

VERIFIED PETITION OF

QUEEN ANNE’S CONSERVATION
ASSOCIATION, INC.
P.O. Box 157
Centreville, MD 21617

FOR JUDICIAL REVIEW OF THE
DECISIONS OF THE MARYLAND
TRANSPORTATION AUTHORITY AND
THE MARYLAND DEPARTMENT OF
TRANSPORTATION

SERVE ON:

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IN THE CASE OF:
Petition for the Judicial Review
Regarding the Maryland Department of
Transportation’s failure to respond to MPIA and
The Maryland Transportation Authority’s
MPIA Responses dated May 23 and May 27, 2022.

* IN THE CIRCUIT COURT
* FOR QUEEN ANNE’S COUNTY
* STATE OF MARYLAND
* CASE NO. _____

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**VERIFIED PETITION FOR JUDICIAL REVIEW AND
REQUEST FOR EXPEDITED HEARING**

Petitioner Queen Anne’s Conservation Association, Inc. (“QACA”), by its undersigned counsel, pursuant to, *inter alia*, § 4-362 of the General Provisions Article of the Annotated Code of Maryland¹ and Md. Rule 7-201 *et seq.*, hereby requests judicial review of the Maryland Department of Transportation’s (“MDOT”) failure to respond to QACA’s May 9, 2022, Maryland Public Information Act Request (the “MDOT MPIA”) and the Maryland Transportation Authority’s (“MDTA”) May 23, 2022 written response and its May 27, 2022 oral response to QACA’s May 9, 2022 Maryland Public Information Act Request to MDTA (the “MDTA MPIA”), refusing to conduct a reasonable search for the records requested by QACA’s MDTA MPIA.

FACTUAL BACKGROUND

1. On May 9, 2022, QACA served the MDOT MPIA and the MDTA MPIA (collectively, where appropriate, the “MPIAs”) on the custodians of records of each agency. *See Exhibits 1 and 2*; *see also* MPIA Act at § 4-202 (“a person ... shall submit a written [MPIA request] to the custodian” of records). QACA served the MPIAs electronically through the MDOT MPIA “Electronic Portal” located at: <https://mdot-state-md-us.workflowcloud.com/forms/9e8be49a-710a-4c29-ba9d-e2bd6b38d301>. QACA also served each agency at the address provided for each in Appendix J of the MPIA Act Manual published by the Office of the Attorney General. *Id.* at Appendix J (16th ed. 2021, Updated June 6, 2022) (the “MPIA Manual”).²

¹ Reference to the Maryland Public Information Act (Title 4 of the General Provisions Article of the Annotated Code of Maryland) is hereafter abbreviated as the “MPIA Act”.

2. In the MPIAs, QACA requested that MDOT and MDTA search for and provide public records specifically discussing that agency’s consideration of “congestion management strategies” on the Chesapeake Bay Bridge with regard to the State of Maryland’s “Chesapeake Bay Crossing Study: Tier 1 NEPA Final Environmental Impact Statement and Record of Decision” dated March 2022 (the “Tier 1 Study”). *See* Exs. 1 and 2. To further focus and narrow the scope of the search and document production, both MPIAs identified six (6) specific congestion management strategies at issue in the Tier 1 Study and provided citation to the exact pages of the Tier 1 Study where it discussed congestion management strategies.³ *Id.* For example, each MPIA requested that the respective agency search for records making reference to “variable tolling”, a term of art well known to MDTA and MDOT.⁴

3. In the MPIAs, QACA requested that all fees incurred to search for and provide responsive records (beyond the first two (2) hours) be waived “in the public interest.” *Id.*; *see also* MPIA Act at §§ 4-206(e) and (c) (the “first 2 hours that are needed to **search for** a public record” and/or produce the same are free of charge (emphasis added)). Both MPIAs explained that QACA is a 501(c)(3) non-profit organization whose mission is to monitor environmental

² The MPIA Manual can be accessed online at the Attorney General’s Website at <https://www.marylandattorneygeneral.gov/Pages/OpenGov/piamannual.aspx>.

³ *See* Exs. 1 and 2 (stating that the MPIAs seek documents regarding the following six specific congestion management strategies: “(i) peak period variable toll pricing; (ii) truck/bus restrictions in the reversible/contra-flow lane; (iii) rapid reversible lane deployment; (iv) active management of reversible/contra-flow lane based on demand/need; (v) HOV/HOT lane restrictions in one lane in the peak traffic direction; and (vi) incident management best practices”). *See also*, the Tier 1 Study at pg. 7-2 (addressing congestion management strategies) <https://www.baycrossingstudy.com/component/jdownloads/?task=download.send&id=44&catid=7&m=0&Itemid=101> (last visited on June 7, 2022).

⁴ *See* https://mdta.maryland.gov/ICC/Toll_Rates.html discussing, for example, variably priced tolling on the Intercounty Connector (ICC)/MD 200.

impacts upon, and to promote and protect, the natural resources and rural character of Queen Anne's County, Maryland. *See* Exs. 1 and 2. Both MPIAs also made clear that QACA intends to provide broad public dissemination of information provided in response. *Id.* Each MPIA specifically requested that if either agency refused to waive such fees that they immediately contact undersigned counsel. *Id.* Finally, each MPIA provided the name, address, phone number and email address of undersigned counsel, as well as the post office box, phone number and email address for QACA. *Id.*

4. To date, MDOT has failed to respond in any fashion to the MDOT MPIA in direct violation of, *inter alia*, MPIA Act § 4-203. MDOT's wholesale failure to respond "constitutes a denial of an application that may not be considered a result of a bona fide dispute" since MDOT failed to send a "10-day letter" pursuant to MPIA Act § 4-203(b)(2) or make any effort to work with QACA "in good faith" as required by MPIA Act § 4-203(b)(3) (emphasis added). *See* Section 4-203(a)(3). Thus, by statute, MDOT's failure to respond to QACA's MDOT MPIA lacks good faith and cannot be the result of a bona fide dispute. *Id.*

5. Regarding the MDTA MPIA, on May 19, 2022, MDTA's MPIA representative, Christopher Imms ("Mr. Imms"), called the Executive Director of QACA (Mr. Falstad). During the call Mr. Imms took the position that QACA's specific reference to the six congestion management strategies (*see supra* fn. 3) impermissibly converted the MDTA MPIA into six (6) MPIAs. *See* MPIA Act § 4-203(c)(i)(3). Mr. Imms insisted that QACA must "narrow the scope" of the MPIA by limiting the MDTA MPIA to no more than one (1) or two (2) congestion management strategies. Mr. Imms contended that the search for and production of documents regarding all six (6) congestion management strategies is unduly burdensome. Mr. Falstad responded that QACA is more than willing to work with MDTA to avoid unnecessary costs or

delays but suggested that Mr. Imms speak to undersigned counsel regarding his request to “narrow the scope” of the MPIA by eliminating specific congestion management strategies. Mr. Imms ended the call by informing Mr. Falstad that he would send a follow up letter regarding the MDTA MPIA.

6. On May 24, 2022, undersigned counsel called Mr. Imms regarding the MDTA MPIA. The two spoke briefly but, due to time constraints, scheduled a substantive call for May 27, 2022. During the brief May 24 call, undersigned counsel reiterated QACA’s willingness to work with MDTA to minimize any unnecessary expenses. On May 27, 2022, Mr. Imms and undersigned counsel spoke at greater length (the “May 27 Call”). During the May 27 Call, undersigned counsel asked why MDTA had not timely sent a “10-day letter” to QACA and undersigned counsel as required by § 4-203 of the MPIA Act. Mr. Imms responded claiming that he had sent a 10-day letter to Mr. Falstad (the “10-day Letter”) but admitted that he failed to copy undersigned counsel as requested in the MDTA MPIA. Mr. Imms thereafter sent an electronic copy of the 10-day Letter to undersigned counsel by email. *See Exhibit 3.*⁵

7. During the May 27 Call, Mr. Imms again asked QACA to “narrow the scope” of the MDTA MPIA. In support, Mr. Imms repeated his claim that the specific reference to the six (6) congestion management strategies (*see supra* fn. 3) impermissibly transformed the MDT MPIA into six (6) MPIAs, but conceded that he had no statutory basis for the position. Undersigned counsel explained to Mr. Imms that the reference to the six (6) specific congestion management strategies (fn. 3) was intended to focus and narrow the search just as he was

⁵ As reflected in the untimely 10-day Letter, even though the MDTA MPIA provided undersigned counsel’s office address and email address, as well as Mr. Falstad’s email address – all of which were also provided to MDTA via MDOT’s web-based “MPIA Portal” – Mr. Imms allegedly chose to send the letter to QACA’s post office box. To date, QACA still has not received the original 10-day letter that Mr. Imms claims to have mailed to QACA’s post office box.

requesting. Such specificity is encouraged by the MPIA Act (*see* MPIA Manual at § 4-2) and, ironically, is requested in the untimely 10-day Letter emailed by Mr. Imms. *See* Ex. 3 (requesting “key words” to enable a search). Undersigned counsel also suggested that the six (6) specific congestion management strategies (fn. 3) could be divided into separate MPIAs if that is what Mr. Imms desired but Mr. Imms conceded that the formality was not necessary.

8. During the May 27 Call Mr. Imms also suggested that QACA eliminate specific congestion management strategies from the MDTA MPIA, or allow MDTA to respond to one (1) or two (2) of the six (6) referenced congestion management strategies at a time. Undersigned counsel explained that such an approach would unnecessarily delay a complete production for several months. Undersigned counsel then asked Mr. Imms how long he expected it to take MDTA to respond to the MDTA MPIA as currently drafted. Mr. Imms candidly responded that he did not know because: (1) it depended on the volume of documents found when the search was conducted; and (2) **no one had actually attempted to perform a search**. Mr. Imms acknowledged that the alleged burden on which MDTA was relying was “**assumed**” and that no one had bothered to perform even a preliminary search to determine if the **assumption** was correct.⁶

9. During the May 27 Call Mr. Imms took the position that MDTA was not denying the MPIA. Instead, he contended that MDTA would not attempt a search for documents unless QACA “narrowed” its request to eliminate several of the specific congestion management strategies based upon MDTA’s *assumption* that the search and the resulting document

⁶ The MPIA Manual makes clear that even if Mr. Imms considered the MDTA MPIA to be overbroad, which it is not, a “productive response” to the MDAT MPIA requires that “the agency report[] on the type and scope of the files it holds that may include responsive records” so that QACA can determine whether the search can be refined “to reduce the labor (and expense) of searching.” *See* MPIA Manual at § 2-6.

production would be overbroad. When undersigned counsel asked for the statutory authority for MDTA's position Mr. Imms responded that he did not know because he is not an attorney.

10. At the conclusion of the May 27 Call, undersigned counsel requested: (1) that Mr. Imms consult with MDTA's counsel to provide QACA with the legal basis for MDTA's refusal to produce documents as required by § 4-203(c)(i)(3); (2) that the appropriate persons within MDTA perform at least a preliminary search (i.e., the initial, free, two (2) hour search required by § 4-206(c)) instead of simply assuming QACA's request to inspect records is unduly burdensome; and (3) that Mr. Imms report back as required by the MPIA Act. As of the date of this filing, Mr. Imms has not responded to these requests in direct violation of MDTA's obligations pursuant to the MPIA Act.

LEGAL BASES FOR THE RELIEF REQUESTED

11. The MPIA Act requires that MDOT and MDTA undertake a reasonable search designed to locate all records responsive to the MPIA requests. *See* MPIA Manual at § 2-5, ¶ C. At a minimum, the MPIA Act requires that MDOT and MDTA perform a preliminary two (2) hour search at no charge to QACA. *See* MPIA Act at § 4-206(c). The MPIA Act further requires that, except in circumstances not applicable in this case, MDOT and MDTA must either "grant or deny the application promptly, but not more than 30 days after receiving the application."⁷ *Id.* The MPIA does not provide for the option elected by MDTA – that it will not undertake even a preliminary search for the records requested unless QACA agrees to eliminate specific categories of documents. *Id.*

12. If MDOT and MDTA determined that it was not possible to produce the requested documents within thirty (30) days, the custodian of records of both agencies was obligated to

⁷ Section 4-203(a)(2) excuses the thirty (30) day requirement when the recipient of the MPIA sends a letter within ten (10) days.

provide notice within ten (10) business days of receipt of the MPIA stating the amount of time that each agency anticipated it would take to produce the records; the estimate range of fees associated therewith; and the reason for the delay. *See* § 4-203(b)(2). No such notice was provided by either MDTA or MDOT.

13. When, on the other hand, an MPIA is denied, the custodian of records is obligated to provide, *inter alia*, “a written statement” within ten (10) working days, setting forth: (1) the reasons for the denial; (2) the legal authority for the denial; (3) a brief description of the undisclosed record that will enable the applicant to assess the applicability of the legal authority for the denial; and (4) a notice of remedies. *Id.* at 4-203(c). The MPIA Act is clear that the failure to produce documents within the thirty (30) day period “constitutes a denial of an application.” 4-203(b)(3). Although MDOT and MDTA both failed to produce any records, no notice as required by § 4-203 was provided by either agency.

14. As of the date of this filing, MDOT has failed to respond to the MDOT MPIA in any way, shape, or form. QACA’s counsel served MDOT electronically as requested on its website, and by mail at the address provided in the Attorney General’s MPIA Handbook. *See* Ex. 1; *see also*, MPIA Handbook at Appendix J. MDOT failed to send a ten (10) day letter, failed to contact QACA to discuss the MPIA, and failed to contact QACA to request an extension of time, all as required by the MPIA Act. MDOT made no effort to work with QACA “in good faith” as required by § 4-203(b)(3) and has cited no “bona fide dispute” regarding the MDOT MPIA served upon it electronically and via first class mail. MDOT has provided no documents responsive to the MPIA, which in effect denies the MPIA (*see* § 4-203(b)(3)), and has provided no statutory basis for its failure to do so as required by § 4-203(c).

15. As of the date of this filing, MDTA has not provided any of the documents requested in the MDTA MPIA. MDTA's MPIA representative acknowledges that no effort was made to conduct even a preliminary search for the records requested. MDTA contends that it is not denying the MPIA but will not respond unless QACA agrees to stagger the MDTA MPIA response over several months or eliminate specific categories of documents, in direct violation of the MPIA Act. Although MDTA's refusal to produce responsive records equates to a denial of the MDTA MPIA (*see* § 4-203(b)(3)), to date MDTA has failed and refused to provide a legal basis for its position in writing as required by the MPIA Act.

16. Section 4-362 provides that a Complaint for Judicial Review is the proper procedural method for resolution of a dispute when an entity such as QACA is denied inspection of public records or whenever such an entity is "not provided with a copy, printout, or photograph of a public record as requested" in an MPIA. *Id.*

17. Venue is appropriate in this Court pursuant to § 4-362, which provides that a Complaint for Judicial Review pursuant to the MPIA Act may be filed in "the circuit court for the county where ... the complainant resides or has a principal place of business." *Id.*

18. Pursuant to § 4-632(b), in response to this Petition for Judicial Review, MDOT has the burden to provide this Court with a legal basis for its failure to respond to the MDOT MPIA and its failure to provide any of the documents requested in the MDOT MPIA.

19. Pursuant to § 4-632(b), in response to this Petition for Judicial Review, MDTA has the burden to provide this Court with a legal basis for its refusal to perform even a preliminary search to determine the breadth of the allegedly burdensome production and its failure to provide any document in response to the MDTA MPIA.

20. QACA is a "party" to the MDTA and MDOT MPIAs as that term is used in the MPIA Act and Maryland Rules 7-201 *et seq.* The records QACA seeks are public records within the meaning of the MPIA Act and there is no statutory exemption under the MPIA Act that applies to the records withheld. Pursuant to § 4-362(c) of the MPIA Act, Petitioner requests that this matter take precedence on the docket, be scheduled for a hearing at the earliest practicable date, and otherwise be expedited in every way.

WHEREFORE, pursuant to, *inter alia*, § 4-362 of the MPIA Act, Petitioner requests that this Court issue an Order in the form attached hereto: (1) enjoining MDOT and MDTA from withholding the public records sought via the MPIAs; (2) requiring MDOT and MDTA to search for and produce the requested documents; waiving all fees associated with the search for and production of said documents in the public interest; (3) awarding QACA its reasonable counsel fees and other litigation costs incurred in this matter; and (4) for such other and further relief as the nature of this cause may justify or require.

VERIFICATION

The undersigned hereby certifies that the foregoing is true and correct to the best of his knowledge, information, and belief.


Jay Falstad, Executive Director, QACA

Respectfully submitted,

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