAN CIVIL LIBERTIES :  
UNION FOUNDATION OF :  
MARYLAND, *et al.*, :

Plaintiffs, :

v. : Case No.: C-22-CV-17-000440

CITY OF SALISBURY, *et al.*, :

Defendants. :

: : : : : : : : : : : :

**[PROPOSED] ORDER**

Upon consideration of Plaintiffs’ Motion for Summary Judgment, it is, this \_\_\_\_  
day of \_\_\_\_\_, 2018, by the Circuit Court for Wicomico County, Maryland, hereby

**ORDERED**, that the Motion is **GRANTED**. It is further

**ORDERED** that within ten (10) days of this Order, Defendants shall produce all  
responsive, non-privileged documents within their possession, custody, or control and  
within the scope of Plaintiffs’ request under the Maryland Public Information Act,  
including the settlement agreement identified in Plaintiffs’ request.

\_\_\_\_\_  
JUDGE OF THE CIRCUIT COURT  
FOR WICOMICO COUNTY, MARYLAND