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July 12, 2010

Jim Lee, Editor
Carroll County Times
201 Railroad Ave.
P.O. Box 346
Westminster, MD 21158

Dear Mr. Lee:

The Mayor and Common Council of Westminster have asked me to respond to the July 9, 2010 editorial, "Disregard for Open Government". In that piece, the *Carroll County Times*, by both misrepresentation and omission, misleads the public about the operation of City government in a manner that appears to have been intentional.

Times reporter, Marc Shapiro, who requested the material in question, has made a series of requests under the Public Information Act (PIA) in the last three months, prior to the most recent request for general ledger documents. The City responded in a timely fashion to each of the prior requests and communicated with Mr. Shapiro on several occasions in order to ensure that the City's response was timely and proper. In fact, when it appeared that complying with the requests would be inordinately expensive for the newspaper, I offered to assist Mr. Shapiro in narrowing or reframing his requests so that there would be less of a financial burden for the Times. Mr. Shapiro declined to pursue that course of action. Mr. Shapiro therefore has actual knowledge that the City does not stonewall PIA requests from the newspaper (or from anyone else, for that matter).

In the case of the request for general ledger information, the City's response was delayed, due to an oversight and not, as the editorial implies, any intent to interfere with the newspaper's right of access to public records. A response was due on July 6, 2010 (because the 30th day from Mr. Shapiro's June 3 request fell on the Saturday of a holiday weekend). The response was therefore one day late when Mr. Shapiro's July 8, 2010 article went to press on the evening of July 7. It is my understanding that Mr. Shapiro received the information he had requested on July 8, before the July 9 editorial went to press. Both the article by Mr. Shapiro and the subsequent editorial, by failing to describe the minimal extent of the delay, gave the impression that the City was substantially and significantly late, which was simply not the case.

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Similarly, both the article and the editorial, again by misstating or omitting relevant information, imply an improper motive on the part of the City with respect to denials of access to previously requested information and with respect to the City's estimated charges for producing other documents. Mr. Shapiro's request was not, as the newspaper stated, "dropped when the documents were obtained through other channels before a response from the city was issued". That statement is simply inaccurate; Mr. Shapiro was advised that most of the information he was seeking was likely to be exempt from disclosure under the Public Information Act because it is subject to the well-established deliberational process privilege. Because of the existence of the privilege, the records that he sought, which constituted an enormous quantity of communications (City staff estimated the number at 5,000 -10,000), would have had to be reviewed and redacted before anything that might not fall within that privilege could be disclosed. While Mr. Shapiro did tell me, after he was advised of the potential cost of producing these records, due to the amount of time anticipated for collection and review, that he had obtained some of the information from another source, he did not communicate to me or to the City, prior to that time, that he was withdrawing his request.

The PIA permits local governments to charge the requester for the cost of copies and for the cost of staff time in excess of two hours incurred in producing documents. Charging the requester for this time serves the public interest, because the government can avoid charging its taxpayers for a task that may or may not have been of interest to anyone other than the requester. Particularly in economic times such as these, when as the Carroll County Times itself has previously pointed out, the City's budget is stretched to its limits, the City's taxpayers are entitled not to be charged for Mr. Shapiro's whims.

The editorial asserts, "Putting excessive costs on requests for records is another common tactic governments use to dissuade people from examining public records." The writer cites not a single fact in support of this baseless accusation. If, in fact, it were true, one would have expected there to have been a rash of cases in which the courts have awarded costs against local governments for willful failure to comply with the terms of the Act; the PIA expressly sets forth remedies for such misconduct. To the contrary, in my experience, my local government clients always endeavor to comply with requests for information in a timely fashion. In the case of the charges that would have resulted to the *Times* as a consequence of complying with its PIA requests, at no time did Mr. Shapiro take issue with the City's estimations and the *Times* did not make any attempt to avail itself of the remedies available to it if the City had been acting in bad faith.



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For all of these reasons, the accusations contained in the questions posed by the editorial in its conclusion, regarding whether the City's lack of compliance is a matter of laziness, forgetfulness, incompetence, or willful intent to hide uncomfortable information, are irresponsible and sensationalist, and lack any factual foundation.

Very truly yours,

Elissa D. Levan/SSC

Elissa D. Levan
Westminster City Attorney

