

**IN THE CIRCUIT COURT FOR
BALTIMORE CITY, MARYLAND**

**INSTITUTE FOR CONSTITUTIONAL
ADVOCACY AND PROTECTION**

600 New Jersey Ave. N.W.
Washington, D.C. 20001

Plaintiff,

v.

BALTIMORE POLICE DEPARTMENT

601 East Fayette Street
Baltimore, MD 21202

Defendants.

Case No.: _____

COMPLAINT

1. This is an action challenging as unlawful under the Maryland Public Information Act (MPIA) the failure of Defendant Baltimore Police Department (BPD) to disclose records reflecting how it handles MPIA fee-waiver requests.

2. The MPIA provides the public with a broad right of access to government records to facilitate government transparency and increase public accountability. To ensure that the cost of obtaining such records does not serve as a barrier to public inspection and education, the MPIA authorizes any responding agency to waive the fees associated with processing a request for

records if doing so would be in the “public interest.” Md. Code G.P.

§ 4-206(e). Consistent with this statutory command, BPD’s official policy provides that “[a]ll requests to waive a fee must be considered and granted if the documents and/or information requested are in the general interest of the public.” BPD, Policy 603 (May 7, 2017), *available at* <https://perma.cc/EUC9-L9CJ> (emphasis in original).

3. In practice, however, requesters often find that BPD denies fee waivers. As a result, requesters face fees that are financially burdensome, at best, and cost prohibitive, at worst.

4. To understand better how BPD processes fee-waiver requests, Plaintiff Institute for Constitutional Advocacy and Protection (ICAP) submitted an MPIA request on September 18, 2020, asking for records of any BPD policies governing fee waivers and records sufficient to show to whom BPD had granted or denied fee waivers since January 1, 2018. In response, BPD produced only one document: a policy that was already publicly available. BPD explicitly refused to produce any records documenting to whom it had granted or denied fee waivers because producing such records would involve “hand pulling” the responsive documents.

5. Because there is no “hand pulling” exception to the MPIA, ICAP brings this suit to vindicate its rights to these public records and to enable the public to be better informed about how BPD processes fee-waiver requests.

PARTIES

6. Plaintiff Institute for Constitutional Advocacy and Protection is a non-profit legal institute based at Georgetown University Law Center whose mission is to use the power of the courts to defend American constitutional rights and values. This includes using the courts as a means for increasing government transparency at the local, state, and federal level. As part of this effort, ICAP has litigated cases involving government records in Maryland and police misconduct in the BPD. ICAP also publishes press releases, opinion articles, and reports, and it frequently submits public records requests. Depending on the content of the records received here if relief is granted, ICAP will share what it has learned with the public through its Medium blog page, Twitter, an op-ed, and/or other available means.

7. Defendant Baltimore Police Department is the custodian of the requested records.

JURISDICTION AND VENUE

8. This Court has jurisdiction under Md. Code G.P. § 4-362(a)(1). Venue is proper in this Court under Md. Code G.P. § 4-362(a)(3)(ii).

FACTS

9. On September 18, 2020, ICAP submitted an MPIA request seeking the following records:

1. Any policy, rule, directive, guideline, or similar record governing under what circumstances BPD grants a fee waiver to individuals and/or entities who submit an MPIA request;
2. Records sufficient to show, for every MPIA request for which BPD has granted a fee waiver since January 1, 2018, the (a) identity of the requester, (b) the subject matter of the request, and (c) the amount of the fees that were waived; and
3. Records sufficient to show, for every MPIA request for which BPD has denied a fee waiver since January 1, 2018, the (a) identity of the requester, (b) the subject matter of the request, and (c) the amount of the fees that were not waived.

See Exhibit A. ICAP also sought a fee waiver for any costs associated with the request. *Id.*

10. ICAP sought records “sufficient to show” who had been granted or denied a fee waiver in order to reduce the burden of responding to ICAP’s request. This framing of the request eliminated the need for BPD to produce redundant records and provided BPD the option of which records to produce if there were multiple options.

11. On December 2, 2020, BPD responded by producing a single document—a policy responsive to the first component of ICAP’s request.

12. In response to the second and third components of ICAP’s request—i.e., records sufficient to show who had been granted or denied fee waivers—BPD stated, in relevant part:

In reference to the other two (2) parts of your request, please be advised that the BPD does not have a data base in which fee waivers are maintained. This would be the process of hand pulling the request to verify if a fee waiver was granted or not. We would have to create a new data base for this, if you look on page five (5) of the policy it states that there is no duty to create records, only to provide what is available at the time of the request. . . .

The information that you are requesting pertaining to number two (2) and three (3), for (a) identity of the requestor, (b) the subject matter of the request, and (c) the amount of the fees that were waived or not waived would fall under the same reason above, BPD does not track this information and it would have to be manually pulled for each request.

See Exhibit B.

13. On December 8, 2020, in response to this denial, ICAP explained to BPD (via email) that ICAP was not asking BPD to create any records. ICAP further explained that the request could be satisfied through electronic searches or “hand pulling” if necessary, and that there is no exemption under the MPIA for records that must be “hand pulled.”

14. Nonetheless, in an attempt to reduce any burden on BPD and avoid litigation, ICAP also offered to narrow the date range for which records were sought if BPD provided an estimate of how many fee-waiver requests it receives each month. This estimate was necessary to enable ICAP to determine how many months would provide a sufficient sample size to allow it to evaluate BPD’s practices.

15. BPD responded on December 15, 2020, stating that it does not “track such information,” presumably referring to an estimate of the number of fee-waiver requests per month.

16. On January 4, 2021, ICAP emailed again to ask BPD to provide an estimate to avoid litigation.

17. BPD declined to do so because it did not track the information.

CAUSE OF ACTION

Violation of Maryland Public Information Act, Md. Code G.P. § 4-101, et seq.

18. Plaintiff ICAP incorporates by reference the foregoing allegations.

19. ICAP submitted the above-described MPIA request, which was assigned tracking number MPIA 20 1690.

20. The MPIA provides that “[e]xcept as otherwise provided by law, a custodian shall allow a person or governmental unit to inspect any public record at any reasonable time.” Md. Code. G.P. § 4-201(a)(1).

21. Defendant BPD violated this provision by refusing to produce records responsive to ICAP’s MPIA request because doing so would involve “hand pulling.” This is not a valid basis under the MPIA to deny records.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Enter a declaration finding that BPD violated the MPIA;

2. Issue an injunction directing BPD to produce records responsive to ICAP's request and grant a fee waiver;
3. Award ICAP statutory damages;
4. Award counsel fees and litigation costs; and
5. Grant other such relief as the Court deems just and proper.

Dated: January 15, 2021

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Attorneys for Plaintiff

**Motion for admission pro hac vice
forthcoming*

Exhibit A



INSTITUTE FOR CONSTITUTIONAL ADVOCACY AND PROTECTION
GEORGETOWN UNIVERSITY LAW CENTER

September 18, 2020

VIA EMAIL

Dana Abdul Saboor
Baltimore Police Department
Office of Legal Affairs
242 W. 29th Street
Baltimore, MD 21211
dcu@baltimorepolice.org

Dear Ms. Saboor,

Pursuant to the Maryland Public Information Act (“MPIA”), General Provisions Article, § 4-101, *et seq*, the Institute for Constitutional Advocacy and Protection requests the following records from the Baltimore Police Department (“BPD”):

1. Any policy, rule, directive, guideline, or similar record governing under what circumstances BPD grants a fee waiver to individuals and/or entities who submit an MPIA request;
2. Records sufficient to show, for every MPIA request for which BPD has granted a fee waiver since January 1, 2018, the (a) identity of the requester, (b) the subject matter of the request, and (c) the amount of the fees that were waived; and
3. Records sufficient to show, for every MPIA request for which BPD has denied a fee waiver since January 1, 2018, the (a) identity of the requester, (b) the subject matter of the request, and (c) the amount of the fees that were not waived.

For purposes of this request, “record” should be construed as broadly as possible, including, but not limited to, paper records, electronic records, emails, spreadsheets, databases, handwritten notes, videos, and letters.

The Institute for Constitutional Advocacy and Protection also requests a fee waiver. This request, and the disclosure of the information requested, is in the public interest because it addresses how members of the public with limited financial resources can obtain access to government records made available by statute. The requested records will be used by staff at the Institute to inform the public about access to Maryland public records.

If any records are withheld, please explain the basis for the withholding. Please do not hesitate to contact me should you have any questions.

Sincerely,

Rob Friedman
On behalf of
Institute for Constitutional Advocacy and Protection
Georgetown University Law Center
600 New Jersey Ave. NW
Washington, DC 20001
202-661-6599
rdf34@georgetown.edu

Exhibit B



BALTIMORE POLICE DEPARTMENT



Bernard C "Jack" Young
Mayor

Michael S Harrison
Police Commissioner

December 2, 2020

Robert Friedman
Institute for Constitutional Advocacy and Protection
Georgetown University Law Center
600 New Jersey Avenue NW
Washington DC 20001
Rdf34@georgetown.edu

Re: MPIA 20 1690 Information related to "MPIA Fee Waivers"

Dear Mr. Robert Friedman:

You have made a request for public records pursuant to the Maryland Public Information Act (MPIA), which is the General Provisions Article, § 4-101, et seq., of the Annotated Code of Maryland for "Information Related to "MPIA Fee Waivers.

Please see below in reference to the breakdown of your request:

*Any policy, rule, directive, guideline, or similar record governing under what circumstances BPD grants a fee waiver to individuals and/or entities who submit an MPIA request.

* Records sufficient to show, for every MPIA request for which BPD has granted a fee waiver since January 1, 2018, the (a) identity of the requestor, (b) the subject matter of the request, and (c) the amount of the fees that were waived

*Records sufficient to show, for every MPIA request for which BPD has denied a fee waiver since January 1, 2018, the (a) the identity of the requestor, (b) the subject matter of the request, and (c) the amount of the fees that were not waived

Below is the response to your request:

* Please see the attached policy that covers the MPIA request for the

BPD. On page six (6) you will find the section which refers to Fee Waivers.

* In reference to the other two (2) parts of your request, please be advised that the BPD does not have a data base in which fee waivers are maintained. This would be the process of hand pulling the request to verify if a fee waiver was granted or not. We would have to create a new data base for this, if you look on page five (5) of the policy it states that there is no duty to create records, only to provide what is available at the time of the request.

The PIA does not impose an obligation on a custodian to create a document that is responsive to a request. *See* MPIA Manual 13th Ed., October 2014, 3 (citing *Yeager v. DEA*, 678 F.2d 315, 324 (D.C. Cir. 1982)) (“[City] has no obligation to *create* records to satisfy a[n] [M]PIA request.”); *see also* *MacPhail v. Comptroller of Maryland*, 178 Md. App. 115, 119 (2008) (explaining that pertinent Federal Freedom of Information Act (“FOIA”) cases are “persuasive” authority in Maryland because the MPIA and the FOIA share “virtually identical” purposes.”).

* The information that you are requesting pertaining to number two (2) and three (3), for (a) identity of the requestor, (b) the subject matter of the request, and (c) the amount of the fees that were waived or not waived would fall under the same reason above, BPD does not track this information and it would have to be manually pulled for each request.

Please refer to Tracking Number # **MPIA 20 1690** in any subsequent correspondence in this matter.

Sincerely,

Ken Hurst
Contract Specialist
Baltimore Police Department
Office of Legal Affairs
Document Compliance Unit