



Mr. Andrew J. Ford
Assistant County Attorney
Office of the County Attorney
12 East Church Street
Frederick, MD 21701

Via Email: aford@frederickcountymd.gov

October 5, 2021

Dear Mr. Ford:

Public Information Act Request

Pursuant to the Maryland Public Information Act, Md. STATE GOVERNMENT Code Ann. § 10-611, et seq., ENVISION FREDERICK COUNTY 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 official, official, or employee.

(B) Agreement refers to any non-disclosure agreements between Frederick County and any entity, including agreements and drafts that were not agreed on.

REQUESTS:

Copies of any non-disclosure agreements, with any entity, draft or final, that were proposed, discussed, or signed by any of the following Frederick County Officials:

M.C. Keegan-Ayer, President, Frederick County Council
Michael Blue, Vice-President, Frederick County Council
Jerry Donald, Frederick County Council
Kai Hagen, Frederick County Council
Jessica Fitzwater, Frederick County Council
Phil Dacey, Frederick County Council
Steve McKay, Frederick County Council
Ragen Cherney, Frederick County Council, Legislative Director/Chief of Staff

Please limit this request to agreements signed in an official capacity or on behalf of Frederick County. Please limit this request to agreements from the years 2020 and 2021.

This request is limited to the non-disclosure agreements themselves. We are not, at this time, seeking materials covered by the NDAs. The exception to this would be an NDA which covers itself.

TWO FORD-COUNCIL

FEE WAIVER:

ENVISION FREDERICK COUNTY is a non-profit, non-partisan organization founded on the principle that informed public discourse and active engagement of individuals and groups in our civic life are essential to our mutual well-being and prosperity. Founded by committed community advocates with a record of service to our community, Envision Frederick County engages the community in discussion, education, and action. Envision Frederick County is a 501(c)(3) organization.

Pursuant to Md. STATE GOVERNMENT Code Ann. § 10-621(e), Envision Frederick hereby request that all fees associated with these disclosures be waived. Applicant has very limited resources and the cost of copying and the related fees would be prohibitive. Disclosure is in the public interest because the use of Non-disclosure Agreements are matters of widespread citizen and media interest. Public interest in NDAs, including their use in governmental activities, raise possible questions about the government's integrity which can, in turn, affect public confidence in the government.

The level of public interest in NDAs is evidenced by a growing body of national journalism on the subject. (See: Washington Post, 2/15/19, "Google reaped millions of tax breaks as it secretly expanded its real estate footprint across the us", Forbes Magazine, 8/19/21, "Data in the dark: How big tech secretly secured 800 million in tax breaks for data centers", The New York Times, 6/29/21, "How Amazon, Google and Other Companies Exploit NDAs".)

Locally, the issue of NDAs and their effect on governmental operations has already been raised at an open meeting of the Frederick County Council (9/7/21). Questions regarding the existence and impact of NDAs has also been raised at a recent Frederick County Planning Commission meeting (9/15/21, see also the submitted written public comments).

"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).

NDAs directly impact the operations and activities of County government. A contract between a county official and a private company is part and parcel of government operations.

THREE FORD-COUNCIL

When an NDA is a fundamental part of an economic development effort it is clearly a government 'activity.'

By disclosing the actual text, and development, of the NDAs the County will certainly contribute to a greater public understanding of County operations and activities. This is particularly true for Economic Development activities in the technology industry where high levels of confidentiality are now commonplace. (See: Washington Post, 2/15/19, "Google reaped millions of tax breaks as it secretly expanded its real estate footprint across the us", Forbes Magazine, 8/19/21, "Data in the dark: How big tech secretly secured 800 million in tax breaks for data centers", The New York Times, 6/29/21, "How Amazon, Google and Other Companies Exploit NDAs".) For the public to understand the impact of NDAs they must be able to read the actual document and understand the full scope and breadth of the agreements being made by County officials.

Given that there has been no public disclosure thus far of the NDAs entered into by County officials, a release of the requested documents will significantly increase public understanding and appreciation of County government operations and activities.

Documents responsive to this request will be widely publicized and distributed by Envision Fredrick. Envision Frederick intends to post the raw documents, and relevant commentary, on the Envision web site, post to relevant social media sites (Facebook, LinkedIn, Twitter, etc), directly email to parties supportive of Envision's work, brief local and national journalists, and introduce them into the record during official county government meetings. Envision intends to widely distribute the produced materials to journalists and the public so that the electorate can make informed choices about government projects affected by extant NDAs.

Envision Frederick has no commercial interest in the requested disclosures.

The burden of this request on the County is negligible. Given the relative rareness of NDAs in the normal activities and operation of county government there should be little difficulty recalling the existence and location of responsive documents.

Disclosure is in the public interest and any associated fees should be waived. Please inform us of your determination regarding the fee waiver request prior to beginning any copying or document review. If it would minimize costs for applicant to send a representative to inspect the records prior to copying, then please inform us of how we may do that.

Sincerely,

Linda Norris-Waldt, Executive Director
Envision Frederick County

cc. Elizabeth Bauer, Board Chair

ENVISION FREDERICK COUNTY PO BOX 481 FREDERICK MD 21705