

IN THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY

ENERGY POLICY ADVOCATES
170 S. Lincoln St.
Suite 150
Spokane, WA 99201

Plaintiff,

v.

MAYOR & CITY COUNCIL OF
ANNAPOLIS
160 Duke of Gloucester
Annapolis, MD 21401

Defendant.

Civil Case No. C-02-CV-21-001502

COMPLAINT

Plaintiff Energy Policy Advocates (“EPA”), by and through its undersigned counsel, and for its complaint against Defendant Mayor & City of Annapolis (“the City”), alleges as follows:

1. This is an action for equitable and monetary relief arising from Defendant’s refusal to comply with the obligations imposed by the Maryland Public Information Act, Md. Code, GP, §§ 4 – 101 through 4 – 601 (“MPIA”), which requires a governmental custodian of record to permit any person to inspect any public record at any reasonable time or provide copies of any public record.

THE PARTIES

2. Plaintiff Energy Policy Advocates (“EPA”) is incorporated in the State of Washington as a nonprofit and is dedicated to governmental transparency. EPA uses state and federal open records laws to shed light on — and thereby educate the public on — private influences on government policymaking and the use of public office. A substantial part of EPA’s effort has been the records request at issue in this matter and similar requests sent to other municipalities and state attorneys general (AG) offices nationwide.
3. Defendant the City of Annapolis is a governmental subdivision located in Anne Arundel County. Its address is City Hall, 160 Duke of Gloucester Street, Annapolis, MD 21401. “The Mayor’s Office is responsible for the overall management of City government. The City of Annapolis has a ‘Mayor-Council’ form of government in which the Mayor chairs the City Council and also serves as the chief executive of the city government. The Mayor’s Office is responsible for managing all city departments and carrying out the policies adopted by the City Council.” See <https://www.annapolis.gov/371/Mayors-Office>.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter pursuant to Md. Code, GP § 4-362(a).
5. Venue is proper in this Court pursuant to Md. Code, GP § 4-362(a)(3), as the public information requested is likely located at Annapolis City Hall, which is located in Anne Arundel County.

FACTUAL ALLEGATIONS

6. The records at issue in this case relate to a documented *modus operandi* of outside private parties engineering a nationwide campaign of governmental lawsuits which are filed at the instigation of outside policy activists and following lobbying by such lobbyists. Such action is targeted against other entities which these private lobbyists and their clients and silent partners in the collaborative effort have long targeted for investigation and/or prosecution.
7. Public-record emails and text messages, as well as litigation privilege logs, show the Rockefeller Family Fund (“RFF”) has both directly and through organizations it financially underwrites arranged for the assistance of local intermediary groups to lobby these lawsuits into existence, including providing the local intermediaries with sample pleadings to present to public institutions to facilitate filings in their own jurisdictions.¹
8. One activist law faculty member participating in this campaign described an organizational meeting as a “secret meeting at Harvard”² to discuss “potential state

¹ This has been established in judicial proceedings in the states of Texas and New York and, ultimately, by the financier’s own admission to having organized the media campaign to support the filing of such lawsuits. See *Exxon Mobil Corporation v. Schneiderman*, 17-cv-02301, and *Exxon Mobil Corp. v. City of San Francisco, et al.*, Tx. Sup. Ct. 20-0558, and in amicus briefs filed in the past two years by Plaintiff Energy Policy Advocates in the United States Courts of Appeal for the 1st, 2nd, 4th, 8th, and District of Columbia Circuits, the United States Supreme Court in *BP .P.L.C v. Mayor and City Council of Baltimore*, 141 S. Ct. 1532, heard in January and decided in May of this year, and the U.S. District Court for the Southern District of New York.

² “I will be showing this Monday at a secret meeting at Harvard that I’ll tell you about next time we chat. very [sic] exciting!” April 22, 2016, email from Oregon State University Professor Philip Mote to unknown (redacted) party, Subject: [REDACTED]; and, “I’m actually also planning to show this in a secret meeting next Monday—will tell you sometime.” April 20, 2016, Philip Mote email to unknown party, Subject: [REDACTED]. Both obtained from Oregon State University on March 29, 2018, in response to a January 9, 2018, Public Records Act (PRA) request by the Competitive Enterprise Institute.

causes of action against major carbon [*sic*] producers”³ held for staff of state attorneys general, local prosecutors, activists, and “prospective funders”⁴ of these lawsuits.

Another participating faculty member described this campaign as “going after climate denialism - along with a bunch of state and local prosecutors nationwide.”⁶

9. The City of Annapolis filed one such lawsuit, before this Court, in February 2021.

That suit was later removed to federal court as *City of Annapolis v. BP p.l.c.*, D. Md., 1:21-cv-00772. On information and belief and based on other records the Plaintiff has obtained as documented elsewhere herein, Plaintiff asserts that Annapolis’ decision was brought about and influenced by lobbyists and others seeking a particular political outcome.

10. Public records obtained by Plaintiff show that, after RFF was exposed as the principal lobbyist and funder behind this spate of governmental lawsuits against parties the RFF

<https://climatelitigationwatch.org/wp-content/uploads/2019/09/Mote-emails-re-secret-meeting-at-Harvard.pdf>.

³ “Confidential Review Draft—March 20, 2016, Potential State Causes of Action Against Major Carbon Producers: Scientific, Legal, and Historical Perspectives.” Released by the Vermont Office of the Attorney general in litigation, *Energy & Environment Legal Institute v. Attorney General*, Superior Court of the State of Vermont, 349-16-9 Wnc, December 6, 2017. <https://climatelitigationwatch.org/wp-content/uploads/2018/08/FN-55-Harvard-AGs-briefing-UCS-fundraiser-agenda-copy.pdf>.

⁴ “We will have a small number of climate science colleagues, as well as prospective funders, at the meeting.” March 14, 2016, email from Frumhoff to Mote; Subject: invitation to Harvard University—UCS convening. Obtained under same PRA request cited in note 2, *supra*. <https://climatelitigationwatch.org/wp-content/uploads/2018/08/FN-71-Frumhoff-to-Mote-for-AGs-briefing-UCS-fundraiser-copy.pdf>

⁶ “Hi Dan, Thought you would like to hear that Harvard’s enviro clinic, UCLA Emmett Institute, and the Union of Concerned Scientists are talking together today about going after climate denialism [*sic*]—along with a bunch of state and local prosecutors nationwide. Good discussion.” April 25, 2016, email from UCLA Law School’s Cara Horowitz to Dan Emmett, namesake and funder of the Harvard and UCLA centers, Subject: UCLA and Harvard Emmetts come together today. Obtained by the Competitive Enterprise Institute under California’s Public Records Act. Available at <https://climatelitigationwatch.org/on-the-subject-of-recruiting-law-enforcement-email-affirms-origin-of-prosecutorial-abuses/>.

had targeted and recruited investigations of in the name of catastrophic man-made climate change, a new organization supported by RFF stood in as the new point of contact for recruiting “climate” plaintiffs and lobbying municipalities to file copycat suits. That is a group described by one local activist group engaged by RFF in Minnesota, Fresh Energy, as the “lawyers advising Rockefeller family fund” [*sic*], to wit: the Center for Climate Integrity (“CCI”).

11. At the City of Annapolis’s February 2021 press conference announcing its lawsuit against two dozen private entities for climate public nuisance, when asked by a reporter, “I’m curious, how did this [lawsuit] come about,” specifically who came to whom in organizing the suit, Annapolis Deputy Manager for Resilience and Sustainability Jackie Guild disclosed that the city was lobbied about bringing a climate lawsuit by the Chesapeake Climate Action Network (“CCAN”).

<https://www.youtube.com/watch?v=jAEe-KzDBXs>. See also,

<https://eidclimate.org/annapolis-leaders-admit-activist-group-convinced-city-file-climate-lawsuit/>.

12. As one record released by the City states, CCAN “is a Maryland, Virginia and DC based nonprofit dedicated to fighting global warming. CCAN, in collaboration with the Center for Climate Integrity is very interested in facilitating lawsuits for cities in Maryland against fossil fuel companies for the ongoing damages brought on by climate change...I am meeting virtually with CCI on Wednesday this week to talk specifically about Annapolis and how a lawsuit could benefit the city going forward. I will have a lot more information to share with you after that meeting. My goal is to

eventually connect you as Director of Environmental Policy, Mayor Buckley and the City Counsel with CCI personnel so that you all can discuss the details of what a lawsuit would look like. Today I'm also reaching out to Mayor Buckley and Alderman Savidge - part of the initial [sic] e-introduction [sic] by Diane Butler.”

13. In her one minute forty second-long response to the media query at the press conference noting the involvement of CCAN, Ms. Guild did not mention the involvement of CCI. However certain news coverage mentioned, e.g., “The climate lawsuits are backed by environmental groups, including the the [sic] Center for Climate Integrity”⁸, and public records confirm that CCI was instrumental in lobbying the City of Annapolis to sue, that it helped coach the City in testimony in favor of related legislation, and that Mayor Gavin Buckley even asked CCI’s local lobbying partner, Chesapeake Climate Action Network CCAN, to recruit Anne Arundel County to join him in filing suit.

14. Plaintiff Energy Policy Advocates has learned certain specifics of CCI’s role in arranging for Annapolis’s lawsuit from records released under plaintiff’s MPIA requests submitted to obtain further information shedding light on this campaign of municipal litigation, supported by certain state attorneys general and at least one private organization providing privately hired attorneys to state AGs in part for this purpose.⁹

⁸ Jacob Fenston, “Annapolis, Battling Sea Level Rise, Sues 26 Oil Companies,” NPR, February 25, 2021, <https://www.npr.org/local/305/2021/02/25/971000557/annapolis-battling-sea-level-rise-sues-26-oil-companies>.

⁹ Climate activist, major political donor, and former New York City mayor Michael Bloomberg created a private group to hire and placing “Special Assistant Attorneys General” in AG offices, including three

15. Specifically, in February and March, 2021, EPA sent three Public Information Act requests for certain described email correspondence and other public records reflecting the City's dealings with two outside advocacy groups, Chesapeake Climate Action Network (CCAN) and the Center for Climate Integrity (CCI).
16. On April 9, 2021, after taking an extension of time, the City responded with a consolidated response, producing some records in whole, redacting others, and withholding others in full.
17. The City denied review of nine (9) records that it claims constitute attorney-client privileged communications between the Office of Law and other City departments, offices, and/or agencies, review of four (4) records which the City claims constitutes privileged attorney work product, and review of twenty-three (23) records that it states "constitute "inter- and intraagency memorandum" between City departments and agencies, and between the City and its hired consultants." The City declared that there had been no waiver of the purported attorney-client and work product records and, regarding the latter category, that "[t]hese records include: draft materials and/or

"SAAGs" in Maryland AG Brian Frosh's office, for the purpose of promoting specific, identified political and policy-making priorities of Bloomberg's See, e.g., *See, e.g.*, Editorial, "State AGs for Rent: Privately funded litigators wield state police power," *Wall Street Journal Online*, November 6, 2018; Editorial, "State AGs' Climate Cover-up" *Wall Street Journal*, June 8, 2019, at A14. See also, e.g., Maryland Deputy Attorney General Carolyn Quattrocki explaining the program. "[T]he gist is that Bloomberg is funding through NYU some fellowship positions for mid-career environmental litigators to be farmed out to State Attorneys General to fight against Trump's rollback of our environmental laws and regulations." November 7, 2017 email from Quattrocki to various colleagues, Subject: Environmental Fellowship Position. Obtained under Maryland's PIA. Maryland OAG's "SAAGs" then filed an amicus brief in support of the similar lawsuit brought by another municipality CCI helped bring into the stable of plaintiffs, in the Fourth Circuit on behalf of the Mayor & City of Baltimore in their "nuisance" case, available at https://www.marylandattorneygeneral.gov/News%20Documents/090319_Baltimore_climate_amicus.pdf.

internal decision-making discussions.” Those records containing redactions and the cover letter are attached hereto as Exhibit A.

18. Inherently, withholding in full of any correspondence or memorandum withholds non-exempt, purely factual information of no deliberative value, which must be released under the MPIA such as the To and From parties, date and subject.¹¹ To the extent that any information could have been permissibly redacted, the Defendant violated the MPIA by withholding records in full.

19. On October 4, 2021, Plaintiff sent another, similar request to the City.

20. On October 22, 2021, the City responded by notifying EPA that it had posted responsive records on a Google Drive folder. The City denied review of fifty-two (52) records that it claims constitute attorney-client privileged communications between the Office of Law and other City departments, offices, and/or agencies, review of one (1) record which the City claims constitutes privileged attorney work product, and review of twenty-three (23) records that it states “constitute “inter- and intraagency memorandum” between City departments and agencies, and between the City and its hired consultants.” The City declared that there had been no waiver of the purported

¹¹ EPA researched the public record and determined that, although lobbying registration requirements intended to shed light on such machinations do exist, they do not appear to have been followed by these parties lobbying the City to file this lawsuit. EPA submits that this further enhances the obvious public interest in the records at issue in this matter. For example, Anne Arundel County has stringent lobbying registration requirements but, despite the paper trail of their lobbying AAC officials, a “no records” PIA response from Anne Arundel County indicates that CCAN/ CCI seem not to have registered there. Plaintiff requested lobbying forms from Annapolis on October 26, 2021. On October 27, 2021, the City estimated that it will be able to produce responsive records by November 25, 2021.

attorney-client and work product records. Those records containing redactions and the cover letter are attached hereto as Exhibit B.

21. On information and belief, EPA asserts that the “consultants” with whom such documents have been shared were in fact lobbying the City for a predetermined outcome, rather than consulting with the City on various options it was deliberating.
22. Defendant’s rote, categorical assertion that certain records are exempt as attorney-client privileged, work product or otherwise are insufficient to sustain its burden to withhold records under the MPIA, and violate Plaintiff’s rights thereunder.
23. Public records including productions by municipal plaintiffs and attorneys general “nationwide” document, in the participants’ own words, that the multi-front campaign of which Annapolis’ lawsuit is a part reflects improper uses of the judicial system, seeking coerce defendants “to the table” on policy issues or prospecting for “new streams of revenue”, which are “sustainable revenue streams”¹² (a term apparently used not in the environmentalist sense but in the sense that the parties expect the money will keep flowing). These admissions make clear that individuals and entities lobbying for the City to engage in litigation are also using the prospect of litigation as a way to obtain political outcomes preferred by the lobbyists.

¹² See, e.g., Brief of Amicus Curiae Energy Policy Advocates in Support of Petitioners, *BP .P.L.C v. Mayor and City Council of Baltimore*, 141 S. Ct. 1532, available at <https://climatelitigationwatch.org/wp-content/uploads/2020/04/EPA-Amicus-BP-et-al-v-Baltimore-39742-pdf-Hardin.pdf>, and Brief of Amicus Curiae Energy Policy Advocates in Support of Defendants and in Opposition to Remand, *City of New York, et al., v. Exxon Mobil, et al.*, S.D.N.Y., 1:21-cv-4807-VEC, available at <https://climatelitigationwatch.org/wp-content/uploads/2021/10/EPA-Amicus-NYC-v-Exxon-Mobil-et-al-Doc-48-1.pdf>.

24. Through these records the public has come to partially understand the genesis of these lawsuits and the role of Center for Climate Integrity.¹³ The requests at issue here seek to further inform the public, press, courts and lawmakers about this wave of litigation.

APPLICABLE LAW

25. The MPIA establishes a general rule that “[a]ll persons are entitled to have access to information about the affairs of government and the officials acts of public officials and employees.” Md. Code, GP § 4-103(a).

26. The MPIA permits a custodian to deny access to a public record only to the extent provided in the MPIA. Md. Code, GP § 4-201(a)(2).

27. Defendant has the burden of sustaining a decision to deny inspection or copies of a public record. Md. Code, GP § 4-362(b)(2). Meeting this burden requires the Defendant to prove how any exemption found within the MPIA applies to the discrete records that have been identified as responsive to the Plaintiff’s request. The 2020 Office of the Maryland Attorney General’s Maryland Public Information Act Manual states “[t]o satisfy the statutory burden, an entity or official withholding a record must put forth evidence sufficient to justify the decision.” Maryland Public Information Act Manual §5-2.

28. Mere argument is not admissible “evidence” that will suffice to meet the Defendant’s burden to withhold a record.

¹³ See generally Government Accountability & Oversight, P.C., “Private Funders, Public Institutions: ‘Climate’ Litigation and a Crisis of Integrity” (May 18, 2021), available at: <https://climatelitigationwatch.org/wp-content/uploads/2021/05/GAO-EPA-CCI-RFF-Climate-Paper.pdf>.

29. Records custodians may not rely on generic exemptions and “the burden of justifying the non-disclosure of even part of a record is squarely cast upon the custodian of the record”. *Blythe v. State*, 161 Md.App. 492, 521 (Md. Ct. Spec. App. 2005) citing *Cranford v. Montgomery County*, 300 Md. 759, 777, 481 A.2d 221 (Md. 1984).
30. In this case, the City has not met that burden. It has offered only the most threadbare and conclusory assertions of privilege, rather than justifying the withholding of discrete records on individualized showings of how lawful exemptions might apply. Assumign, arguendo, that any portion of a record could be withheld, the City has made no efforts to segregate and produce the remaining portions of any record with redactions.
31. The City cannot justify its many withholdings, apparently quite often in full including purely factual information, by mere invocation of attorney-client privilege or other doctrines. It is well-established in this State that “only those attorney-client communications pertaining to legal advice and made with the intention of confidentiality are within the ambit of the privilege”. *E. I. Du Pont de Nemours & Co. v. Forma-Pack, Inc.*, 351 Md. 396, 415-416, 718 A.2d 1129, 1138 (Md. 1998). The City must establish the existence of the applicable attorney-client relationship for each record. The mere existence of an attorney-client relationship between the City and some party is insufficient to privilege all communications between the two. Moreover, the City bears the burden of demonstrating that any privilege which once may have attached was not waived by sharing communications with strangers to the attorney-client relationship. Lastly, the City also bears the burden of establishing that

its “consultants” are, in fact, consultants for the City rather than lobbyists for and on behalf of outside organizations.

32. Attorney work product shields documents “prepared in anticipation of litigation” from discovery. Maryland Rule 2-402(d). The doctrine protects “the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.” *Id.*
33. The City’s complete withholding of records with only an implication or even conclusory statement that each is not reasonably severable is contrary to the MPIA which requires a custodian allow inspection of any part of the record that is subject to inspection. Md. Code, GP § 4-203(c)(1)(ii). The same holds true for the City’s many broad swathes of redactions.
34. The City also has not met its burden to prove that public inspection may be denied pursuant to Md. Code, State Finance and Procurement Section, § 13-210(b). Procurement is defined as “the process of...obtaining... services.” Md. Code SF&P 11-101(n)(1)(ii). The services of an attorney are included in the definition of “Services” under Md. Code, SF&P § 11-101(u). If any record at issue reflects the City attempting to procure the services of an outside attorney, it must establish why Md. Code, SF&P § 13-210(b) does not require disclosure.
35. For all of the reasons specifically set forth heretofore, the City has violated the MPIA, Md. Code, GP, §§ 4 – 101 through 4 – 601 (“MPIA”) by improperly refusing to disclose the records that are at issue and Plaintiff is entitled to relief.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully prays, through counsel, that this Court,

- A. Require the Defendant to establish the factual basis for any claim that a record either is not a public record within the Meaning of the Maryland Public Information Act, or is exempt from production under the Act, including but not limited to identifying the nature of the record and its connection or lack thereof to an attorney-client relationship and the absence of waiver, as well as the factual basis for any assertion that no portion of any requested record may be produced in redacted form;
- B. Enter an injunction directing Defendant to comply fully with the PIA, including but not limited to requiring the Defendant to conduct and to certify that it has conducted a reasonable search for the relevant records and has reviewed each record to determine whether any record in full to determine if each and every portion of each and every document is exempt from disclosure under the MPIA;
- C. Order the Defendant to furnish Plaintiff the public records at issue in this matter, subject only to demonstrated, legally permissible withholdings which must be supported by admissible evidence establishing that any MPIA exemption applies to the particular record(s) which are being withheld in full or in part;
- D. Alternately, perform an *in camera* review of the information withheld by the Defendant and compel Defendant to release all information for which the Defendant is unable to carry its burden to prove each withholding is privileged and not subject to disclosure; and further,

- E. Enter judgement that Defendant has wrongfully withheld information under the MPIA;
- F. Enter judgement in Plaintiff's favor for nominal damages;
- G. Award Plaintiff reasonable attorneys' fees and costs as authorized by Md. Code, GP § 4-362(f); and
- H. Order such additional relief as the Court may deem just and proper.

Respectfully submitted this 1st day of November 2021,

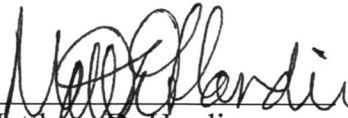
ENERGY POLICY ADVOCATES
By Counsel



Matthew D. Hardin (CPF# 2003160003)
Hardin Law Office, LLC
1725 I Street NW, Suite 300
Washington, DC 20006
Phone: (202) 802-1948
Email: HardinLawPLLC@icloud.com

Certification Pursuant to Rule 1-313

I hereby certify that I have been admitted to practice law in the State of Maryland.



Matthew D. Hardin