

Martin O'Malley, *Governor*
Anthony G. Brown, *Lt. Governor*



James T. Smith, Jr., *Secretary*
Melinda B. Peters, *Administrator*

July 23, 2014

Mr. Christopher Crook
618 Washington Boulevard
Baltimore, Maryland 21230

Dear Mr. Crook:

Thank you for your request for "all records and raw data pertaining to traffic studies performed on the stretch of MD295 extending from Russell Street in Baltimore City to the exit for 195/BWI." Your request is being considered pursuant to the Public Information Act, Annotated Code of Maryland, State Government Article, § 10-611 *et seq.* ("PIA").

The State Highway Administration ("SHA") is not the custodian for all the records you seek. In particular, regarding your request for records and data relating to Baltimore City, you may direct your request to Mr. William M. Johnson, Director, Baltimore City Department of Transportation at 410.396.6802 or at 417 E. Fayette Street, 5th Floor, Baltimore, MD 21202. With regard to your request for records and data relating to MD 295 outside of Baltimore City, although SHA has records responsive to your request, SHA denies your request for the reasons stated below.

First, Section 10-615 (2) (ii) of the State Government Article of the Maryland Annotated Code provides, in part, that "a custodian shall deny inspection of a public record or any part of a public record if ... the inspection would be contrary to ... a federal statute." Your request seeks documents that are collected, generated, and/or maintained by SHA for the purpose of improving highway safety and/or as part of SHA's Highway Safety Improvement program as required by 23 U.S.C. § 148. Because SHA is required to collect and analyze this information as part of its Highway Safety Improvement program, pursuant to 23 U.S.C. § 409¹, Congress has provided that this information is not admissible in evidence or even subject to discovery in any Federal or State court proceeding nor otherwise considered in any action for damages.

The underlying policy of Title 23 of the United States Code sections 409 and 152, as explained by the Supreme Court, is that disclosure of public roads data, collected or compiled for the purpose of developing any highway safety improvement project, would increase the government's risk of liability for accidents, and cause officials to be less forthcoming and thorough in their data collection efforts. *See generally Pierce County v. Guillen*, 537 U.S. 129 (2003). On the other hand, as expounded by the Supreme Court, non-disclosure promotes diligent efforts to collect the best data, allows for full and candid discussion among officials, and results in better informed decision making and ultimately greater highway safety. Accordingly, to the extent that the requested records exist and are in the control or custody of SHA, under Md. Code Ann., State Gov't §10-615(2)(ii), SHA will not disclose the records.

¹ As interpreted by the Supreme Court in *Pierce County v. Guillen*, 537 U.S. 129 (2003).

My telephone number/toll-free number is _____
Maryland Relay Service for Impaired Hearing or Speech 1.800.735.2258 Statewide Toll Free

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Second, Md. Code Ann., State Gov't § 10-618 (b) authorizes denial of any part of an interagency or intra-agency letter or memorandum that would not be available by law to a private party in litigation where such disclosure would be contrary to the public interest. Some of the records you seek are compiled and collected for interagency and intra-agency analysis and fall into this category of records. As a consequence of 23 U.S.C. §§ 148,409, the records would not be available to any private party in litigation, and their production would similarly be contrary to the public interest for the reasons articulated in *Pierce County v. Guillen*, 507 U.S. 129 (2003)(finding that 23 U.S.C. § 152 [now § 148] and § 409 were proper basis to justify refusal to disclose accident data in response to request made under the State of Washington's Public Disclosure Act—the equivalent of the Maryland Public Information Act, Md. Code Ann., State Gov't § 10-611 *et seq.*).

Appeal of Denial

Pursuant to State Government Article of the Code, section 10-614, I must also inform you of all remedies available for review.

Pursuant to section 10-622 of the State Government Article, upon request, you are entitled to an administrative review of a decision to deny access. If requested, such review will be conducted in accordance with provisions of the State Government Article §§ 10-205 through 221 relating to Administrative Hearings and the hearing regulations of the agency published at COMAR 11.01.13.11.

You may also pursue judicial enforcement remedies under Md. Code Ann., State Gov't § 10-623.

Also, the State Highway Administration (SHA) does include traffic volume information on our web site which is available to the public. This information may be viewed at <http://www.roads.maryland.gov/Index.aspx?PageId=251&d=35>.

If you have any questions, please do not hesitate to contact me or Ms. Erin Kuhn, Assistant District Engineer for Traffic. Ms. Kuhn may be reached at 410-229 2380.

Sincerely,



for
David W Peake
Metropolitan District Engineer
Baltimore and Harford Counties

cc: Ms. Erin Kuhn, Assistant District Engineer – Traffic, SHA
Ms. DeNisha Watson, Assistant Attorney General, SHA
SR-0203662