

IN THE CIRCUIT COURT FOR ALLEGANY COUNTY, MARYLAND

INSTITUTE FOR JUSTICE)
901 N. Glebe Road)
Suite 900)
Arlington, VA 22203)

Plaintiff,)

v.)

Civil Action No. _____)

CUMBERLAND ECONOMIC)
DEVELOPMENT CORPORATION)
57 N. Liberty Street)
Cumberland, MD 21502)

Registered Agent:)

Mr. Shawn Hershberger)
57 N. Liberty Street)
Cumberland, MD 21502)

and)

CITY OF CUMBERLAND,)
57 N. Liberty Street)
Cumberland, MD 21502)

Registered Agent:)

Margie Woodring)
City Clerk)
57 N. Liberty Street)
Cumberland, MD 21502)

Defendants.)

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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
(EXPEDITED HEARING SOUGHT)

Plaintiff Institute for Justice (“IJ”), through its undersigned counsel, files this Complaint pursuant to the Maryland Public Information Act (“MPIA”), Maryland Code, General Provisions § 4-101 *et seq.*, and shows the following:

Nature of the Action

1. The Maryland Public Information Act grants the public a broad right of access to records that are in the possession of State and local government agencies. The Maryland Court of Appeals has noted that this law is meant to be construed liberally to create “a public policy and a general presumption in favor of disclosure of government or public documents.” *Office of Governor v. Washington Post Co.*, 360 Md. 520, 544, 759 A.2d 249, 262 (Md. 2000).

2. In this case, the Institute for Justice (“IJ”) made proper disclosure requests to the City of Cumberland (“City”) and the Cumberland Economic Development Corporation (“CEDC”)—an instrumentality of the City—for records relating to an economic redevelopment program through which dozens of homeowners in Cumberland, Maryland are threatened with having their property taken from them by the City and given to a private real estate developer.

3. The City and the CEDC unlawfully rejected IJ’s disclosure requests. This knowing and willful denial was part of a longstanding effort by both the City and the CEDC to shield its back room re-development deal from public scrutiny. In this action, IJ seeks an order from this Court upholding the intent of the General Assembly 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.” Md. Code, Gen’l Prov. § 4-103.

Jurisdiction, Parties, and Venue

4. This suit is brought under the provisions of the Maryland Public Information Act (“MPIA”), Maryland Code, General Provisions § 4-101, *et seq.*, and as such this Court has jurisdiction over this action.

5. Plaintiff, the Institute for Justice (“IJ”), is a nationwide, non-profit public interest law firm organized under the laws of the District of Columbia, with its headquarters in Arlington, Virginia. IJ was founded in 1991 to advocate on behalf of individuals whose most basic rights are denied by the government.

6. Defendant, the City of Cumberland (“the City”), is a political subdivision of the State of Maryland.

7. Defendant, the Cumberland Economic Development Corporation (“CEDC”) is nominally a 501(c)(3) non-profit corporation organized under the laws of the State of Maryland, with its headquarters in Cumberland, Maryland. The CEDC is an instrumentality of the City.

8. Under Maryland Code, General Provisions §4-362(a), venue is proper in this Court as Defendants reside in this county and the public records at issue are located in this county.

Statutory and Factual Background

A. The Maryland Public Information Act

9. The MPIA requires a custodian of public records to “allow a person or governmental unit to inspect any public record at any reasonable time.” Md. Code, Gen’l Prov. § 4-201(a)(1).

10. The MPIA defines a “public record” as “any documentary material that . . . is made by a unit or instrumentality of the State [government] . . . or received by the unit or instrumentality in connection with the transaction of public business.” Md. Code, Gen’l Prov. § 4-101(j).

11. A “custodian” is defined by the MPIA as “the official custodian” or “any other authorized individual who has physical custody and control of a public record.” *Id.* § 4-101(d).

12. In determining whether a body “is an agency or instrumentality of the State within the scope of the Public Information Act, the [MPIA’s] language . . . must be liberally construed in favor of inclusion in order to effectuate the Public Information Act’s broad remedial purpose.” *Office of Governor*, 360 Md. at 535 (quoting *A.S. Abell Pub. Co. v. Mezzanote*, 297 Md. 26, 32, 464 A.2d 1068, 1071 (Md. 1983)).

13. The Court of Appeals has held that a nonprofit corporation formed “to plan and implement long range development strategies throughout the City of Baltimore [on] behalf of the City of Baltimore; to implement, oversee, and encourage development that will increase the City’s tax base; to provide jobs in the City; to enhance and improve the physical and cultural environment of the City; to improve the economic health of the City; and to be responsible for” various urban renewal plans, zones, and developments in the City, “was clearly established, and is maintained, as an agent or tool of Baltimore City in order to accomplish the City’s ends or purposes.” *City of Baltimore Dev. Corp. v. Carmel Realty Assocs.*, 395 Md. 299, 334, 910 A.2d 406, 427 (Md. 2006). The Court held that this nonprofit corporation was thus an instrumentality of the City subject to the MPIA. *Id.*

14. In the same case, the Court of Appeals noted that “when one is forced to convey his or her property to a public entity it is in contravention, albeit alleviated by compensation and thus permitted, of a constitutional right” and that “such proceedings should be even more open to public scrutiny *especially when the property might ultimately be conveyed to other private parties.*” *Id.* at 318 (emphasis added).

15. While the MPIA contains certain exemptions from disclosure, a court “must interpret the [MPIA’s] exemptions narrowly.” *Fioretti v. Md. State Bd. of Dental Exam’rs*, 351 Md. 66, 77, 716 A.2d 258, 264 (Md. 1998).

16. As to all exemptions, if a custodian denies an MPIA request in part, the custodian “shall . . . allow inspection of any part of the record that is subject to inspection” and is reasonably severable. Md. Code, Gen. Prov. § 4-203(c)(1).

17. IJ is a “person” entitled to make a request for disclosure of public records under the MPIA. Md. Code, Gen'l Prov. § 1-114.

B. Creation of the CEDC

18. In 2014, preparatory to applying to the State of Maryland for economic redevelopment funds, the City developed a Strategic Economic Development Plan (“Plan”).

19. While the City has an Economic Development Commission mandated by its code, *see* City of Cumberland Code §§ 2-191 – 2-193, the Plan recommended “establish[ing] a 501(c)(3) entity under which all economic development functions will be administered” for the City. Plan at 6-15, *available at* <https://www.choosecumberland.org/economic-development-strategy/>. The Plan advised that “the City’s existing economic development staff lead this transition from City department to public private partnership. . . .” *Id.* at 6-18.

20. On December 2, 2014, the City’s economic development coordinator, Mr. Shawn Hershberger, presented the Plan to the City Council, including the proposal to create a new 501(c)(3) entity to direct redevelopment activities in place of the code-mandated Economic Development Commission, to which would be delegated the authority formerly delegated to the Economic Development Commission. The City Council approved the Plan. *See* Minutes of December 2, 2014 Meeting of the Mayor & City Council of Cumberland, at § IV.B.2 (attached hereto as Exhibit A).

21. On July 15, 2015, the CEDC was incorporated with the purpose of “support[ing] economic development and property/community development” and “thereby lessen[] the burdens” on local and State governments “in their efforts to promote the public purposes of

creating jobs, increasing the tax base, and improving the quality of life in the City of Cumberland.” CEDC Articles of Incorporation at 1 (attached hereto as Exhibit B).

22. The Articles listed the address of City Hall as the address of the new corporation’s principal office and identified Mr. Hershberger as its resident agent. *Id.* at 1.

23. On July 25, 2015, the City Council authorized the execution of a Memorandum of Understanding (“MOU”) with the CEDC to set forth the terms and conditions for the City’s annual funding of the CEDC. *See* Minutes of July 21, 2015 Meeting of the Mayor & City Council of Cumberland, § V.C.6 (attached hereto as Exhibit C).

24. The MOU between the City and the CEDC states that the “CEDC shall have the responsibility of implementing the [Plan] adopted by the City,” and that the “City shall appropriate to the CEDC funding in the minimum amount of three hundred fifty thousand dollars (\$350,000.00) annually.” MOU at 1–3 (attached hereto as Exhibit D).

25. Additionally, the “City shall directly pay for the salaries and all benefits of CEDC staff, who shall continue to be employees of the City,” the “City will continue to provide office space to the CEDC for its operations in Suite 107 of City Hall,” and the “City will continue to provide a car to the Executive Director/President of CEDC.” *Id.* at 3–5.

26. The CEDC’s Bylaws require that three voting members of its Board of Directors “shall be appointed as follows: (I) one shall be a representative from City government, with preference given to the City Administrator, and (II) one shall be appointed by a majority vote of the existing Board Members after allowing for input on the selection to be given by the Mayor and City Council [of the City], and (III) one shall be a representative from Allegany College of Maryland.” Bylaws of Cumberland Economic Development Corporation, Article V(B), *available at* <http://www.choosecumberland.org/bylaws/> (attached hereto as Exhibit E). If the City

Administrator is a member of the Board, his or her term “shall end immediately upon termination of his term as a City Administrator.” *Id.* The original bylaws stated that the second voting member described above was appointed by a majority vote of the Mayor and City Council, but this provision was amended after IJ filed the Maryland Open Meetings Act complaint described below in Paragraph 42, in which IJ successfully alleged that the CEDC was a “public body” under Maryland law.

27. Two of the “private sector” members of the Board of the CEDC, Jonathan Hutcherson and Michael Marchini, were previously members of the City’s Economic Development Commission. *See* Economic Development Commission Members & CEDC Board Members (attached hereto as Exhibit F).

28. Mr. Hershberger stepped down from his position as the City’s Economic Development Coordinator and became the president and executive director of the CEDC. *See* Press Release by CEDC Regarding MOU with City (July 23, 2015) (attached hereto as Exhibit G).

29. According to Mr. Hershberger, with the creation of the CEDC “[t]here will no longer be a city department of economic development. The city department will go away.” *See* Greg Larry, *Cumberland economic development office to close, nonprofit will take over*, CUMBERLAND TIMES-NEWS, July 24, 2015, *available at* http://www.times-news.com/news/cumberland-economic-development-office-to-close-nonprofit-will-take-over/article_c869cc20-3231-11e5-8bfa-9bce67365bb7.html (attached hereto as Exhibit H).

30. City Mayor Brian Grim described the transition from the Economic Development Commission to the CEDC as “a license to be more aggressive with economic development.”

Mayor Grim stated that with the creation of the CEDC “[w]e give up a little control,” but “[w]e will still hold the most significant purse strings.” *Id.*

C. The Maryland Avenue Redevelopment Project

31. The Maryland Avenue Redevelopment Project is the City’s plan to bulldoze more than 60 homes in the Rolling Mill neighborhood in the City and sell the land to a private developer who will build a commercial retail development, potentially consisting of a national restaurant chain outlet and other retail stores.

32. IJ, Preservation Maryland, and the Save Our Homes Alliance have been working with about a dozen homeowners and landowners in the neighborhood in order to ensure that the City will not use eminent domain to take their homes for the benefit of a private developer.

33. In February 2015, Mr. Hershberger, still in his role as the City’s Economic Development Coordinator, entered into talks with PennTex Ventures, LLC, a Pennsylvania-based private developer, regarding the Maryland Avenue Redevelopment Project. *See* Email from Shawn Hershberger, Economic Development Coordinator, to Ted Donald & Ed Baker of PennTex Ventures (Feb. 13, 2015) (attached hereto as Exhibit I).

34. In May 2015, PennTex began drafting a proposed Letter of Intent with the City regarding the Maryland Avenue Redevelopment Project. By this point, however, the City was in the process of incorporating the CEDC, and PennTex asked the City to “[p]lease advise as to the NAME of the 501C3 Corporation and as to its official standing (i.e. Public, Private, Quasi).” Email from E. Baker to S. Hershberger (May 12, 2015) (attached hereto as Exhibit J).

35. The Rolling Mill home owners, IJ, and Preservation Maryland obtained a copy of this draft Letter of Intent between the City and PennTex. The Letter clearly states that the City intends to acquire properties in the Rolling Mill area “through the City’s power of eminent

domain and/or otherwise within two (2) years.” *See* Letter of Intent at 2 (June 11, 2015) (attached hereto as Exhibit K).

36. Once the CEDC was incorporated, that entity began negotiating on the City’s behalf with PennTex, and eventually entered into an agreement with PennTex to move forward with the Maryland Avenue Redevelopment Project. *See* Press Release, Cumberland Economic Development Corporation Announces Partnership with PennTex Ventures LLC (Sept. 29, 2015) (attached hereto as Exhibit L).

37. The City refused to release the text of the agreement between the CEDC and PennTex, arguing that it is a confidential document between CEDC and PennTex, and that the City is not a party. *See* Email from J. Rhodes to Mayor B. Grim and City Council members (Dec. 11, 2015) (attached hereto as Exhibit M).

38. Jeff Rhodes, the City Administrator and a member of the CEDC Board, expressed his concern to the Mayor and City Council members that if details about the Maryland Avenue Redevelopment Project become public “before the deal is done, it jeopardizes the project,” noting that a previous redevelopment project failed because “that project became too public.” *Id.*

39. In December 2015, the City Council approved plans to raise \$4.2 million (including \$2.5 million in a new bond issuance) to fund the Maryland Avenue Redevelopment Project, including money to obtain privately owned homes in the Rolling Mill neighborhood. *See* Greg Larry, *Cumberland to raise millions for Maryland Avenue project*, CUMBERLAND TIMES-NEWS (Dec. 2, 2015), available at http://www.times-news.com/news/cumberland-to-raise-millions-for-maryland-avenue-project/article_5d39d7cc-985e-11e5-9e3d-e70322faddbe.html (attached hereto as Exhibit N). In the same article, Mr. Hershberger noted that the CEDC has “a close relationship with the mayor and the city.” *Id.*

40. The City has transferred some portion of these funds to the CEDC for use in carrying out the Maryland Avenue Redevelopment Project. *See* Letter from K. Tressler, City Comptroller, to S. Hershberger (March 4, 2016) (attached hereto as Exhibit O).

41. On July 13, 2016, IJ sent the CEDC a request via certified mail requesting a schedule of all past and upcoming meetings of the CEDC board or any committee, working group, or other body thereof, as well as the agendas and minutes of all past meetings, pursuant to the Maryland Open Meetings Act, Maryland Code, General Provisions § 3-101, *et seq.* *See* Open Meetings Request (July 13, 2016) (attached hereto as Exhibit P). The CEDC did not respond to this request.

42. On August 23, 2016, IJ filed a complaint with the Open Meetings Compliance Board of the Office of the Attorney General of the State Maryland, arguing that CEDC is a “public body” within the meaning of the Open Meetings Act and must comply with that Act. IJ attached to the Complaint a copy of the MOU between the CEDC and the City. *See* Open Meetings Act Complaint Against Cumberland Economic Development Corporation (Aug. 23, 2016) (attached hereto as Exhibit Q).

43. On November 3, 2016, the Open Meetings Compliance Board determined that the CEDC is a “public body” within the meaning of the Open Meetings Act because it “‘function[s] as an extension and sub-agency of the City [of Cumberland] government’ and was created, by the City for that purpose.” *Re: Cumberland Economic Development Corporation*, 10 Official Opinions of the Compliance Board 117, 124 (2016) (quoting *Andy’s Ice Cream, Inc. v. City of Salisbury*, 125 Md. App. 125, 157 (Md. App. 1999)) (attached hereto as Exhibit R). The Board determined that the CEDC had violated the Open Meetings Act and was required to comply with it in the future.

44. The CEDC has not appealed or otherwise challenged this determination.

D. IJ's Requests for Disclosures

45. On July 14, 2016, IJ sent a request for disclosure under the MPIA to the CEDC. This request asserted that the CEDC is an instrumentality of the City "required to produce records upon request." *See* 2016 Request at 1 (attached hereto as Exhibit S).

46. In the 2016 Request, IJ requested, *inter alia*, "any and all of the following public records" created in the past five years:

4. All communications between CEDC and PennTex Ventures, or any other developer, regarding the Maryland Avenue Redevelopment Project.
...
6. All urban renewal plans, economic development plans, feasibility studies, strategic plans, comprehensive plans, sight plans, proposals, or other plans regarding the Maryland Avenue Redevelopment Project.
...
8. All blight studies, findings, reports, or other documents prepared regarding blighted or slum properties in the Maryland Avenue Redevelopment Project.
...
13. All timelines or project calendars regarding the Maryland Avenue Redevelopment Project....

Id. at 1–2.

47. The 2016 Request noted that "[d]isclosure of the requested information is required by law, in the public interest, and likely to contribute to the public understanding of the Maryland Avenue Redevelopment Project, as well as the CEDC's role in acquiring land and financial support for the development." *Id.* at 2.

48. On August 5, 2016, Mr. Hershberger responded on behalf of the CEDC to the 2016 Request, on letterhead that listed the CEDC's address as the Cumberland City Hall at 57 N. Liberty Street. The CEDC asserted that as a "private nonprofit corporation," the CEDC "is not subject to the [MPIA]." August 5 Response (attached hereto as Exhibit T). However, the CEDC

indicated that it was “willing to comply with your request for documentation” and asserted that it would charge 25 cents per copied page as well as staff time. The CEDC stated that it anticipated being able to produce the requested documents within 30 days. The letter did not assert that any of the requested documents were subject to any exemption.

49. Despite its statement that it would produce responsive documents, the CEDC produced no public records in response to the 2016 Request, including in response to items 4, 6, 8, and 13 described above.

50. On September 12, 2016, an IJ employee emailed Mr. Hershberger, again asserting that “the CEDC is an instrumentality of the City of Cumberland and is subject to the terms of the [MPIA]” and asked when the CEDC would produce the balance of the documents requested on July 14. The same employee followed up on November 16, 2016 and December 28, 2016 to ask when the CEDC would provide the responsive documents it had promised. *See* Emails from J. Shaw to S. Hershberger (attached hereto as Exhibit U). The CEDC did not respond to any of these emails.

51. On information and belief, on December 13, 2016, the CEDC signed a letter of intent to sell all its real estate holdings within the Maryland Avenue Redevelopment Project area to Cumberland Gateway Real Estate LLC. This letter of intent was announced on the CEDC website on December 31, 2016, but a copy of this letter was not posted or otherwise made publicly available.

52. On information and belief, the Cumberland Gateway letter of intent contains information relevant to the use of eminent domain against the Rolling Mill homeowners in order to convey their properties to a private party. “[S]uch proceedings,” the Court of Appeals has

held, “should be even more open to public scrutiny.” *City of Baltimore Dev. Corp.*, 395 Md. at 318.

53. On January 11, 2017, IJ sent the City of Cumberland and the CEDC identical information requests under the MPIA requesting two categories of documents:

The “Letter of Intent with Cumberland Gateway Real Estate LLC to sell all real estate holdings within the MD Avenue Redevelopment Project area” (also described as “The Letter of Intent dated on December 13[th] between the CEDC and Cumberland Gateway Real Estate”) announced on the CEDC website on December 31, 2016:
<http://www.choosecumberland.org/cumberland-economicdevelopment-corporation-announces-grant-award-and-loi-for-the-marylandavenue-redevelopment-project/>

[and]

Any other Letters of Intent, Memoranda of Understanding, contracts, or other agreements between the CEDC and Cumberland Gateway Real Estate LLC regarding the Maryland Avenue Redevelopment Project.

2017 Requests (attached hereto as Exhibit V).

54. The 2017 Requests stated that “[i]f any information is exempt from disclosure it should be considered severable from the other information requested.” The Requests noted that disclosure of the requested documents was “required by law, in the public interest, and likely to contribute to the public understanding of the Maryland Avenue Redevelopment Project, as well as the CEDC’s role in acquiring land and financial support for the development.” *Id.*

55. On January 20, 2017, Mr. Hershberger responded to the Request on behalf of the CEDC, on letterhead that listed the CEDC’s address as the Cumberland City Hall at 57 N. Liberty Street. He stated that “[w]hile we respect the *opinion* of the Open Meetings Compliance Board, we feel their opinion is flawed in its rationale and conclusions.” CEDC Response (Jan. 20, 2017) (attached hereto as Exhibit W) (emphasis in original).

56. The CEDC denied IJ's 2017 Request on grounds that the requested documents "are proprietary in nature based on the Annotated Code of Maryland section 4-335 - Trade secrets; confidential information." *Id.*

57. The CEDC did not deny that it is an instrumentality of the City of Cumberland within the meaning of the MPIA, nor that it did not have the requested documents in its possession.

58. The same day, the City stated in its Response that "although the Open Meetings Compliance Board determined that the [CEDC] is a public body within the meaning of the Maryland Open Meetings Act, it did not find that CEDC was an instrumentality of the City under the MPIA." The City stated that it had no documents in its possession responsive to the Request and directed IJ to the CEDC. *See* City of Cumberland MPIA Response (Jan. 20, 2017) (attached hereto as Exhibit X).

COUNT I
UNLAWFUL DENIAL OF A REQUEST FOR DISCLOSURE UNDER THE
MARYLAND PUBLIC INFORMATION ACT
(Against the City—2017 Request)

59. Paragraphs 1–58 are incorporated herein in their entirety.

60. On information and belief, the City has public records in its possession that are responsive to the 2017 Request.

61. Because the CEDC is an instrumentality of the City, any public records in the possession of the CEDC are constructively within the possession and custody of the City.

62. Alternatively, on information and belief, public records within the possession of the CEDC are stored within the CEDC's offices in the Cumberland City Hall at 57 N. Liberty Street, and thus are in the actual possession and custody of the City.

63. The City's denial of IJ's 2017 Request is unlawful, as the MPIA does not exempt sales agreements, contracts, MOUs, and other agreements entered into by instrumentalities of the State from disclosure.

64. The confidential commercial information exemption to the MPIA does not exempt completed sales agreements, contracts, MOUs, and other agreements entered into by instrumentalities of the State.

65. Alternatively, the existence of some confidential commercial information in the letter of intent does not permit the City to withhold the letter in its entirety.

66. The City's unlawful denial of IJ's 2017 Request is yet the latest example of a recurring pattern of abuse of public information sunshine laws by the City and its instrumentality, the CEDC, undertaken to shield the details of the Maryland Avenue Redevelopment Project from public scrutiny.

67. The City's unlawful denial of IJ's 2017 Request is a knowing and willful failure to disclose a public record or part of a record that IJ is entitled to inspect under the MPIA.

68. The denial of IJ's MPIA disclosure request is immediately reviewable by this Court.

69. This Complaint has been filed within two years of the City's final decision to deny IJ's requests. Md. Code, Court & Judicial Proc. § 5-110.

70. Accordingly, this Complaint has been timely filed and IJ is entitled to judicial review, as well as statutory damages and reasonable attorneys' fees and litigation costs associated with this action. *See* Md. Code, Gen'l Prov. §§ 4-362(d)(1), (f).

71. IJ seeks expedited hearing of this cause, pursuant to Md. Code, Gen'l Prov. § 4-362(c).

COUNT II
UNLAWFUL DENIAL OF A REQUEST FOR DISCLOSURE UNDER THE
MARYLAND PUBLIC INFORMATION ACT
(Against the CEDC—2016 Request)

72. Paragraphs 1–71 are incorporated herein in their entirety.

73. The CEDC is an instrumentality of the City and is subject to the MPIA.

74. On information and belief, the CEDC has public records in its possession that are responsive to items 4, 6, 8, and 13 of the 2016 Request.

75. The CEDC's failure to produce those public records constitutes a *de facto* denial of IJ's 2016 Request, despite the CEDC's suggestion that it would provide documents in response to that request.

76. The CEDC's denial of IJ's 2016 Request is unlawful.

77. The CEDC's unlawful denial of IJ's 2016 Request is another example of a recurring pattern of abuse of public information sunshine laws by the City and its instrumentality, the CEDC, undertaken to shield the details of the Maryland Avenue Redevelopment Project from public scrutiny.

78. The CEDC's unlawful denial of the 2016 Request is a knowing and willful failure to disclose a public record or part of a record that IJ is entitled to inspect under the MPIA.

79. The denial of IJ's 2016 Request is immediately reviewable by this Court.

80. This Complaint has been filed within two years of the CEDC's final decision to deny the July 14 Request. Md. Code, Court & Judicial Proc. § 5-110.

81. Accordingly, this Complaint has been timely filed and IJ is entitled to judicial review, as well as statutory damages and reasonable attorneys' fees and litigation costs associated with this action. *See* Md. Code, Gen'l Prov. §§ 4-362(d)(1), (f).

82. IJ seeks expedited hearing of this cause, pursuant to Md. Code, Gen'l Prov. § 4-362(c).

COUNT III
UNLAWFUL DENIAL OF A REQUEST FOR DISCLOSURE UNDER THE
MARYLAND PUBLIC INFORMATION ACT
(Against the CEDC—2017 Request)

83. Paragraphs 1–82 are incorporated herein in their entirety.

84. On information and belief, the CEDC has public records in its possession that are responsive to the 2017 Request.

85. The CEDC's denial of IJ's 2017 Request is unlawful, as the MPIA does not exempt sales agreements, contracts, MOUs, and other agreements entered into by instrumentalities of the State from disclosure.

86. The confidential commercial information exemption to the MPIA does not exempt completed sales agreements, contracts, MOUs, and other agreements entered into by instrumentalities of the State.

87. Alternatively, the existence of some confidential commercial information in the letter of intent does not permit the CEDC to withhold the letter in its entirety.

88. The CEDC's unlawful denial of the 2017 Request is another example of a recurring pattern of abuse of public information sunshine laws by the City and its instrumentality, the CEDC, undertaken to shield the details of the Maryland Avenue Redevelopment Project from public scrutiny.

89. The CEDC's unlawful denial of IJ's 2017 Request is a knowing and willful failure to disclose a public record or part of a record that IJ is entitled to inspect under the MPIA.

90. The denial of IJ's 2017 Request is immediately reviewable by this Court.

91. This Complaint has been filed within two years of the City's final decision to deny IJ's requests. Md. Code, Court & Judicial Proc. § 5-110.

92. Accordingly, this Complaint has been timely filed and IJ is entitled to judicial review, as well as statutory damages and reasonable attorneys' fees and litigation costs associated with this action. *See* Md. Code, Gen'l Prov. §§ 4-362(d)(1), (f).

93. IJ seeks expedited hearing of this cause, pursuant to Md. Code, Gen'l Prov. § 4-362(c).

Prayer for Relief

Wherefore, Plaintiff prays:

A. That the Court declare that the CEDC is an instrumentality of the State pursuant to the Maryland Public Information Act;

B. That the Court further declare that the denial of IJ's access to the documents or other public records referenced in this Complaint is a violation of the MPIA;

C. That the Court enter an order enjoining Defendants from withholding any documents or other public records that are within the scope of IJ's MPIA Requests dated July 14, 2016 and January 11, 2017;

D. That the Court enter an order for the production of all documents or other public records that are within the scope of IJ's MPIA Requests of July 14, 2016 and January 11, 2017;

E. That the Court enter an order requiring Defendants to pay the Plaintiff counsel fees and litigation costs that it has reasonably incurred;

F. That the Court enter an order requiring the payment of statutory damages in the amount of \$1000.00; and

G. Such other and further relief as the Court may deem just and proper to ensure that IJ has received a full and complete disclosure of all public records within the scope of its MPIA Requests dated July 14, 2016 and January 11, 2017.

DATED: March 21, 2017

Respectfully submitted,



Marisa C. Maleck
Justin A. Torres (application for special admission pending)
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Attorneys for Plaintiff Institute for Justice

ATTORNEY CERTIFICATION

I hereby certify, pursuant to Rule 1-313 of the Maryland Rules, that I am admitted to practice law in the State of Maryland.



Marisa C. Maleck
Attorney for Plaintiff Institute for Justice