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October 17, 2018

Via Email and U.S. First Class Mail

Mike.Evans@calvertcountymd.gov

Sheriff Mike Evans
Calvert County Sheriff's Office
30 Church Street
Prince Frederick, MD 20678

Re: Unlawful Denial of *The Chesapeake Today*'s Public Information Act Request

Dear Sheriff Evans:

We represent Kenneth Rossignol and his newspaper, *The Chesapeake Today*, in connection with the Maryland Public Information Act request he made to your office for records regarding DWI arrests in Calvert County. We write to request that you reverse your improper denial of the request and immediately provide the information Mr. Rossignol has requested as required by Maryland law.

The Maryland Public Information Act ("PIA") provides for public access to any "documentary material" which is made or received "in connection with the transaction of public business." Md. Code Ann. G.P. § 4-101(j)(1)(i). Mr. Rossignol requested information contained in records that are unquestionably subject to the Act: the name, age, hometown, date and time of arrest, and name of arresting officer for all DWI arrests made by your office. Your response to this request was that this information "will not be provided to tabloids." As you know, however, this information has been provided to and published by *The Chesapeake Today* for years, not only for Calvert County but for many other jurisdictions in the region.

Your stated basis for withholding the information Mr. Rossignol has requested is plainly unlawful. The PIA provides that "[a]ll persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees." *Massey v. Galley*, 898 A.2d 951, 956 (Md. 2006) (quoting statute currently codified at Md. Code Ann., G.P. § 4-103). The Maryland Court of Appeals has made it crystal clear that "all" means "all" – "the Maryland Public Information Act contains no

limitations as to those persons entitled to inspect public records.” *Id.* There is no basis in the law for denying a request based on the identity of the requester, and the use to which citizens will put the information requested is irrelevant. *Id.* at 959 (“A person may seek access to a public record simply out of curiosity.”).

The clear unlawfulness of your denial, together with the timing of it – shortly after *The Chesapeake Today* published an article by Mr. Rossignol discussing allegations of potential wrongdoing by you and your office – strongly suggests that you are retaliating against Mr. Rossignol based on his speech. This is a clear violation of Mr. Rossignol’s rights under the First Amendment and the Maryland Declaration of Rights. *See Rossignol v. Voorhaar*, 321 F. Supp. 2d 642, 648 (D. Md. 2004) (St. Mary’s County sheriff’s deputies lacked immunity for unconstitutional retaliation against Mr. Rossignol for his newspaper’s criticism of the sheriff’s office).¹

The PIA allows a person whose public records request has been denied to challenge that denial in Circuit Court. Md. Code Ann., G.P. § 4-362. A person who successfully challenges a denial in court can recover statutory damages of up to \$1,000, as well as an award of attorneys’ fees and other litigation costs. *Id.*; *see also Stromberg Metal Works, Inc. v. Univ. of Maryland*, 395 Md. 120, 128-31, 909 A.2d 663, 668-70 (2006). If Mr. Rossignol were to file such a lawsuit, you would have the burden of persuading the court that you had a legitimate and lawful justification for denying Mr. Rossignol’s request. *Maryland Dep’t of State Police v. Maryland State Conference of NAACP Branches*, 59 A.3d 1037, 1044 (Md. 2013); *see also Police Patrol Sec. Sys., Inc. v. Prince George’s Cty.*, 838 A.2d 1191, 1200 (Md. 2003) (“a records custodian . . . must find some basis in law for the denial of a request before choosing to withhold public records”).

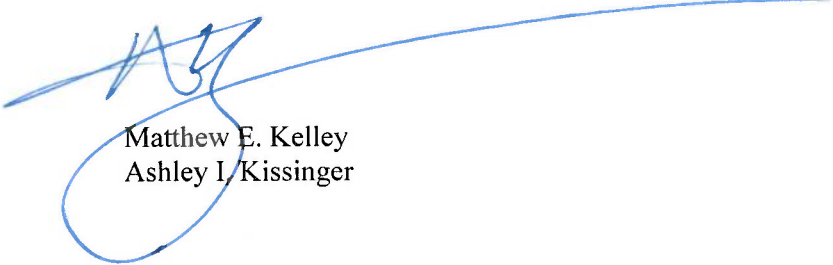
Imposing on Calvert County taxpayers the expense of litigating Mr. Rossignol’s unremarkable PIA request, which could well result in the county being required to pay Mr. Rossignol’s legal fees, would be both unnecessary and unwise. Accordingly, please provide to Mr. Rossignol, no later than October 31, 2018, the requested information regarding DWI arrests for 2018. We trust that you will comply with the PIA in responding to Mr. Rossignol’s requests in the future.

This correspondence is without prejudice to any legal options available to Mr. Rossignol and *The Chesapeake Today*, and they expressly reserve all of their rights in this matter.

¹ Your denial of Mr. Rossignol’s request also fails to comply with the PIA’s requirements for a written statement of the reasons and legal authority for the denial. *See* Md. Code Ann., G.P. § 4-203(c)(1)(i). A knowing or willful violation of the PIA is a misdemeanor carrying a fine of up to \$1,000.

Sheriff Mike Evans
October 17, 2018
Page 3

Sincerely,

A handwritten signature in blue ink, appearing to be 'MK', is written over a long, sweeping horizontal line that extends across the right side of the page.

Matthew E. Kelley
Ashley I. Kissinger

AIK/mek