



Bryon Black  
Frederick County Public Information Act Representative  
Office of the County Attorney  
12 East Church Street  
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Via email to: BBlack@frederickcountymd.gov  
(Also submitted through Frederick County on-line PIA system)

July 8, 2024

Mr. Black:

### **Public Information Act Request**

Pursuant to the Maryland Public Information Act, Md. GP § 4-103(a), The Sugarloaf Alliance hereby requests the following:

#### **DEFINITIONS:**

- (A) Any reference to Frederick County, or a department or subdivision thereof, includes any person working for Frederick County, the department or subdivision whether an elected or appointed official, official, or employee.
- (B) Emails refers to the full content of electronic messages exchanged between two or more parties. Email records include the date sent, the names and email addresses of those sending the message, the names and email addresses of those receiving the message, a "Subject" line for the message, the full text of the message, *and any attached files*. Should an email include a repetition of previous messages in the chain, all the included messages should be considered part of the responsive email.
- (C) If any employee or official of Frederick County used a personal email account to conduct county business, then this request extends to those personal email accounts as well.

#### **BACKGROUND:**

Council Member Steve McKay has been developing legislation for a residential growth moratorium linked to school overcrowding since 2023. Sometime in or around May 2024 a draft of this legislation was allegedly leaked to at least one member of the developer community.

Releasing privileged information to persons outside county government, and outside of the normal public process, would be a significant violation of the norms of open and transparent governance.

Sugarloaf Alliance intends to gather information on the leak and the county response to it. We are undertaking this investigation in order to educate the public on these events, and their impact on county governance.

## **REQUESTS:**

Sugarloaf Alliance believes that information related to this leak may be contained in emails sent to or from Frederick County email accounts, to or from a specific list of non-government email addresses, containing specific keywords, in a specified time period.

Frederick County email accounts of interest include all accounts associated with the County Executive's administration, The Division of Planning and Permitting, The Office of the County Attorney, Frederick County Council members, the staff of the County Council, as well as all other @FrederickCountyMD.gov email accounts. ***If any employee or official of Frederick County used a personal email account to conduct county business, then this request extends to those personal email accounts as well.***

Sugarloaf Alliance requests any and all email messages, including any attachments, residing on any email servers owned, managed, used, or controlled by Frederick County, which match all three of the following criteria:

***Responsive records will be To, From, CC, or BCC any of the following email addresses:***

Matt Holbrook <[mholbrook@sjpi.com](mailto:mholbrook@sjpi.com)>  
Danielle Adams <[danielle@frederickbuilders.org](mailto:danielle@frederickbuilders.org)>  
Andrew Brown <[abrown@cohnpropertygroup.com](mailto:abrown@cohnpropertygroup.com)>  
Tony Checchia <[tonyc@vcre.co](mailto:tonyc@vcre.co)>  
Chris Smariga <[csmariga@harrissmariga.com](mailto:csmariga@harrissmariga.com)>  
Lisa Graditor <[lgraditor@mdglawfirm.com](mailto:lgraditor@mdglawfirm.com)>  
Eric Soter <[esoter@rodgers.com](mailto:esoter@rodgers.com)>  
Don Pleasants <[dpleasants@pleasants.org](mailto:dpleasants@pleasants.org)>  
Brian Morris <[bmorris@mataninc.com](mailto:bmorris@mataninc.com)>  
Taylor Davis <[tdavis@morgankeller.com](mailto:tdavis@morgankeller.com)>  
Bruce Dean <[bdean@mdglawfirm.com](mailto:bdean@mdglawfirm.com)>  
Tom Natelli <[tomnatelli@natelli.com](mailto:tomnatelli@natelli.com)>  
Tom Natelli <[tom@natelli.com](mailto:tom@natelli.com)>  
Dusty Rood <[DRood@RODGERS.com](mailto:DRood@RODGERS.com)>  
Rick Weldon <[rweldon@frederickchamber.org](mailto:rweldon@frederickchamber.org)>  
Noel Manalo <[noel.manalo@offitkurman.com](mailto:noel.manalo@offitkurman.com)>  
David Severn <[dsevern@offitkurman.com](mailto:dsevern@offitkurman.com)>

We are requesting *both* emails *sent to* these addresses as well as any *received from* these addresses.

***Responsive records will contain any of the following search terms:***

“moratorium”  
“McKay”  
“overcrowding”  
“growth”  
“development”

Search terms are NOT case sensitive.

***Responsive records will be dated between May 1, 2024, and June 12, 2024.***

If any of the records contain material that is not releasable, please redact that part of the text and disclose the remainder. For each redaction, please specify the specific legal basis for your decision.

***Any emails that match these three criteria should be considered responsive to our request.*** Please provide all responsive records whether you feel they are relevant or not. To be clear, please release all responsive records.

**FEE WAIVER:**

The mission of Sugarloaf Alliance is to protect the unique natural and historical aspects of the Sugarloaf Mountain area and its environment through education and initiatives in support of watersheds, streams, meadows, forests, and historic sites. Working with volunteers, civic groups, and local, state, and federal agencies, the organization’s primary goal is to preserve the unique character and serenity of the area for future generations. Government transparency and the Maryland Public Information Act are key tools in fulfilling our mission. Sugarloaf Alliance is a 501(c)(3) organization.

***It is unlikely that this request and the necessary review will take more than two (2) hours.*** We have worked to craft this request in a way that lends itself to electronic search. Should the search encounter unforeseen complexity or difficulty please contact us immediately so we can work with you to refine the request and speed your response.

Should this request take more than the allowable two hours, pursuant to the MIPA § 4-206(e), we hereby request that all fees associated with these disclosures be waived. Applicant has very limited resources and any fees would be prohibitive. Sugarloaf Alliance is a non-profit, volunteer organization. The Alliance relies exclusively on donations to fund its activities and does not generate any commercial income. ***This request is purely in the public interest.***

The public, and Sugarloaf Alliance, has keen interest in any actions by County officials or staff which might violate the norms of open and transparent governance. The alleged leak of a

privileged document to parties outside government infringes on the public's right to fully participate in the legislative process. If developer interests, for example, have advanced (inappropriate) knowledge of potential legislation then they have an unfair advantage during the public process. The full disclosure of the details of this alleged leak is fully in the public interest.

Local media coverage of the McKay Moratorium proposal and the leaking of the draft bill demonstrates the wider public interest in this episode. The public, as evidenced by media coverage, has significant interest in potential policies to reduce school overcrowding. There is similar interest in the process by which these potential policies may become law. The Frederick News-Post and other media have published numerous articles and opinion pieces related to the Moratorium and leak:

“Editorial: McKay's moratorium idea makes sense.” *Frederick News-Post*, 9/30/23.

[https://www.fredericknewspost.com/opinion/editorial/mckays-moratorium-idea-makes-sense/article\\_575bf9db-d1f3-57ef-bb67-bf262210c69e.html](https://www.fredericknewspost.com/opinion/editorial/mckays-moratorium-idea-makes-sense/article_575bf9db-d1f3-57ef-bb67-bf262210c69e.html)

“Editorial: Moratorium would help county catch up with growth.” *Frederick News-Post*, 6/27/24.

[https://www.fredericknewspost.com/opinion/editorial/moratorium-would-help-county-catch-up-with-growth/article\\_75ad79a5-6613-526c-b70f-629bc45865b3.html](https://www.fredericknewspost.com/opinion/editorial/moratorium-would-help-county-catch-up-with-growth/article_75ad79a5-6613-526c-b70f-629bc45865b3.html)

“As I See It: Leaking the Frederick County moratorium bill was foul play.” *Frederick News-Post*, 7/6/24.

[https://www.fredericknewspost.com/opinion/columns/leaking-the-frederick-county-moratorium-bill-was-foul-play/article\\_bd57c15e-a68e-5a2a-b7ae-fae1787b7e00.html](https://www.fredericknewspost.com/opinion/columns/leaking-the-frederick-county-moratorium-bill-was-foul-play/article_bd57c15e-a68e-5a2a-b7ae-fae1787b7e00.html)

Jacoby, Ceoli. “McKay alleges that introduction of his moratorium bill was delayed in attempt to kill it.” *Frederick News-Post*, 7/1/24.

[https://www.fredericknewspost.com/news/economy\\_and\\_business/real\\_estate\\_and\\_development/mckay-alleges-that-introduction-of-his-moratorium-bill-was-delayed-in-attempt-to-kill-it/article\\_401b816e-dadd-56e0-9685-f2d5adc207e9.html](https://www.fredericknewspost.com/news/economy_and_business/real_estate_and_development/mckay-alleges-that-introduction-of-his-moratorium-bill-was-delayed-in-attempt-to-kill-it/article_401b816e-dadd-56e0-9685-f2d5adc207e9.html)

WFMD Radio. “Councilman McKay Outlines Proposed Growth Moratorium Ordinance.” 6/12/24.

<https://www.wfmd.com/2024/06/12/councilman-mckay-outlines-proposed-growth-moratorium-ordinance/>.

Gourley, Bruce. “Letter to the Editor: Moratorium proposal deserves full support” *Frederick News-Post*, 7/6/24.

[https://www.fredericknewspost.com/opinion/letter\\_to\\_editor/moratorium-proposal-deserves-full-support/article\\_f946d394-7b80-512b-ab30-03c8ea1475a3.html](https://www.fredericknewspost.com/opinion/letter_to_editor/moratorium-proposal-deserves-full-support/article_f946d394-7b80-512b-ab30-03c8ea1475a3.html)

The depth and breadth of public engagement on this topic makes clear that this is a matter of local controversy. A denial of this fee waiver request would effectively stymie the release of

public records. *It is certain that a decision by county government to effectively deny release of public records related to the leak would only serve to enflame public concerns.* This would have the effect of exacerbating the controversy.

"The purpose of the Maryland Public Information Act is virtually identical to that of the [Freedom of Information Act] FOIA: to provide the public the right to inspect the records of the State government or of a political subdivision. Moreover, the historical development of portions of the MPIA parallel those of its federal counterpart. Under these circumstances, the interpretation of the FOIA by federal courts is persuasive." *Police Patrol Sec. Sys. v. Prince George's County*, 378 Md. 702,724,838 A.2d 1191, 2003 Md. LEXIS 823 (Md. 2003) (internal citations omitted.)

FOIA law dictates that "documents shall be furnished without charge or at a charge reduced ... if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." *Larson v. CIA*, 843 F.2d 1481, 1482-1483, 269 U.S. App. D.C. 153, 1988 U.S. App. LEXIS 4615, 15 Media L. Rep. 1961 (D.C. Cir. 1988). The Court of Special Appeals has endorsed this reasoning, "moreover, the federal Freedom of Information Act contains a similar fee waiver provision at 5 U.S.C. § 552(a)(4) *which has been liberally construed in favor of the media or other requesters who will provide broad public dissemination of the information sought.*" *Baltimore v. Burke*, 67 Md. App. 147, 156, 506 A.2d 683, 1986 Md. App. LEXIS 297 (Md. Ct. Spec. App. 1986).

Government policy on school overcrowding, residential development, and capital spending are inarguably some of the principal areas of the public's interest in government operations. No aspect of government operations is as central to public concerns, interests and discourse as school and development policy.

Because there is no publicly available data on the details of this alleged leak, the release of these records will vastly increase the public's understanding of this important aspect of Frederick County government operations.

Documents responsive to this request will be widely publicized and distributed by the Sugarloaf Alliance. We intend to post the raw documents, and relevant commentary, on the Alliance web site, post to relevant social media sites (Facebook, Instagram, LinkedIn, Twitter, etc.), directly email to parties supportive of the Alliance's work, brief local and national journalists, and introduce them into the record during official county government meetings. The Sugarloaf Alliance intends to widely distribute the produced materials to journalists and the public so that the electorate can have a more informed understanding of Frederick County's operations, policies, and intentions. *The Sugarloaf Alliance has a significant track record of publicizing the results of its PIA efforts. (See: [www.SugarloafAlliance.org](http://www.SugarloafAlliance.org))*

The Sugarloaf Alliance has no commercial interest in the requested disclosures. The burden of this request on the county is reasonable. Given the highly specific and limited number of documents, and the ease with which electronic records can be searched, this request should be easy to fulfill. Should the initial search yield an unexpectedly large number of results, please

communicate this to us immediately so that we can further refine our request to speed the response process and reduce the burden on the county.

***Disclosure is in the public interest and any associated fees should be waived.*** If it would minimize costs for us to send a representative to inspect the records prior to copying, then please inform us of how we may do that.

Our request for this fee waiver has addressed all the relevant factors that an Official Custodian must consider when deciding if a request is in the public interest. If you feel that other factors, not addressed above, are relevant to your decision on this fee waiver request please inform us immediately so that we can work with you to resolve your concerns. If you feel that we have not adequately addressed any of the factors above, please contact us immediately so that we can work with you to resolve your concerns.

***If you feel that there are ANY other factors that suggest this request is not fully in the public interest, please inform us of those factors and your rationale so that we can work with you to resolve any misunderstandings.***

Sincerely,

Stephen Black,  
President  
Sugarloaf Alliance  
Email: [Steveblack2313@gmail.com](mailto:Steveblack2313@gmail.com)