

**IN THE CIRCUIT COURT  
FOR ANNE ARUNDEL COUNTY**

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

**Plaintiff,**

v.

**ANNE ARUNDEL COUNTY,  
MARYLAND  
2660 Riva Road  
4th Floor  
Annapolis, MD 21401,**

**Defendant.**

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Civil Case No. \_\_\_\_\_

**COMPLAINT**

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Plaintiff Energy Policy Advocates (“EPA”), by and through its undersigned counsel, and for its complaint against Anne Arundel County (“the County”), 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 subject to certain exclusions.

2. This case involves only one withheld record, more specifically described in paragraph 40, below. That record appears to indicate that the County was aware of private funding for its political or policy agenda and was aware of the risk that information shared with such private parties would not remain confidential.

### **THE PARTIES**

3. Plaintiff Energy Policy Advocates (“EPA”) is incorporated in the State of Washington as a nonprofit organization. Its mission is to promote 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.
4. Defendant Anne Arundel County (“the County”) is a chartered county of the State of Maryland established under Article XI-A of the State Constitution with powers conferred upon it by, *inter alia*, Titles 9 and 10 of the Local Government Article of the Annotated Code of Maryland. Pursuant to Section 103 of the Anne Arundel County Charter, all legal proceedings on behalf of its constituent offices and departments are brought by, and against, the County in its corporate name, “Anne Arundel County, Maryland.”

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over this matter pursuant to Md. Code, GP § 4-362(a).

6. Venue is proper in this Court pursuant to Md. Code, GP § 4-362(a)(3), as the public information requested is likely located at or in County offices, which are located in Anne Arundel County.

## STATEMENT OF FACTS

### RELEVANT BACKGROUND TO PUBLIC INTEREST

7. The records at issue in this case relate to a documented *modus operandi* of outside, private parties lobbying for, engineering, and privately financing a nationwide campaign of governmental lawsuits in pursuit of a political agenda. Such actions are targeted against other private entities which these policy- and litigation-lobbyists and their and silent partners in the collaborative effort have long targeted for investigation and/or prosecution on the basis of allegedly causing, worsening and/or speaking about climate change.
8. This veritable tsunami of state-court lawsuits began as “climate nuisance” actions but, after setbacks in federal court, the suits been recast to claim that their basis is actually state consumer protection law. This has been done in order to shield these pursuits from federal jurisdiction.
9. Anne Arundel County filed one such lawsuit in April 2021 (Civil Action No. C-02-CV-21-000565). That suit was later removed to the U.S. District Court for the District of Maryland (Northern Division) and is currently captioned *Anne Arundel County, Maryland vs. BP P.L.C., et al.*, Case Number: 1:21-cv-01323.
10. Previous MPIA requests Plaintiff submitted to shed light on this litigation campaign revealed some specifics of the guiding role in the County’s lawsuit played by a

privately financed-and-directed group called the Center for Climate Integrity (“CCI”).  
On information and belief, that group receives funding from the Rockefeller Family Fund.

11. Based on these and other records and information and belief, Plaintiff asserts that the County’s decision to file suit was brought about and influenced by lobbyists behind a nationwide campaign of such litigation, promoted as part of seeking a particular political outcome.<sup>1</sup>
12. The County’s suit is one of the latest in a series of lawsuits that have been filed beginning in July 2017 alleging various offenses grounded in claims of man-made climate change, from public nuisance claims to consumer fraud claims and failure to warn claims.
13. Further, and particularly relevant to the instant matter, public records suggest that despite a “contingency fee” contract promising the County’s law firm Sher Edling, LLP, a substantial percentage of alleged damages ostensibly suffered by the taxpayers in return for its representation in that lawsuit, the County was made aware prior to its

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<sup>1</sup> It had previously been established by public record productions and in judicial proceedings in the states of Texas and New York that private parties were underwriting and engaging in such a lobbying campaign through intermediary “green 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. 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 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 8<sup>th</sup>, 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 2021, and the U.S. District Court for the Southern District of New York.

signing that agreement that the law firm was already being paid substantial sums by a private foundation to file these lawsuits.

14. Recent revelations from public record productions and other research affirms at least two private foundations are financing this class of governmental litigation with charitable contributions.<sup>2</sup>

15. Public records show one of these groups, Resources Legacy Fund (“RLF”), reporting to the Internal Revenue Service these “charitable grants” and other payments to the County’s law firm of millions of dollars as being for reasons with evolving descriptions, although other records released in public records litigation confirm clearly that the contributions finance the litigation.

16. For example, in its Internal Revenue Service (IRS) Form 990 for the year 2017, which non-profit organizations must file providing certain details of their spending, RLF listed a charitable grant to the law firm Sher Edling, LLP in the amount of \$432,129

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<sup>2</sup> The other known such Collective Action Fund or “Collaborative Action Fund” is “A fiscally sponsored project of New Venture Fund, the Collective Action Fund for Accountability, Resilience, and Adaptation [which] makes charitable grants that enable cities, counties, and states hard hit by climate change to file high-impact climate damage and deception lawsuits represented by expert counsel.” <https://hewlett.org/grants/new-venture-fund-for-the-collective-action-fund-for-accountability-resilience-and-adaptation/>. See also <https://www.macfound.org/grantee/new-venture-fund-43535/>, “This award supports NVF’s Collaborative Action Fund for Accountability, Resilience, and Adaptation (CAF), which supports precedent-setting lawsuits to hold major corporations accountable for costs associated with the effects on climate of their pollutants. The award renews support for legal processes associated with a variety of lawsuits filed in support of states, counties and cities affected by climate change.”

for “Land or Marine Conservation”. [https://resourceslegacyfund.org/wp-content/uploads/2018/11/RLF\\_990\\_2017.pdf](https://resourceslegacyfund.org/wp-content/uploads/2018/11/RLF_990_2017.pdf), Schedule I, Part II.<sup>3</sup>

17. RLF is a non-profit dedicated to achieving policy outcomes. It states on its website:

“We are a 501(c)(3) nonprofit organization that partners with leaders in philanthropy, communities, government, science, and business to promote smart policies and secure equitable public funding for the environment, climate change resilience, and healthy communities.” <https://resourceslegacyfund.org/our-cause-values/>

18. Sher Edling, LLP is the law firm that has filed the overwhelming majority of these “climate” lawsuits against these and similarly situated defendants since 2017, including the County’s April 27, 2021, lawsuit

19. RLF’s 2018 form 990 reports a \$1,319,625 charitable grant to Sher Edling, LLP, this time claiming a different purpose, of “Advancing Healthy Communities”.

<https://resourceslegacyfund.org/wp-content/uploads/2020/03/RLF-IRS-Final-990-12.31.18-Public-Copy-4829-6612-8044.pdf>

20. RLF’s 2019 990 reports a \$1,110,000 in a charitable grant to Sher Edling, LLP, this time for another stated environmental purpose, “Land or Marine Conservation

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<sup>3</sup> The numerous millions of dollars paid by this funder to the County’s law firm counsel to bring “climate” lawsuits are in addition to robust contingency fee agreements with each governmental plaintiff promising, e.g., 16.67% of the first \$150 million in settlement or verdict and 7.5% of all sums above \$150 million (Minnesota, available at <https://govoversight.org/wp-content/uploads/2021/01/AGO-LAC.pdf>), a percentage of “damages” awarded not to exceed \$25,000,000 (District of Columbia available at <https://climatelitigationwatch.org/something-wicked-this-way-comes/>), or \$25 million of the first \$100 million, 15% of the next \$50 million, “plus seven and one-half percent (7.5%) of the amount of the Net Monetary Recovery greater than one hundred fifty million dollars (\$150,000,000) (San Francisco City and County, available at <https://climatelitigationwatch.org/wp-content/uploads/2018/12/SF-CC-2018-11-20-Legal-Services-Agreement-SF-SE-AB-FINAL-EXECUTED.pdf>).

Promotion of Education and/or Healthy Communities”.

<https://resourceslegacyfund.org/wp-content/uploads/2021/02/RLF-Public-Copy-IRS-Form-990-12.31.19-4824-7483-1056.pdf>

21. RLF’s 2020 990, released earlier this year, reported a \$2,394,000 charitable grant to Sher Edling, LLP, this time for a same stated environmental purpose as a previous year, “Land or Marine Conservation Promotion of Education and/or Healthy Communities”. <https://resourceslegacyfund.org/wp-content/uploads/2022/03/RLF-2020-IRS-Form-990-Public-Copy-Amended.pdf>
22. This reflects increasing amounts provided to the law firm by the Resources Legacy Fund as the number of lawsuits were filed by Sher Edling, LLP.
23. In late April of this year, the public interest group Government Accountability & Oversight obtained records in California Public Records Act litigation against the Regents of the University of California, which revealed correspondence from Sher Edling, LLP, to a prospective donor asking if he could support its nuisance litigation cases and affirming that the firm was being privately underwritten through something the firm’s representative called the “Collective Action Fund.”<sup>4</sup>
24. Specifically, Sher Edling’s Chuck Savitt wrote, in pertinent part:

“Dear Dan, Wanted to let you know that we filed the first three law suits supported by the Collective Action Fund on Monday. These precedent setting cases call on 37 of the world’s leading fossil fuel companies to take responsibility for the devastating damage sea level rise - caused by their greenhouse gas emissions - is having on coastal communities. The suits were filed in California Superior Court on behalf of the City of Imperial Beach and

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<sup>4</sup> The correspondence cited in ¶¶ 24-27 are available at <https://climatelitigationwatch.org/wp-content/uploads/2022/04/Nuisance-suits.pdf>.

the Counties of Marin and San Mateo.... We will keep you up to date as the cases move forward and as we file additional cases. Dam [sic], can we find a time to continue our conversation about your possible support for the project? And it would be great to have you meet Vic Sher.”

25. The soon-to-be donor, Dan Emmett, forwarded this email to parties he funds at the University of California at Los Angeles (UCLA) School of Law to, *inter alia*, support climate litigation — one of whom, Prof. Ann Carlson, was according to her outside-activity filings with the School on the Sher Edling, LLP, team advising on climate litigation. <https://climatelitigationwatch.org/wp-content/uploads/2021/03/Carlson-reporting-forms-Responsive-Documents-20-8525.pdf>
26. Mr. Emmett wrote, *inter alia*, “Chuck Savitt who is heading this new organization behind the lawsuits has been seeking our support. Terry Tamminen in his new role with the DiCaprio Foundation has been a key supporter.” *Id.*
27. In February 2018, Emmett wrote again to Carlson in the context of recruiting another activist donor “in helping to finance the nuisance litigation,” and specifically the County’s lawyers “Vic Sher and team,” stating in pertinent part “You can tell [the prospective donor] Terry's organization and I are both serious supporters”. *Id.*
28. The Leonardo DiCaprio Foundation (LDF) merged in July 2019 with two other organizations (<https://philanthropynewsdigest.org/news/dicaprio-foundation-merges-with-new-environmental-organization>). While LDF’s website remained active until recently and with no mention of support for such lawsuits, a search of the Wayback Machine (Archive.org) reveals a September 2017 post LDF stating, in pertinent part (emphasis in original), “Climate Program – \$3,573,562 ... Highlighted grantees



include:... **The Collective Action Fund** (Resources Legacy Fund): to support precedent-setting legal actions to hold major corporations in the fossil fuel industry liable for the effects of climate change pollution”. “Leonardo DiCaprio Foundation awards \$20 million in environmental grants,” September 17, 2017, available at <https://web.archive.org/web/20171002192851/https://www.leonardodicaprio.org/leonardo-dicaprio-foundation-awards-20-million-in-environmental-grants/>.

29. Also, “Terry Tamminen, CEO of LDF commented, ‘This round of grants comes at a critical time. With a lack of political leadership, and continued evidence that climate change is growing worse with record-breaking heatwaves and storms, we believe we need to do as much as we can now, before it is too late.’” *Id.*
30. The reference to using this financing to fill a perceived “lack of political leadership,” i.e., changes to law and policy, also is instructive and the record is now clear that the County’s counsel Sher Edling, LLP, is in fact filing these numerous “climate” lawsuits in state courts, including the the County’s, all now styled as consumer protection or failure to warn “climate” lawsuits, but still paid for by a third party dedicated to achieving policy outcomes.
31. Nowhere in the charity’s attested filings before the IRS does the charity mention consumer protection, failure to warn or other such purposes, as they would given that the IRS even provides additional space in Form I (Part IV, Supplemental Information) for additional explanation. In that Sec. IV, RLF regularly reports that other information is available, e.g., (CAPS in original) “RLF GRANTS INCLUDE REQUIREMENTS FOR PERIODIC REPORTS RECONCILING GRANT

ACTIVITIES, PROGRESS, AND OUTCOMES WITH GRANT OBJECTIVES, AS WELL AS A RECONCILIATION OF GRANT EXPENDITURES WITH THE PROPOSAL BUDGET. IN ADDITION, STAFF MAINTAINS CONTACT WITH GRANTEES AND PERIODICALLY CONDUCTS FIELD VISITS FOR SIGNIFICANT PROJECTS.”

32. Instead, and regardless of whether this reflects any intention to obscure the group’s financing of these suits out of concern over particular rules of professional conduct such as Minnesota Rule of Professional Conduct 1.8(f)<sup>5</sup> (see, *infra*) or other reasons, public records now confirm that these monies paid by RLF of between \$5.25 million and \$7.65 million to the County’s counsel over the first four years of filing these suits, from the year litigation first commenced through 2020 (the most recent year for which RLF’s Forms 990 are available), are for the purpose of bringing about various policy-driven lawsuits.

33. Prior to these recent revelations, in the face of information which merely suggested that this might be occurring, at least one law professor published commentary raising serious tax and public policy consequences in the event this private financing of litigation was in fact transpiring. Prof. Michael I. Krauss “Using Charitable Funds to Subsidize “Legislation Through Litigation,” Forbes, July 28, 2022, <https://www.forbes.com/sites/michaelkrauss/2020/07/28/using-charitable-funds-to-subsidize-legislation-through-litigation/?sh=1f7098ff3342>.

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<sup>5</sup> Maryland has an analogous Rule 19-301.8 (f).

34. Subsequently, RLF's 2020 form 990, added an entry for the first time listing Sher Edling, LLP as an independent contractor, its "highest compensated independent contractor," which it also paid an amount identical to the "charitable grant for Land or Marine Conservation Promotion of Education and/or Healthy Communities," \$2,394,000, but for "Consulting," for a total of \$4,788,000 sent to the law firm for the year before the County's suit was filed, 2021 (no RLF Form 990 for 2021 is yet available).
35. Public records including productions by municipal "climate" plaintiffs and state attorneys general document, in the participants' own words, that the multi-front campaign of which the County's lawsuit is a part seeks to coerce defendants "to the table" on policy issues and involves prospecting for "new streams of revenue" or "sustainable revenue streams"<sup>6</sup> (a term apparently used not in the environmentalist sense but in the sense that the parties expect the money will keep flowing).
36. These admissions make clear that individuals and entities who Plaintiff previously revealed lobbied the County to engage in litigation are also using the prospect of litigation as a way to obtain political outcomes preferred by the lobbyists. The sworn

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<sup>6</sup> 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>.

RLF Forms 990 and other emails cited, *supra*, affirm this which is both an issue of great expenditure of public funds to argue against, and of great public interest.

37. Through these records the public has come to partially understand the true nature of these lawsuits and the role of private parties to recruit and, now, to finance lawsuits.

38. Plaintiff then learned the above facts about private financing of these lawsuits, and sought further information held in public records including those sought in the instant matter.

#### THE MAY 11, 2022, PUBLIC INFORMATION ACT REQUEST

39. On May 11, 2022, Plaintiff EPA sent a Public Information Act request for certain described email correspondence and other public records reflecting the County's 2021 arrangements with Sher Edling, LLP and all disclosures made to the County by Sher Edling, and correspondence using Resources Legacy Fund ("III. All electronic or hard copy correspondence sent to or from or copying the County Executive Office at any time in 2021 that uses the term "Resources Legacy Fund.").

40. On June 16, 2022, the County responded by denying Plaintiff's request in full, for each of three categories of records, and stating, in pertinent part about "III":

"[A]n electronic search of the Google accounts of County Executive Steuart Pittman, Mr. Matt Johnston, Mr. Gregory Swain, and Mr. Hamilton Tyler for the key phrase "Resources Legacy Fund" was performed. The search produced one email communication between Mr. Johnston, County Attorney Gregory Swain and Deputy County Attorney Hamilton Tyler. The communication occurred on March 2, 2021. This communication is also protected by attorney client privilege pursuant to GP § 4-301 (a)(1) as Mr. Johnston was the Director of Environmental Policy for Anne Arundel County and the communication was with attorneys at the

County Office of Law regarding an ongoing legal matter. As such, your request for this document is denied.”

41. Inherently, withholding in full any correspondence or memorandum withholds non-exempt, purely factual information to which no privilege or exemption can apply.

This includes fields such as the To: and From: parties, the date, and the subject.<sup>7</sup> To the extent that any information could have been permissibly redacted, the Defendant violated the MPIA at minimum by withholding records in full despite the existence of reasonably segregable factual and other non-exempt information.

42. On information and belief, Plaintiff EPA asserts that the one acknowledged record referencing Resources Legacy Fund reflects either or both of the following:

- a. The County’s knowledge that the firm was in fact already being paid to file the County’s lawsuit, prior to the County promising the firm a contingency fee agreement under which the law firm would receive scores of millions of dollars out of alleged taxpayer damages, despite already being paid to pursue the litigation, by a third party.<sup>8</sup>

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<sup>7</sup> 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 County 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.

<sup>8</sup> The numerous millions of dollars paid by this funder to Plaintiff’s counsel to bring “climate” lawsuits are in addition to robust contingency fee agreements with each governmental plaintiff promising, e.g., 16.67% of the first \$150 million in settlement or verdict and 7.5% of all sums above \$150 million (Minnesota, available at <https://govoversight.org/wp-content/uploads/2021/01/AGO-LAC.pdf>), a percentage of “damages” awarded not to exceed \$25,000,000 (District of Columbia available at), or \$25 million of the first \$100 million, 15% of the next \$50 million, “plus seven and one-half percent (7.5%) of the amount of the Net Monetary

b. The County's knowledge that information was being shared with third parties with whom no privilege or legally-recognized common interest existed, such that the County could not lawfully protect information shared with such third parties.

43. The aforementioned relationship between the County, its attorneys, and well-heeled third parties lobbying for a particular outcome is inarguably of great public interest.

44. This information is not available to the public from any other source.

45. Despite this, the County refuses to produce a single email which inarguably references the efforts of a third party to influence or fund the County's desired course of action.

46. Defendant's description of the single email referencing the information about Resources Legacy Fund and why it is exempt is insufficient to sustain the County's burden to withhold records under the MPIA, in violation of Plaintiff's rights thereunder.

#### **APPLICABLE LAW**

47. The MPIA establishes a general rule 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, GP § 4-103(a).

48. 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).

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Recovery greater than one hundred fifty million dollars (\$150,000,000) (San Francisco City and County, available at <https://climatelitigationwatch.org/wp-content/uploads/2018/12/SF-CC-2018-11-20-Legal-Services-Agreement-SF-SE-AB-FINAL-EXECUTED.pdf>)

49. 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.
50. Mere argument is not admissible “evidence” that will suffice to meet the Defendant’s burden to withhold a record.
51. 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).
52. In this case, the County has not met that burden. It has offered only the most threadbare and conclusory assertions of privilege — “The communication occurred on March 2, 2021 [eight weeks prior to the filing of its lawsuit by Sher Edling, LLP and, it seems, financed by RLF]. This communication is also protected by attorney client privilege pursuant to GP § 4-301 (a)(1) as Mr. Johnston was the Director of Environmental Policy for Anne Arundel County and the communication was with attorneys at the County Office of Law regarding an ongoing legal matter.”

53. Defendant does not state what this legal matter was, though the facts suggest it was the County's April 27, 2021 "climate" lawsuit filed on its behalf by Sher Edling, LLP. Defendant does not support the claim that the *content* of the record, is privileged, in full, rather than stating it was between certain parties and pertained to some ongoing legal matter. On information and belief, the "ongoing" legal matter at issue was not "ongoing" at all, but was yet to be filed and was not reasonably anticipated.
54. The County's claim of exemption or privilege does not rise to the required level of individualized showing to justify the withholding of this particular record. Assuming, *arguendo*, that any portion of a record could be withheld, the County has made no effort to segregate and produce the remaining portions of any record with redactions.
55. The County cannot justify its categorical withholdings of this one responsive record, in full, including of 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) (*emphasis added*). The County must establish the existence of the applicable attorney-client relationship for this record, and must show that the county intended for the record to remain confidential despite the apparent sharing of information with outside parties, as set forth above. The mere existence of an attorney-client relationship is insufficient to privilege all communications between two individuals.



Moreover, the County 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.

56. Attorney work product doctrine protects “the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.” Maryland Rule 2-402(d). It does not protect a factual statement that, e.g., a private party is already financing attorneys, to whom the County would then promise to also pay the same law firm substantial sums out of alleged taxpayer damages, to file such lawsuits.

57. The County’s complete withholding of this one record with only an implication or even conclusory statement that it has no reasonably severable information 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).

58. The County 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 the record at issue reflects the County attempting to procure the services of an outside attorney, including with non-county funding sources, it must establish why Md. Code, SF&P § 13-210(b) does not require disclosure.

59. For all of the reasons specifically set forth heretofore, the County 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 the record at issue 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 the requested record may be produced in redacted form;
- B. Order the Defendant to furnish Plaintiff the public record at issue in this matter, subject only to demonstrated, legally permissible withholdings or redactions which must be supported by admissible evidence establishing that any MPIA exemption applies to the particular record or portion of it which is being withheld in full or in part;
- C. Alternately, perform an *in camera* review of the record at issue which is withheld by the Defendant and compel Defendant to release either the record or the portions of it for which the Defendant is unable to carry its burden to prove the existence of a privilege or exemption from disclosure; and further,

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

Respectfully submitted this 28<sup>th</sup> day of June 2022,

ENERGY POLICY ADVOCATES  
By Counsel

/s/ Matthew D. Hardin  
Matthew D. Hardin (CPF# 2003160003)  
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Certification Pursuant to Rule 1-313

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

/s/ Matthew D. Hardin  
Matthew D. Hardin