

Dear Mr. Peake,

In response to your denial of my previous FOIA request for MD295 traffic volume and speed data, I have included a resubmission of said request under different rationale. The true nature of requesting this data is that I wish to write an article for the public interest, after analyzing said data, that reconciles it with my personal, anecdotal experience driving on MD295 on that stretch: that the speed limits are set artificially low for the purposes of the state to raise revenue, when the actual flow of traffic runs at a speed approximately at least 15mph above the posted limits, with the left-most fast lane frequently travelling 25mph above that limit.

The reason that I chose to give another rationale for the initial FOIA is because FOIA request rationale typically does not matter according to federal regulation (<http://www.law.fsu.edu/library/admin/acus/305834.html>). Further, I distrust the state to be transparent about its policies, especially when it can suffer embarrassment from them. Your denial effectively confirms these fears since the exemptions claimed to apply are completely irrelevant to my request.

I find the exceptions referenced by your denial to my FOIA for MD295 traffic data capricious, vexatious, and irrelevant for the following reasons:

- US Code 23 § 409 explicitly covers denial of data production in reference to traffic highway safety data in the discovery phase of litigation. However, a FOIA request is not litigation, and more than glancing reading of this statute reveals the following:
 - A FOIA request is not discovery, though it can be used for such purposes. It is a separate process independent of litigation according to 1 C.F.R. § 305.83-4.
 - Further, I would not have standing for any litigation against the state on this stretch of road as I have no accidents nor even speeding tickets in the state of Maryland, thus making any fears of this information being used in litigation I could conceivably initiate moot.
 - If the fear is that myself or other parties may use this information in litigation in the future, that point is also moot, as the above-referenced US Code *explicitly prohibits such information from being admitted as evidence in “any action for damages arising from any occurrence at a location mentioned or addressed in such reports...”*, even if it is released. Hence, releasing the data I’ve requested does not violate this section of US Code for three reasons: 1) this is not discovery 2) this is not an action for damages arising from an occurrence along said stretch of road 3) releasing the information for FOIA purposes does not mean it becomes admissible evidence in future court cases. Hence, there is absolutely no violation of that statute.
 - Further, the referenced supporting Supreme Court case that states obfuscating government data collection somehow provides better data collection methodologies and standards flies in the face of reason. Scientific studies are peer reviewed for the very purpose of ensuring data collection methodologies are

not flawed and are reproducible. Shielding government from this same accountability is, quite frankly, insane, and simply cannot lead to “better” data collection processes, but both my assertion and the holding of the court is unprovable since the data cannot be released for review in the first place!

- The basis of non-disclosure under Md. Code Ann., State Gov’t 10-618 (b) only covers intra-agency and inter-agency memoranda “which would not be available to a private party in litigation where such disclosure would be contrary to the public interest”. Your argument for exemption fails for the following reasons:
 - First and foremost, the raw data I requested would only be *compiled into* such letters and memoranda, thus making section 10-618 (b) non-applicable to the request at hand, since I did not request the compiled reports; I requested the raw data itself, and will compile it myself as I have a significant background in data analysis.
 - Secondly, the denial of the FOIA also states only “some of the records” are “compiled into” such documents, indicating there exist other records that were in fact, not compiled into memoranda, yet were still not produced. The records and raw data themselves are not those memoranda documents, so the compiled documents can be left free of this request without a wholesale denial of the request, rendering this claimed exception moot. I can only consider failure to supply the non-memoranda records that presumably exist according to your statement as an act of obstruction to my initial request.
 - Third, as previously mentioned, this information absolutely *is* in the best interest of the public as they have a right to know how the government operates, especially when policy can become capricious to the point of being extortionary. As previous litigation involving red-light cameras and speed cameras have shown in Baltimore City, there is absolutely a public interest in releasing data when citizens are being fined by a system whose rules are wildly opaque, set by a government that would rather hide from the citizens it serves than be transparent. The purposes of the public identifying whether the State is preying on citizens wallets by setting artificially low speed limits clearly serves the best interest of the traveling public.
 - Fourth, when point three above is considered, it indicates that the memoranda should also be released, but again, those memoranda weren’t part of my initial request anyway, so not disclosing them is acceptable, unless the State has failed to preserve the original raw data, leaving the only source of information regarding speed and traffic volume. I would accept redacted memoranda containing only compiled numeric statistics, if that is the only thing available.

Further, a failure to provide me with data, collected with taxpayer monies, on which to potentially craft an argument against improper government behavior against its own citizenry is clearly not in the public interest, and clearly prevents me from petitioning the government for redress. Citizen oversight of government policy such as setting speed limits is absolutely **not** “contrary to

the public interest”, and in fact is very obviously in the best interest of the traveling public and makes this request non-exempt under Md. Code Ann., State 10-618 (a).

Again, the desire to analyze the data and possibly editorialize my findings, or petition the government for a change in policy, neither falls under litigation for damages as my intent is to stir a public outcry rather than pursue litigation, thus still making release of this data acceptable and not exempt under US Code 23 § 409, 148 as there is no action or occurrence present in this case.

Attached, please find my original FOIA request for release of the data previously requested, as well as the original denial letter. **I am amending my original request now to also include any and all documents related to the data collection methodologies (devices used, data scrubbing performed, etc.) used for traffic volume and speed data.** To minimize cost to the State, be eco-friendly, and make analyses easiest, digital formats of the records in question are preferred over physical hard copies, though I would accept whichever is more expedient.

Failure to produce these records in a timely manner will ultimately lead me to pursue judicial enforcement remedies under Md. Code Ann., State § 10-623 for the aforementioned reasons, as well as damages, fees, and custodian disciplinary action under GP § 4-362(e)(1) considering the egregious rationale for the exemptions claimed to apply, many of which clearly succumb to the “strawman” logical fallacy, as they argue not against my request, but against a manufactured argument which I did not make in the first place.

Kindest regards,

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