

**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;

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FILED

Civil Case No. _____

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
44 Calvert Street
Annapolis, Maryland 21404;

**ANNE ARUNDEL COUNTY
OFFICE OF THE COUNTY EXECUTIVE**
44 Calvert Street
Annapolis, Maryland 21404; and

**ANNE ARUNDEL COUNTY
POLICE DEPARTMENT**
8495 Veterans Highway
Millersville, Maryland 21108,

Defendants.

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 Office of the County Executive (“County Executive”) and Defendant Anne Arundel County Police Department (“Police Department”), allege as follows:

INTRODUCTION

1. This is an action for equitable and monetary relief arising from Defendants' refusal to comply with their obligations under the Maryland Public Information Act ("MPIA"), Md. Code Ann., State Gov't §§ 10-611-630, which prohibits inappropriate creation or compilation of personal records and requires a governmental custodian to permit any person to inspect any public record at any reasonable time.

2. On March 2, 2012, John R. Leopold, 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 Defendant 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 fear that Leopold (or other employees of the County Executive) may have directed, requested, or encouraged county police officers or other county employees to investigate them and compile 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 compilation of these dossiers and on Defendants’ improper denials of Plaintiffs’ repeated requests for information under the MPIA.

6. Defendants’ compilation of 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 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 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

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.

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.

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 Defendant Police Department 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.

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 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 Defendant Police Department 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 improperly conducted at Leopold's request. Moreover, a cover letter to the

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.

March 13, 2012 response (attached as Ex. 10) indicates that some records about Redmond, which were obtained through CJIS, were withheld.

16. Plaintiff Lewis A. Bracy is a retired National Security Agency law enforcement officer and a community activist in Anne Arundel County.

17. 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 Defendant 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.

18. 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.

19. 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, Chief 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.

20. Plaintiff Jacqueline Irene Allsup is president of the Anne Arundel County Branch of the NAACP.

21. 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 Defendant 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...."

22. Plaintiff Karla R. Hamner is a former member of Leopold's staff.

23. 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).

24. 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 Defendant 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, Ms. Hamner 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.

25. Plaintiff Joan M. Harris is a former member of Leopold's staff.

26. 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).

27. 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 Defendant 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.

28. Plaintiff Eugene Peterson is a former member of the Anne Arundel County Board of Education.

29. 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 Defendant 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....”

30. Plaintiff Eric Lionel Martin Scott is a Sergeant in the Defendant Police Department. Sgt. Scott is an African-American officer, and has taken a leadership role in raising concerns about the need for increased diversity within the Defendant Police Department and about discriminatory treatment suffered by minority officers.

31. 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 Defendant 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....”

32. Plaintiff Mike Shay was the Green Party's candidate in 2010 for Anne Arundel County Executive.

33. 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 Defendant 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....”

34. Plaintiff John M. Singleton is a Towson, Maryland attorney representing Joan Harris and Karla Hamner in their lawsuits against Leopold.

35. 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 Defendant 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.

36. Defendant John R. Leopold is the current County Executive for Anne Arundel County, Maryland. His office is located at 44 Calvert Street, Annapolis, Maryland 21404. Defendant Leopold is the executive officer for Anne Arundel County, which is a political subdivision of the State of Maryland.

37. Defendant Anne Arundel County Office of the County Executive (“County Executive”) is located at 44 Calvert Street, Annapolis, Maryland 21404. Defendant County Executive is a unit or instrumentality of Anne Arundel County, which is a political subdivision of the State of Maryland.

38. Defendant Anne Arundel County Police Department (“Police Department”) is a law enforcement agency with its headquarters at 8495 Veterans Highway, Millersville, Maryland 21108. Defendant Police Department is a unit or instrumentality of Anne Arundel County, which is a political subdivision of the State of Maryland.

JURISDICTION AND VENUE

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

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

FACTUAL BACKGROUND

First MPIA Request

41. On March 2, 2012, the State of Maryland filed an indictment against 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.”

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

43. 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... .”

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

45. The documents produced in Defendant 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 Defendant Police Department to have collected any of the Snowden records produced.³

³ The police records 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 Defendant Police Department, other than for legitimate law enforcement purposes.

46. Defendant 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 Defendant Police Department were not publicly available.

Second MPIA Request

47. 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.

48. 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... ."

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

50. According to Chief Teare's March 19 letter, the files maintained by the Defendant 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, Chief 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.)

Third MPIA Request

51. 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.

52. 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

53. 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

54. 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

55. On March 30, 2012, Defendant 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.)

56. Despite Defendant County Executive's denial, defendant 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 and should have been in Defendant County Executive's possession.

57. Also despite Defendant County Executive's denial, Colonel James Teare Sr.'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, Colonel 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.

58. Also on March 30, 2012, Defendant Police Department 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 Defendant 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.)

59. In other words, Defendant Police Department acknowledges having responsive records regarding the individual Plaintiffs, but refuses to disclose them based on speculation that the records “likely constitute evidence” in the criminal case against Mr. Leopold, and erroneously claiming that this means they constitute “investigatory records” that may be withheld pursuant to the MPIA.

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

61. On information and belief, Plaintiffs aver that the State Prosecutor has not interposed any objection to Defendants releasing the responsive records.

The Leopold Dossiers Were Not Created for a Law Enforcement Purpose

62. Defendants have not asserted a valid law enforcement purpose for the initial creation, compilation, or dissemination of information about the individual Plaintiffs (or other subjects).

63. 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 Defendant County Executive were not active police officers at the time the information was acquired

64. On information and belief, Plaintiffs aver that at least some officers acquired information for the Leopold dossiers at the direction of Defendant County Executive without first determining whether the information was relevant to any ongoing criminal investigation.

Improper Searches of Criminal History Databases

65. On information and belief, Plaintiffs aver that certain individuals, working at the direction of Defendant County Executive and with the consent of the Defendant Police Department, obtained confidential criminal history records on several Plaintiffs.

66. Timothy P. Phelan, an officer of Defendant Police Department assigned to Leopold's EPO detail, searched CJIS on September 12, 2008, for information about Plaintiff Redmond. (Ex. 9.)

67. 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 Defendant 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.

68. 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."

69. On information and belief, there was no legitimate law enforcement purpose for Officer 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.

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

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

72. 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.

73. 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.

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

75. 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.

76. 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.

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

78. 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.)

79. On November 17, 2009, Detective Donohue searched CJIS for information on Plaintiff Lewis Bracy. (*See* Defendant 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.)

80. 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.

Equitable Relief

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

82. 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.

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

84. There exists no adequate remedy at law.

COUNT ONE

Improper Collection of Personal Information

85. Plaintiffs incorporate by reference the allegations made in paragraphs 1 through 84 above as if each were separately restated herein.

86. The records compiled by Defendants about each Plaintiff are "personal records" under the MPIA, Md. Code Ann., State Gov't. § 10-624(a).

87. There was no legitimate need for Defendants to compile records about any Plaintiff, and their compilation thus 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."

COUNT TWO

Improper Maintenance of Information Without a Legitimate Governmental Purpose

88. Plaintiffs incorporate by reference the allegations made in paragraphs 1 through 84 above as if each were separately restated herein.

89. The records compiled by Defendants about each Plaintiff were not “needed . . . to accomplish a governmental purpose that is authorized or required to be accomplished under: (i) a statute or legislative mandate; (ii) an executive order of the Governor; (iii) an executive order of the chief executive of a local jurisdiction; or (iv) a judicial rule,” and thus violated Md. Code Ann., State Gov’t. § 10-602, which prohibits governmental units from “keep[ing]” such information.

COUNT THREE

Improper Denial of Access to Public Records

90. Plaintiffs incorporate by reference the allegations made in paragraphs 1 through 84 above as if each were separately restated herein.

91. The records requested by Plaintiffs are public records under Defendants’ possession, custody, and control.

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

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

94. Defendants have violated the MPIA by improperly withholding records responsive to Plaintiffs’ MPIA requests.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Enter a declaratory judgment in favor of Plaintiffs that Defendants have violated the MPIA by improperly collecting personal information about Plaintiffs without a clearly established need;

B. Enter a declaratory judgment in favor of Plaintiffs that Defendants have violated Md. Code Ann., State Gov't. § 10-602 by keeping records about Plaintiffs that were not needed to accomplish any authorized governmental purpose;

C. Enter a declaratory judgment in favor of Plaintiffs that Defendants have violated the MPIA by improperly withholding responsive records;

D. Order Defendants to produce all responsive records;

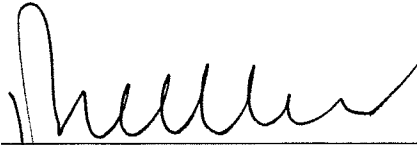
E. Order Defendants to provide the originals of any improperly collected or created records to Plaintiffs, to inform Plaintiffs about any and all dissemination of such records, and to destroy any copies of such records in Defendants' possession and control;

F. Award each Plaintiff at least one dollar in nominal or actual compensatory damages for Defendants' violation of Plaintiffs' rights under the MPIA;

G. Award Plaintiffs all costs incurred, including attorneys' fees, in maintaining this action, as authorized under the MPIA; and

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

Date: December 12, 2012

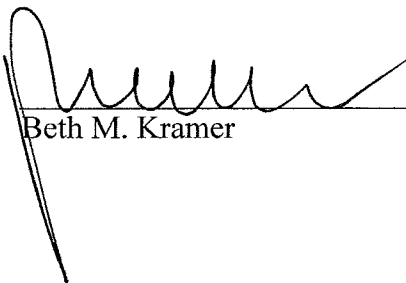


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I hereby certify that I have been admitted to practice law by the Court of Appeals of Maryland.



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