



# Legal Views

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Volume 14, Issue 1

*A Resource from Montgomery County's Office of the County Attorney*

February 2009

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## A Cracked Crystal Ball

**Clifford L. Royalty**

Section 32-7 of the Montgomery County Code prohibits the acceptance of remuneration by any person for foretelling the future through the use of cards, palm reading, or other such schemes. The County statute is neither unique, nor new. The County enacted its prohibition in 1951 and has hardly modified it since then. The wording of the County statute is similar, if not identical, to other such prohibitions that have been enacted by local governments from Mount Rainier to Gaithersburg. Fortunetelling prohibitions reportedly trace their lineage to Parliament, which enacted a fortunetelling ban 250 years ago.

Though not articulated when it was enacted, the obvious purpose of the County's statute is to prohibit fraud by practitioners of the "crafty sciences." The County's concern about fortuneteller fraud is not without foundation. The State of Maryland has prosecuted fortunetellers in the County who schemed their way to ill-

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## Maryland Public Information Act – A Primer

**Patricia P. Via**

Have you ever seen a letter come across your desk in which someone is asking for information under the "Freedom of Information Act" or the "Maryland Public Information Act?" What is this and do you need to respond? The Maryland Public Information Act (MPIA) is a law which assures open access to information about the affairs of government and the official acts of public officials and government employees. Sometimes a person seeking this information incorrectly refers to the Freedom of Information Act, which is a federal law with the same intent and purpose. In Maryland, such requests are properly made under the MPIA. However, even if a person identifies the incorrect law, the County must still respond because the public has the right to inspect records of the State government or any of its political subdivisions.

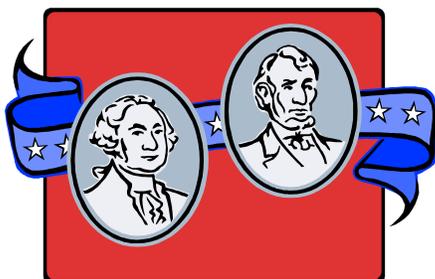
The MPIA is found in the State Government Article of the Maryland Annotated Code at §§ 10-611 to 10-628. The law is liberally construed in favor of permitting inspection of a public record, unless there is an unwarranted invasion of privacy of a particular person or there is some other exception provided in the law. Under this law, public inspection of records is to be done with the least cost and the least delay to the person or government unit who requests inspection.

Specifically, a person or government unit may request inspection of public records at any reasonable time after a written application is submitted to the custodian of those records. The custodian shall either grant or deny the application within 30 days after receiving the request. If the custodian is going to

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gotten funds. Notwithstanding the obvious nature of fortunetelling, prohibitions on the practice have been challenged. This past summer, a fortuneteller (and Key West resident) filed a challenge to the County law on the grounds that it impinges upon the fortuneteller's right to freedom of speech under the First Amendment of the United States Constitution. The County argued in court that the statute does not prohibit speech (fortunes may be told), but, rather, prohibits an inherently fraudulent practice, i.e., the acceptance of money for claiming to foretell the future. The fortuneteller argued that the law is too broad and that only fortunetellers who do not believe in their powers are engaging in fraud. The Montgomery County Circuit Court was not persuaded by the fortuneteller's view and agreed that the County law is a legitimate exercise of the police power. It is unknown whether the fortuneteller predicted the outcome. ❖

## Enabling Smart Growth

### Eric Willis

Smart Growth is a planning concept developed in response to the suburban sprawl form of development that proliferated around metropolitan areas over the last couple of decades. The basic premise behind Smart Growth is to deter suburban sprawl by concentrating future development and infrastructure in existing communities; creating a more urban sense of community that encourages mass transit and pedestrian transportation, while also preserving open space in the outer rural communities.

In Montgomery County, development based on Smart Growth principles can be seen in a number of areas. The Rockville Town Center, with its mix of high-density residential, retail, and office development in close proximity to mass transit and public facilities is one example. In light of the County's continued growth and associated traffic congestion problems, County planners have encouraged other "Town Center" concepts to be developed in close proximity to Metro stations, such as the future development planned for the White Flint and Twinbrook areas. To facilitate this type of transit-oriented development, the County Council, in February 2006, enacted legislation amending the Montgomery County

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produce the public record, he or she is required to do so immediately or within a reasonable period of time that is needed to retrieve the public record, not to exceed 30 days after receipt of the request. If the custodian is going to deny the application, he shall notify the applicant within ten working days and give the applicant a written statement of the reasons and legal authority for the denial and the various remedies for review of the denial.

However, the MPIA is not without limitations. The law provides protections for certain public records and **requires** that the custodian deny production of such records, such as documents that are otherwise prohibited from disclosure by law or are privileged or confidential. Further, a custodian generally **shall deny** inspection of documents such as adoption records, welfare records, retirement records, and the like. Section 10-616 identifies those records to which the custodian may deny inspection, unless otherwise provided by law. Section 10-617 provides that a custodian **shall deny** access to information which may be part of a record, including medical, psychological, personnel, and financial information. Under § 10-618, a custodian **may deny** access to records that the custodian deems would be contrary to public interest.

The MPIA provides that the custodian of the records may charge an applicant a reasonable fee to search for, prepare, and reproduce public records. But the custodian may not charge a fee for the first two hours needed to search for and prepare public records. Finally, the law allows for administrative and judicial review of a denial of access to certain records.

So when you see such a request (and please note that the County may honor oral requests as well), it is imperative that you respond timely and properly. The failure to comply with the MPIA may result in the government having to pay damages and in disciplinary action being imposed against employees who act in an arbitrary and capricious manner in withholding public information. Therefore, if you receive such a request – whether the information is held by your agency or not – act promptly. Contact your agency's general counsel and work with the assigned attorney to ensure that a proper and timely response is prepared. ❖

# Deposition Checklist

## Patty Kane

A deposition is a proceeding where a party or witness (deponent) is asked to give testimony, under oath, regarding his or her knowledge of facts or documents which may be relevant to a pending lawsuit. Depositions are usually oral, and may be videotaped. The parties and attorneys in the lawsuit have the right to be present for the deposition. The attorneys will question the deponent. A transcript of the proceeding will be prepared by a court reporter. Depositions are an important tool for attorneys to gather facts and evidence which is necessary to properly present their client's version of the facts and to learn the nature of the other party's version of the facts.

During the deposition, one attorney or another may object to certain questions that are asked. If you are a party to the lawsuit, your attorney will tell you whether or not you may answer the question over the objection which has been raised. If you are a witness, and do not have counsel present, no one can instruct you whether or not to answer the question. If your deposition is noted in connection with something which happened in your employment with Montgomery County, you should:

1. Stay calm -- there is no need to panic.
2. Notify your supervisor.
3. Notify the County Attorney's Office so that we may assist you in preparing for your deposition and in protecting your interests, as well as the County's interest. We can attend the deposition with you, and guide you through the process.
4. If you are not available for the date and time scheduled, relax. Typically, the deposition can be rescheduled.
5. During the deposition, listen carefully to the question that is asked. Answer that question and only that question. Answer the questions honestly and succinctly. Do not volunteer information. If someone wants to know something, he or she will ask about it.
6. Give a verbal answer to every question that is asked so the court reporter can accurately record your answer. A nod of the head or "uh huh" and "uhnt-uh" are not always accurately reported on the transcript.
7. At the conclusion of the deposition, you will be asked if you want to review the transcript or waive your right to review the transcript. If you elect to review the transcript, a copy will be provided for you to review after it has been typed. You will then have an opportunity to note any errors that you or the court reporter made during your deposition. If you made mistakes, you can correct your testimony on the errata (correction) sheet; however, this allows the attorneys to re-depose you on the corrections you have made. If you waive your right to review the transcript, it will be presumed to be accurate.
8. The deposition can be used at trial to impeach you if you say something different at trial than you said in your deposition. Thus, if the case is going to trial, it is a good idea for you to review your deposition transcript prior to the trial.

Should you have any questions, do not hesitate to contact the Office of the County Attorney for assistance. We are happy to help you. ❖

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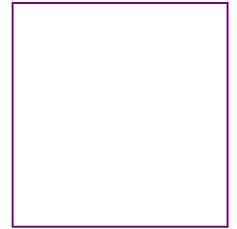
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*Patricia P. Via*

**Legal Views** is a quarterly newsletter prepared as part of the County Attorney's preventive law and education efforts. This information is not legal advice, but an informative tool. While we attempt to ensure the accuracy of information, the informal nature of Legal Views does not allow for thorough legal analysis. If you have an interest in a reported article, please contact us. If you wish to be placed on our mailing list, please send your request with your full name, address, and phone number.



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ADDRESS CORRECTION REQUESTED

**Smart Growth**

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Zoning Ordinance to establish a new Transit Oriented, Mixed Use (TOMX) Zone (Montgomery County Zoning Ordinance § 59-C-13, et seq.) to encourage the redevelopment of transit areas into “distinct and compact mixed-use centers for housing and employment opportunities and include public use space and appropriate public facilities and amenities.” (Montgomery County Zoning Ordinance § 59-C.13.211.)

Recently, the County Council, again, amended the Montgomery County Zoning Ordinance to establish a new transit-oriented mixed use zone. Zoning Text Amendment 08-14, adopted November 25, 2008, and effective as of December 15, 2008, established a new Transit Mixed-Use (TMX) Zone. (Montgomery County Zoning Ordinance § 59-C-14, et seq.). While the development standards of the new TMX Zone are similar to the development standards under the TOMX Zone, the TMX Zone permits a developer to increase its development density through the purchase of a Building Lot Termination (BLT)

Development Right Easement. (Montgomery County Zoning Ordinance § 59-C-14.27). A BLT Easement, as defined in Montgomery County Zoning Ordinance § 59-A-2.1, is a transferable development right created from land that, “(a) consists of at least 25 acres; (b) is capable of being served by an individual sewage treatment unit which meets the requirements of Chapter 27A and applicable regulations issued under that Chapter; (c) is located in the Rural Density Transfer (RDT) zone; and (d) could be transferred by a BLT Easement under this Chapter.” Importantly, a BLT Easement differs from a traditional Transferable Development Right (TDR) in that the BLT Easement extinguishes the right to build a dwelling unit in the RDT, thus preserving open space in the RDT. The BLT Easement provides the County with another tool for enabling future development guided by Smart Growth principles. ❖