

**IN THE CIRCUIT COURT OF BALTIMORE CITY
FOR THE STATE OF MARYLAND**

BRIAN CHARLES VAETH
8225 Poplar Mill Road
Baltimore, Maryland 21236

v.

Case No.

MAYOR & CITY COUNCIL OF BALTIMORE
City Hall
100 Holliday Street
Baltimore, Maryland 21202

COMPLAINT

This Administrative Procedure Act lawsuit challenges Defendant's failure to conform to the Maryland Public Information Act concerning the preservation of public records. As grounds for this lawsuit, Plaintiff alleges as follows:

JURISDICTION & VENUE

1. This Court has subject matter jurisdiction pursuant to Md. Code Ann., Governmental Procedures § 10-204.
2. The Court has personal jurisdiction over Defendants pursuant to Md. Code Ann., Cts. & Jud. Proc. § 6-102 and 6-103(b).
3. Venue in this Court is proper pursuant to Md. Code Ann., Cts. & Jud. Proc. § 6-201.

PARTIES

4. Plaintiff, BRIAN CHARLES VAETH, was a firefighter for the City of Baltimore and is a resident of Baltimore County, Maryland at 8225 Poplar Mill Road, Nottingham, Maryland 21236.

Plaintiff's intent is to prove very serious allegations of corrupt practices perpetrated by governmental lawyers employed by the Baltimore City Solicitor's Office. Plaintiff undertakes efforts to perform investigations related to the manner in which disability pensions are awarded to Baltimore's Firefighters and Police Officers. Due to Defendant's lack of cooperation in providing Plaintiff with documents and other related material that is in their exclusive control, Plaintiff makes use of the Maryland Public Information Act. If an agency of the City of Baltimore fails to respond to a request within the time required by the MD PIA, Plaintiff files suit. Plaintiff has filed previous MD PIA lawsuits seeking access to communications of agency officials, officers, or employees that remain unsatisfied.

5. Defendant, MAYOR AND CITY COUNCIL, is a municipal corporation under Maryland law, with the power to sue and be sued under Maryland Code, Local Gov. § 4-103(a).

ALLEGATIONS

6. In 2015, the General Assembly amended the Public Information Act ("PIA") to reform the process by which PIA responses are issued and reviewed. 2015 Md. Laws, ch. 135. The MD PIA governs the creation, management, and disposal of records by government agencies.

7. The MD PIA requires the preservation of all records made or received by an agency that documents the agency's activities.

8. The MD PIA also requires agencies establish and maintain a recordkeeping program that provides effective controls over their records. It promulgates standards, procedures, and guidelines concerning the management of public records.

9. The Maryland State Archives and Records Administration has a central oversight role in providing guidance and assistance to agencies.

10. Under the City Charter, the Baltimore City Archives and Records Management Office is empowered to implement and oversee records management of all City agencies. All agencies are required to maintain records of all proceedings, financial transactions and official acts. Only records covered by an approved retention schedule for the agency can be stored in the City Archives and Records Management Center. Disposal of records must be approved by the Records Management Officer and be included on the retention schedule of the agency.

11. As previously stated, Plaintiff filed a Maryland Public Information Act Request on August 2, 2018 in this Court, case number 24-C-18-004604, seeking access to public information from Defendants who responded to that request by filing a Motion to Dismiss. A hearing was conducted on October 31, 2018 wherein the Baltimore City Solicitor, through counsel Mr. Benjamin Bor, attempted to comply with Plaintiff's request to disclose files that were in the Baltimore City Solicitor's possession only. Despite the assertion that the disclosure was incomplete, it is Plaintiff's belief that counsel's actions were in good faith. Plaintiff is not alleging any misconduct on the part of counsel for Defendants but disputes the denial of the access to the files requested. Evidence that is in Plaintiff's possession shows that there is much more evidence in Defendant's possession than what was disclosed by the Baltimore City Solicitor. It is impossible to conclude that the City of Baltimore defended itself in 2 lawsuits in the United States District Court and 2 appeals in the United States Court of Appeals, and is currently defending itself in an independent action filed by Plaintiff in the United States District of Maryland wherein Plaintiff has requested the Court to assess whether it's been a victim of fraud committed by Defendants, with the scant evidence provided to Plaintiff, as a result of Mr. Bor's incomplete disclosure.

12. Plaintiff's action was dismissed and notification was given that a separate request for information would have to be served upon the Custodian of Records for each individual agency

within the City of Baltimore that would possess the employment and medical files of Plaintiff. As a result, Plaintiff engaged in an effort to speculate on whose possession the requested records were in and sent requests to the Custodian of Records for those agencies. Plaintiff identified the Custodian of Records by internet search and by contacting the agency by telephone in an effort to locate the proper recipient designated by the City to respond to the request. Those individuals are as identified in exhibit 1.

13. As of the filing of this action, only the Baltimore City Solicitor's Office has partially attempted to comply with Plaintiff's requests. Mr. Aisenstark, the Custodian of Records for the Baltimore City Department of Legislative Reference, requested additional time to locate the requested files, however, Mr. Aisenstark has been non-responsive since that was request was made.

14. The remaining Custodian of Records have failed to accommodate Plaintiff's requests. These requests were sent via the United States Postal Service, certified mail. Plaintiff received confirmation from the USPS that those requests were delivered to the individuals named.

15. As Defendants have been non-responsive to this latest request to access the information, Plaintiff's case is damaged by his inability to participate in a fair trial associated with this matter because of the Baltimore City Solicitor's actions. If the requested information is not in the possession of the agencies named in this action, Plaintiff would not be able to provide additional speculation, as to where that information is located. It appears as though the information has been disposed of in violation of the law. Plaintiff has included copies of his requests to the agencies named herein and their responses, as exhibit 1.

WHEREFORE, Plaintiff requests that the Court enter a judgment against Defendants as follows:

1. Order the above-named Defendants to provide access to the documents requested in Plaintiff's requests;
2. Grant Plaintiff's requests for a waiver of the fees; and
3. Order such further relief as the Court deems just and proper.

Respectfully submitted,

Brian Charles Vaeth
8225 Poplar Mill Road
Baltimore, Maryland 21236
(443) 604-0610

AFFIDAVIT

I SOLEMNLY AFFIRM under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge, information, and belief this 7th day of March 2019.

Respectfully,

Brian Charles Vaeth
8225 Poplar Mill Road
Baltimore, Maryland 21236

CERTIFICATE OF SERVICE

I, Brian Charles Vaeth, plaintiff in the above captioned matter, hereby certifies that I effected service of process to the resident agent for the Mayor and City Council and the Fire and Police Employees Retirement System of Baltimore City, the Office of the Baltimore City Solicitor, via United States Postal Service certified mail, restricted delivery, return receipt requested on March 7, 2019.

Respectfully,

Brian Charles Vaeth
8225 Poplar Mill Road
Baltimore, Maryland 21236