



Maryland Transportation Authority

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December 8, 2009

Greg Smith
Director, Community Research
9230 Saint Andrews Place
College Park, MD 20740

Dear Mr. Smith,

I have received your letter dated October 23, 2009 to the Secretary of the Maryland Department of Transportation ("MDOT"), requesting copies of certain public records under the Maryland Public Information Act ("PIA"), Annotated Code of Maryland, State Government Article ("SG"), § 10-611 et seq. Your letter was forwarded to the Maryland Transportation Authority ("Authority") on November 9, 2009. As Executive Secretary, I am responding as the official custodian of the Authority's public records. You have requested records in my custody and control listed on pages 3-6 of your letter, summarized as follows:

1. All forecasts or analyses of potential toll revenues for the Intercounty Connector ("ICC") (without limitation as to date). You have indicated that this request includes all documents associated with the issuance of bonds or other indebtedness for the ICC.
2. All forecasts and analyses of potential toll revenues for all other toll facilities operated by the Maryland Transportation Authority (without limitation as to date).
3. Forecasts and analyses the Authority relied upon as a basis for revenue estimates in the 2004 Draft Environmental Impact Statement and 2006 Final Environmental Impact Statement.
4. Documents including projected expenditures for the operation, maintenance, and rehabilitation of the ICC and all other bridges and tunnels owned or operated by the Authority (without limitation as to date).
5. All forecasts the Authority has provided to the Maryland Department of Legislative Services.
6. All correspondence or other documents the Authority and its consultants have relied upon in developing proposed toll rates (without limitation as to date or toll facility).

7. All correspondence and other documents that Authority staff “shared” with private entities engaged in evaluating the ICC financial plan and updates submitted to the Federal Highway Administration, the issuance of debt for the ICC, or the marketing of bonds issued to finance the ICC.

8. All analyses relating to the impact of currently proposed toll rates for the ICC on the following from the Environmental Impact Study (“EIS”) for the ICC, the ICC Study Area and Secondary and Cumulative Effects Area (“SCEA”):

- a) Total vehicle miles traveled.
- b) Vehicle miles on the ICC by vehicle class for 2010, 2012, 2020 and 2030.
- c) Vehicle miles on other roads in the ICC Study Area and SCEA, by vehicle class, for the same years.
- d) Average daily and hourly traffic volumes on all of the above areas, by vehicle class, for the same years.
- e) Levels of Service on all of the above areas for the same years.
- f) Critical Lane Volumes at intersections modeled in the 2006 final Environmental Impact Statement, for the same years.
- g) Vehicle Hours of Delay for the above locations and years.
- h) Trip times for origin and destination pairs modeled in the 2006 final Environmental Impact Statement, for the same years.
- i) Number of weekday trips from various sites to the Baltimore Washington International Thurgood Marshall Airport for the same years.

9. Documents relating to the impact of proposed toll rates and the tolls modeled in the 2006 EIS on:

- a) Distribution of persons expected to travel the ICC by income and place of residence in 2010, 2012, 2020, and 2030;
- b) Commuters’ ability to invest in housing, food, health, education and other needs;

c) The local and regional economy.

The PIA provides that an agency may charge a reasonable fee to recover the actual costs it incurs in responding to a request under the Act, excluding the first two hours of personnel time required to search for records and prepare them for inspection. SG § 10-621(a), (c). MDOT's corresponding regulations proscribe certain fees for copies and for the time spent by public employees to search for and retrieve requested documents. Code of Maryland Regulations ("COMAR") 11.01.13.13. An official custodian may waive a fee if, after consideration of the applicant's ability to pay the fee and other relevant factors, the custodian determines a waiver would be in the public interest. SG § 10-621(e); COMAR 11.01.13.13A(7).

Notwithstanding the breadth of your request as summarized above, you have asked that the Authority waive all fees associated with searching for, retrieving and copying records. We estimate that a full search for all responsive documents would require at least eight Authority professional employees approximately 280 hours to complete, which would amount to a cost of at least \$17,500.00. In addition, we estimate the Authority would need to retrieve several years of electronic files for at least ten employees at an estimated cost of \$8,000.00 per employee.

Your letter does not provide any information regarding the ability of you or the organizations you list to pay the costs usually charged to the requestor under the PIA and regulations. Rather, you state your opinion that all of these records are necessary to allow the public to provide the Authority with informed comments on the proposed tolls. At the same time, your letter indicates that you already have approximately 15 draft or final traffic and toll revenue studies, dated from 2003 through 2008, associated with the ICC and/or other toll facilities operated by the Authority. Further, the Authority has received numerous comments from all segments of the public and various stakeholders during the comment period. By separate letter of November 20, 2009, the Authority denied your request to delay the public comment period and the Authority's decision on the proposed tolls rates for the ICC. Considering these factors and the substantive expenditure of public funds that would be required to obtain all of the documents at public expense, I have determined that a waiver of fees is not in the public interest. Therefore, your request to waive fees and costs for searching and producing all of the documents identified in your October 23, 2009 letter is denied, with the exception of the following documents that the Authority is providing at no cost to you:

(Paper Copies):

1. Traffic and Revenue Update Study for the Proposed Intercountry Connector, dated September, 2009, by Wilbur Smith Associates.
2. Comprehensive Traffic and Toll Revenue Study for the Maryland Transportation Authority, dated October 27, 2009, by Jacobs Engineering Group, Inc.

3. August 12, 2009 letter from MDOT Secretary Beverley K. Swaim-Staley to Maryland Senate President Thomas V. Mike Miller and Speaker of the House Michael E. Bush, attaching the Maryland Transportation Authority's six-year financial forecast for its operations as directed by Section 4-210 of the Transportation Article.
4. November 2, 2009 letter from MDOT Secretary Beverley K. Swaim-Staley to the Chairman of the Maryland Senate Budget and Taxation Committee and Chairman of the House Appropriations Committee, attaching the Maryland Transportation Authority's financial forecast in support of its Draft FY 2010-2015 CTP, as requested by the Department of Legislative Services.
5. November 4, 2009 letter from Wilbur Smith Associates to David Chapin, Senior Policy Analyst, Maryland Transportation Authority attaching revised ICC transaction and revenue estimates related to changes in the proposed project phasing schedule for the ICC.
6. Official Statement of the Maryland Transportation Authority, relating to \$425,000,000 Grant and Revenue Anticipation Bonds, Series 2008.
7. Official Statement of the Maryland Transportation Authority Relating to \$573,305,000 Transportation Facilities Projects Revenue Bonds, Series 2008.

(Electronic Copies, on Disk):

8. Official Statement of the Maryland Transportation Authority Relating to \$325,000,000 Grant and Revenue Anticipation Bonds, Series 2007.
9. ICC O&M and Rehabilitation Forecast, Final Report, January 29, 2008, prepared by PB Consult, Inc. for the Maryland Transportation Authority.
10. Intercounty Connector, Eastern Operations Center Feasibility Analysis, October 3, 2008, prepared by PB Consult, Inc. for the Maryland Transportation Authority.

Before producing additional records in response to your request, the Authority will require that you provide written confirmation of your intent to pay the actual costs and reasonable fees under the PIA, as provided by COMAR 11.01.13.13D.

Pursuant to SG § 10-614(b)(3)(ii)3, I must inform you of all remedies available for review. Pursuant to SG § 10-622, you are entitled to an administrative review with this agency upon request. If requested, such review will be conducted in accordance with SG §§ 10-205 – 10-221 and, by policy of the Authority, the procedures contained in the hearing regulations of the Maryland Department of Transportation found at COMAR 11.01.14. You may also pursue judicial enforcement remedies under SG § 10-623.

Sincerely,



Ronald L. Freeland
Executive Secretary
Maryland Transportation Authority

Enclosures

cc: Beverley K. Swaim-Staley, Secretary, Maryland Department of Transportation
Harold M. Bartlett, Deputy Secretary, Maryland Department of Transportation
Valerie J. Smith, Principal Counsel, Maryland Transportation Authority
Thomas Peter, Deputy Counsel, Maryland Department of Transportation