

**CIRCUIT COURT OF MARYLAND  
MONTGOMERY COUNTY**

CASA DE MARYLAND, INC.,

Plaintiff,

v.

FREDERICK COUNTY SHERIFF'S OFFICE,

Defendant.

Case No.: 304960-V

November 25, 2008

**COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF  
AND REQUEST FOR EXPEDITED REVIEW**

1. This is an action under the Maryland Public Information Act ["PIA"], Md. Code Ann., State Government ["SG"] § 10-611 *et seq.*, for injunctive and declaratory relief to compel the production of records willfully and wrongfully withheld from CASA de Maryland, Inc. ["CASA" or "Plaintiff"] by the Frederick County Sheriff's Office ["FCSO" or "Defendant"].

2. Plaintiff seeks to compel the release of records on a matter of vital public concern, namely, the content, scope, and effects of Defendant's participation in a federal program through which some FCSO officers are now enforcing civil provisions of federal immigration law.

3. Since February of 2008, when Frederick County Sheriff Chuck Jenkins announced that the FCSO had entered into a Memorandum of Agreement ["the MOA"] with the federal Bureau of Immigration and Customs Enforcement ["ICE"], CASA has submitted three PIA requests for records relating to various aspects of Defendant's involvement in the program; the enforcement of immigration law more generally; as well as records that could confirm or

dispel the widely-suspected possibility that it is engaging in the racial profiling of individuals who are, or appear to be, of Hispanic or Latino origin.

4. Despite Defendant's legal obligation to permit inspection of "any public record at any reasonable time", SG § 10-613(a)(1), subject only to narrow exemptions heretofore not invoked by the FCSO, Plaintiff has been denied access to a huge portion of its requests for records; specifically, those records dealing most directly with Defendant's enforcement of civil immigration law.

5. To date, Defendant has offered multiple conflicting rationales for denying access to the records. Meritless even in isolation, when taken as a whole, the proffered justifications are legally and logically inconsistent.

6. In responding to Plaintiff's first MPIA request, sent in March of 2008, Defendant unlawfully delegated its responsibility under the Maryland PIA, to determine whether to grant or to deny the inspection of certain records within its possession and control, to an ICE employee – i.e., an official of the *federal* government.

7. The ICE employee who apparently "denied" Plaintiff's request did so without giving the reasons for the denial; the legal authority for the denial; or notice of the remedies for review of the denial, all of which are required by SG § 10-614(b)(3). Purporting to wield power that has not been granted to him by the state of Maryland – or, indeed, by any government – he stated only that "we are not authorizing the release" of the records in question. Despite its obvious failings, Defendant passed this statement on to Plaintiff in May of 2008 as the explanation for the denial.

8. Also in May, 2008, Defendant denied Plaintiff's second PIA request – which

asked for a copy of the written agreement between the FCSO and ICE concerning the Frederick Adult Detention Center – by stating that “DHS has told us that they have ownership of the records you have requested.” Defendant did not dispute that it, too, had “ownership” over the records; nor could it have plausibly done so, since the FCSO is one of the two parties to the agreement.

9. In June of 2008, when Plaintiff sought clarification for the legal bases for the denials, Defendant responded approximately one month later with a yet another justification for the denial, stating that the FCSO “does not have any of these records.”

10. In October of 2008, Plaintiff repeated its request for the unlawfully withheld public records, as well as access to other records not yet provided. On November 3, 2008, Defendant’s counsel gave Plaintiff a fourth different justification for denying access, saying that the records were being withheld pursuant to SG § 10-615(2)(ii), which requires a custodian of public records to deny inspection if prohibited by federal law or regulation.

11. When Plaintiff pointed out that there is no federal law or regulation that prohibits the disclosure of the requested records, and asked upon what federal law the denial was purportedly based, Defendant’s counsel stated that the FCSO was relying upon the representations of ICE officials that the documents could not be released, but had not evaluated ICE’s claim.

12. Finally, on November 20, 2008, Defendant provided a fifth reason for refusing to permit inspection of the public records, stating that, “We do not own these documents and can not give them to you.”

13. Collectively, the varied and conflicting reasons for Defendant’s noncompliance

with the PIA suggests that the FCSO is not interested in what is required by the PIA.

14. Meanwhile, in the last several months, members of the affected communities have repeatedly expressed concerns that Defendant is engaging in the racial profiling of Hispanics, Latinos, and others that officers of the FCSO suspect are undocumented immigrants, based on nothing more than the color of their skin.

15. In order to better inform this vigorous public debate, and to vindicate the PIA's guarantee of open, honest, and transparent governance, CASA brings this action to enjoin the FCSO from unlawfully continuing to withhold public records.

### **PARTIES & JURISDICTION**

16. Plaintiff CASA de Maryland, Inc. ("CASA"), is a non-profit, community based organization focusing on the social, economic and legal conditions of the immigrant communities in Maryland, and on the dissemination of information affecting immigrants in Maryland. Founded in 1985, CASA has programs in employment placement, vocational training, financial literacy, job development, English-language instruction, citizenship classes, legal services, health outreach and education, health information services, social services, and community organizing and advocacy. CASA has offices throughout the state of Maryland, but its principal office and place of business is in Silver Spring, Maryland.

17. Defendant Frederick County Sheriff's Office is a unit or instrumentality of Frederick County. SG § 10-611(g)(1)(i). Defendant either maintains physical custody and control over, or is responsible for keeping, the public records which are the subject of this action, and is therefore a "custodian", as defined by SG §§ 10-611(c). The records sought through this action are copies of documentary material made or received by the Defendant in connection with

the transaction of public business; accordingly, they are “public records”, as defined in SG § 10-611(g).

18. CASA has made written application to Defendant to inspect public records of which it is the custodian, as required by SG § 10-614(a).

19. Defendant has denied CASA’s right to inspect public records. SG § 10-614(b).

20. This Court has jurisdiction pursuant to SG § 10-623(a)(1).

21. Plaintiff respectfully requests proceedings in this action be “expedited in every way,” and a hearing “at the earliest practicable date” in accordance with SG § 10-623(c).

### **STATEMENT OF FACTS**

22. In February of 2008, the Frederick County Sheriff’s Office and the federal Bureau of Immigration and Customs Enforcement – a component agency of the U.S. Department of Homeland Security [“DHS”] – entered into a Memorandum of Agreement whereby a maximum of twenty-six officers of the FCSO are trained and certified to perform certain designated immigration enforcement functions.

23. The MOA is based upon Section 287(g) of the Immigration and Nationality Act [“INA”], 8 U.S.C. § 1357(g), which states in relevant part that “the Attorney General may enter into a written agreement with . . . any political subdivision of a State, pursuant to which an officer or employee of the State or subdivision . . . may carry out [certain functions of immigration officers] at the expense of the State or political subdivision and to the extent consistent with State and local law.”

### **March PIA Request**

24. By letter dated March 26, 2008, Plaintiff submitted a request [hereinafter, “the

March request”] under the PIA to Defendant; the majority of the request dealt with records related to the MOA, such as training materials explaining the immigration functions to be performed by the FCSO officers so designated, as well the cost of the program.

25. Plaintiff also requested a waiver of fees pursuant to SG § 10–621(e).

26. On or about April 23, 2008, Plaintiff consented to Defendant’s request for additional time to respond to the PIA request.

27. By letter dated April 24, 2008, counsel for Defendant, Assistant Attorney General Elissa D. Levan, stated that “the federal Immigration and Customs Enforcement Office [sic] has now indicated that we may not release any documents pertaining to that office without their authorization.”

28. The April 24, 2008 letter also stated that CASA’s fee waiver would be denied because of the expense in staff time that Defendant would incur responding to the request.

29. By email dated April 29, 2008, Plaintiff requested Defendant’s assistance in narrowing the PIA request in order to minimize the cost to CASA and the disruption to the FCSO.

30. By reply email dated April 30, 2008, Defendant indicated a willingness “to discuss ways to reduce cost and effort,” but stated that Plaintiff’s suggestion for achieving those goals would not work without suggesting any alternative.

31. Defendant also stated in the April 30 email that “we have been prohibited by ICE from disclosing documents without its authorization.”

32. Like the April 24 letter, the April 30 email did not explain a basis for needing ICE’s authorization to fulfill Plaintiff’s request under the Maryland Public Information Act.

33. By email dated May 21, 2008, Defendant updated Plaintiff on the March request by stating, in reference to a document attached to the email, that “We will be awaiting [ICE’s] review before any further release.”

34. Attached to the May 21 email was a letter dated May 20, 2008 to Frederick County Sheriff Charles Jenkins from an ICE employee, James A. Dinkins [hereinafter, “the ICE letter.”].

35. The ICE letter stated that ICE had received a copy of the request for records sent by Plaintiff to Defendant for records “relating to the delegation of immigration authority under Section 287(g) of the Immigration and Nationality Act (INA).”

36. Plaintiff did not send copies of any of its PIA request to ICE.

37. The ICE letter stated further that “We have forwarded this request to our Information Disclosure Unit at ICE Headquarters for review and action. At this time, we are not authorizing the release of any ICE-generated documents, to include email communication, memoranda, reports or other related documents.”

38. Neither the ICE letter nor any subsequent communication from ICE or Defendant explained the legal basis for the decision to delegate the authority to determine whether to grant or deny Plaintiff’s PIA request to any federal officer or agency, including ICE.

39. Neither the ICE letter nor any subsequent communication from ICE or Defendant explained the legal basis for conditioning the release of public records that are both responsive to Plaintiff’s PIA requests and within the physical custody of Defendant on the “authorization” of any federal officer or agency, including ICE.

40. Neither the ICE letter nor any subsequent communication from ICE or Defendant

explained the circumstances in which ICE would give its “authorization” for releasing documents under the PIA, if ever.

41. By letter to Defendant dated June 11, 2008, Plaintiff requested further explication of the decision to deny certain aspects of the March request. Plaintiff explained that so long as records responsive to its requests were in Defendant’s “physical custody and control”, it was required to either disclose the record or provide a written explanation for the denial.

42. Approximately one month later – some one hundred days from the receipt of the March request – Defendant provided a final response to the March request by letter dated July 8, 2008.

43. The July 8 letter stated that “ICE is a stakeholder and the caretaker of some of the information you have requested and we were obligated to have their legal department review the request and give us direction in this matter.”

44. The July 8 letter does not explain the source, scope, or limits of this alleged “obligation.”

45. The July 8 letter goes on to say that “On June 27, 2008, we received [ICE’s] response and as a result this correspondence outlines what information we have provided as a result of your request.”

46. The letter further states that in regards to several specific parts of Plaintiff’s March request, “Sheriff’s Office does not have any of these records. Request must be made to DHS/ICE.”

47. The July 8 letter was the first time that Defendant ever claimed that it did “not have” any of the records requested by Plaintiff.



48. Neither the July 8 letter nor any subsequent communication from Defendant or ICE explained why Defendant required ICE's "direction" in determining what records the FCSO had.

#### **May PIA Request**

49. By letter dated May 12, 2008, Plaintiff sent a second PIA request [hereinafter, "the May request"] to Defendant, requesting a copy of the Intergovernmental Service Agreement ["IGSA"] between the FCSO and either ICE or DHS concerning the use of the Frederick County Adult Detention Center.

50. An IGSA between the FCSO and ICE is discussed in Section VI of the MOA.

51. Pursuant to SG § 10-621(e), Plaintiff also requested a fee waiver for the May request.

52. By email dated May 21, 2008, Defendant denied the May request, explaining only that "DHS has informed us that they have ownership of the records you have requested and you are directed to file a request with their agency."

#### **October PIA Request**

53. Responding to widespread concerns that officers of the FCSO have targeted those who are, or appear to be, of Hispanic or Latino origin for detentive interrogation regarding their immigration status – particularly on the pretext of minor alleged traffic infractions – Plaintiff submitted a third PIA request to Defendant by letter dated October 16, 2008 [hereinafter, "the October request"].

54. Like in the previous two requests, CASA sought a waiver of fees pursuant to SG § 10-621(e).

55. The October request sought, *inter alia*, numerous law enforcement-related forms completed by the FCSO since the beginning of 2006.

56. All or nearly all of the requested forms – including arrest and detainee logs, copies of traffic citations, etc. – contain a field for the race and/or ethnicity of the individual with whom the officer interacted.

57. The October request also sought any records related to the MOA that had been created and/or received by Defendant since the date of Plaintiff's March request.

58. By telephone conversation on November 3, 2008, counsel for Defendant stated once more that records related to the MOA would not be released by the FCSO.

59. When Plaintiff asked for the legal basis for the denial of the MOA-related documents, Defendant's counsel stated that the records were being withheld pursuant to SG § 10-615(2)(ii), which requires a custodian of public records to deny inspection if prohibited by federal law or regulation.

60. When Plaintiff asked which federal law or regulation prohibited the disclosure of the requested records, counsel for Defendant stated that she did not know.

61. Counsel for Defendant stated further that the FCSO had relied upon the representations of ICE officials that the requested documents could not be released under the PIA.

62. There is no federal law or regulation that prohibits the disclosure of the records responsive to Plaintiff's PIA requests.

63. In the same November 3 conversation, Defendant's counsel stated that Plaintiff's fee waiver would be denied because it would cost approximately \$80,000 to fulfill the October

request. Plaintiff requested that Defendant provide an itemized cost estimate to aid in narrowing the October request.

64. Counsel for Defendant stated that she would speak to her client about the possibility of itemizing the estimated costs.

65. Plaintiff also stated that it wished to work with Defendant to craft its request to avoid unnecessary expense and disruption.

66. Defendant's counsel replied that it was not Defendant's responsibility to suggest to Plaintiff how to write its PIA request.

67. By letter dated November 4, 2008, Defendant estimated that the cost to Plaintiff of fulfilling its October request would be \$35,274.60.

68. The November 4 letter only broke down the estimated costs into two categories: time and copy costs.

69. In terms of staff time, Defendant it estimated that it would require two staff persons "a total of 160 hrs each or 360 [sic] hrs total" to review and assemble the requested documents, at a cost of \$28.70 an hour, with the first two hours free of charge.

70. It is unclear which number – 160 hours times two, which would be 320 hours or 360 hours total – is the correct one, although the cost estimate provided by Defendant was based on the latter.

71. In terms of copy costs, Defendant estimated that fulfilling the October request would require 100,000 copies, at a cost of \$0.25 per copy.

72. The letter concluded by stating that Defendant required payment in the amount of \$35,274.60 in advance of producing any of the requested records.

73. In a phone conversation with FCSO Captain Tim Clarke on November 19, 2008, Plaintiff again requested that Defendant break down the cost estimate by the specific items listed in the October request.

74. Captain Clarke stated that he would check with Sheriff Charles Jenkins regarding the possibility of providing such a breakdown.

75. Also in the November 19 conversation, Plaintiff inquired again as to the fee waiver request, which Captain Clarke said was being denied because of the expense the FCSO would incur by fulfilling the request.

76. By email dated November 20, 2008, Captain Clarke informed Plaintiff that “An additional breakdown of the costs by category that you have requested will not occur. We simply do not have the time to put toward that effort.”

77. The November 20 email also stated that the cost estimate contained in the November 4 letter was created with reference to items A through S in the October request.

78. Regarding the specific request for records relating to the MOA, the November 20 email stated that, “We do not own these documents and can not give them to you.”

79. At no time and in no communication has Defendant disclaimed that the FCSO is the “custodian” of any requested records, as that term is defined in SG § 10-611(c).

80. At no time and in no communication has Defendant explained the manner in which it conducted the searches for records responsive to Plaintiff’s PIA requests.

81. Upon information and belief, Defendant has disclosed records related to the MOA and immigration enforcement to other “[a]pplicant[s]” under the PIA, as that term is defined in SG § 10-611(b), that it has refused to disclose to Plaintiff.

82. The Plaintiff has no plain, speedy, and adequate remedy at law, other than the relief sought in this Complaint.

**FIRST CLAIM FOR RELIEF**  
**Violations of the Maryland Public Information Act**

83. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 82 as if repeated and reincorporated herein.

84. Defendant Frederick County Sheriff's Office violated Plaintiff's right under SG § 10-612(a) "to have access to information about the affairs of government and the official acts of public officials and employees."

85. Defendant Frederick County Sheriff's Office violated the PIA by refusing to "permit a person or governmental unit to inspect any public record at any reasonable time" under SG § 10-613(a)(1).

86. Defendant Frederick County Sheriff's Office violated the PIA by failing to provide a decision on Plaintiff's PIA request "promptly, but not to exceed 30 days after receiving the application." SG § 10-614(b)(1).

87. Defendant Frederick County Sheriff's Office violated the PIA by failing to give Plaintiff a written statement within 10 working days of any denial that provides the reasons for the denial; its legal authority; as well as notice of any remedies for its review. SG § 10-614(b)(3).

88. Defendant Frederick County Sheriff's Office violated the PIA by "condition[ing] the grant of an application on the identity of the applicant." SG § 10-614(c)(i).

89. Defendant Frederick County Sheriff's Office violated the PIA by failing to charge a reasonable fee for "the search for, preparation of, and reproduction of a public record." SG §

10-621(b).

90. Defendant Frederick County Sheriff's Office violated the PIA by arbitrarily and capriciously denying Plaintiff's requests for a waiver of fees. SG § 10-621(e).

91. Defendant Frederick County Sheriff's Office violated the PIA by "willfully or knowingly" violating provisions of the PIA, SG § 10-627(a)(1).

92. Defendant Frederick County Sheriff's Office violated the PIA by failing to conduct a search reasonably calculated to uncover public records responsive Plaintiff's PIA requests.

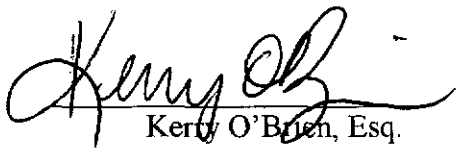
## REQUESTED RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Provide for expeditious proceedings in this action;
3. Order Defendant to disclose the requested records and to make copies available to Plaintiff;
4. Order Defendant to waive all fees associated with providing the requested records;
5. Order Defendant to fully comply with the PIA in the future;
6. Award Plaintiff actual damages for the knowing and willful failure to disclose or fully disclose a public record that Plaintiff was entitled to inspect, as provided by SG § 10-623(d);
7. Award Plaintiff litigation costs and reasonable attorneys' fees in this action as provided by SG § 10-623(f);
8. Grant any other relief this Court deems just and appropriate.

Respectfully submitted,

Dated: 11/25/08  
Silver Spring, Maryland

  
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