



March 6, 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:

AMERICAN CIVIL
LIBERTIES UNION OF
MARYLAND FOUNDATION
3600 CLIPPER MILL ROAD
SUITE 350
BALTIMORE, MD 21211
T/410-889-8555
F/410-366-7838
WWW.ACLU-MD.ORG

OFFICERS AND DIRECTORS
SARA N. LOVE
PRESIDENT

SUSAN GOERING
EXECUTIVE DIRECTOR

C. CHRISTOPHER BROWN
GENERAL COUNSEL

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 and Carl O. Snowden, whom we represent with respect to this request.

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.

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.

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 Mr. Snowden 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. In addition to forming the basis of alleged criminal violations, 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.*

III. Instructions

The Requesters seek disclosure of any and all records,¹ 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 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.

¹ 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.

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 policies relating to the information collection referred to in Question 1 above.

5. 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).

6. Any record relating or referring to Carl Snowden, Joanna Conti, 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).

7. Any record relating to any request or directive to keep, prepare, or compile any of the information referred to in Question 6 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.

8. Any records relating to where, how, by whom, and from whom information referred to in Question 6 was obtained or collected, or the source of any such information.

9. Any policies relating to the information collection referred to in Question 6 above.

10. Any record reflecting or relating to any dissemination of the information referred to in Question 6 above to any person or entity (whether in writing or orally or by any other means).

11. Any policies complying with or implementing the requirements of Md. Code, Pub. Safety § 3-701(m), and any other record relating to implementation of, compliance with, or training related to such policies.

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

AMERICAN CIVIL
LIBERTIES UNION OF
MARYLAND

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