

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF HURON**

THOMAS LAMBERT and  
MICHIGAN OPEN CARRY, INC,  
Plaintiffs,

Case No.: 16-105457-CZ  
Honorable Gerald R. Prill

v.

**PRETRIAL STATEMENT**

CITY OF HARBOR BEACH,  
Defendant

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**PRETRIAL STATEMENT**

***Make a brief statement of your claims or defenses:***

*This case is a Freedom of Information Act record denial and costs challenge case.*

***What are the factual/legal issues:***

*On Oct 3, 2016, Plaintiff THOMAS LAMBERT and/or Plaintiff MICHIGAN OPEN CARRY, INC made Freedom of Information Act requests (3 in total) seeking certain records from Defendant CITY OF HARBOR BEACH related to City Resolution No. 2016-92 and its policy decisions.*

*The City Manager wrote back in a format not authorized by FOIA, did not grant or deny the requests, and asserted grossly inappropriate fees as an attempted way to avoid having to disclose the records. At issue is why the records have not been produced and why is the City charging an inappropriate fee contrary to the explicit cost provisions under FOIA. FOIA provides various remedies including equitable relief, payment of attorney fees, costs, and disbursements, and mandatory civil fines.*

**What are the legal issues? (Cite authorities in support of your position, including, in negligence actions, all statutes which you claim the other party has violated).**

This case resolves completely under the *Freedom of Information Act* statute, MCL 15.231 et seq (as amended effective July 1, 2015).

**Relief sought (itemize damages):**

- a. Enter an order determining that Defendant CITY OF HARBOR BEACH failed to actually grant the Oct 3 FOIA Requests and as such the Wrubel Response is a denial by law pursuant to MCL 15.235(3) and/or by action of not producing the records;
- b. Determine that Defendant CITY OF HARBOR BEACH improperly and illegally demanded any fee when the cost for lack of “unreasonably high costs” to Defendant CITY OF HARBOR BEACH and because Defendant CITY OF HARBOR BEACH failed to specifically identify the nature of these unreasonably high costs by the Wrubel Response;
- c. Determine, in the alternative, that Defendant CITY OF HARBOR BEACH has improperly asserted cost purposely and intentionally designed to constructively deny access to the records sought pursuant to the Michigan’s *Freedom of Information Act*;
- d. Determine the correct costs that that Defendant CITY OF HARBOR BEACH may actual charge, if any and including all required reductions, and enjoin the Defendant CITY OF HARBOR BEACH from acting in non-accordance with that costs determination;
- e. Award attorney fees, costs, and disbursements pursuant to MCL 15.240(6), MCL 15.240a(6), and all other court rules, statutes, and laws for each improperly actual or constructively denied request;
- f. Award all punitive damages pursuant to MCL 15.240(7), MCL 15.240a(7), and all other court rules, statutes, and laws for each improperly actual or constructively denied request;
- g. Impose the appropriate and applicable fines pursuant to MCL 15.240(7), MCL 15.240a(7), MCL 15.240b, and all other court rules, statutes, and laws for each improperly actual or constructively denied request; and
- h. Grant all other relief that is warranted and just.

**What amendments to pleadings are required?**

*It is unclear whom the City of Harbor Beach deems as having made the FOIA request, Mr. Lambert or the Michigan Open Carry, Inc entity. Once that is established (discovery request pending), the other plaintiff will be voluntarily withdrawn from the suit.*

**State what discovery is required:**

*Outstanding written discovery, deposition of the City Manager, mayor, and any other official who was involved with these FOIA requests.*

**State any admissions or waivers (ownership, ordinances, statutes, etc):**

*The Oct 3 FOIA Requests tendered as Exhibit A to the complaint was received by the City on October 3, 2016.*

**There are no motions to dispose of prior to trial except the following:**

*A motion for summary disposition; to the extent discovery is not provided, motion(s) to compel*

**This action is not related to another pending action or actions.**

**The trial of this will be:**            a jury trial            \_\_\_\_\_  
   a non-jury trial              X  

**Estimated trial time:**       1 day  .

**(Optional Answer) Settlement possibilities:**

*Production of all documents requested, without any fee, and full payment of all incurred attorney fees, costs, and disbursements to date.*

**Special scheduling problems, if any (witness in service, trial priority, etc):**

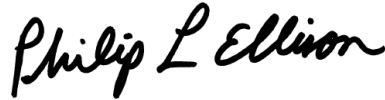
*MCL 15.240(5) and MCL 15.240a(5) requires this case “shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.”*

**Please state any other information which will enable the Court and parties to conduct a meaningful pretrial conference. Please be prepared to stipulate to all exhibits.**

*This is a case largely of first impression under the new costs provisions of FOIA, MCL 15.234 and the enforcement provisions of MCL 15.240a and MCL 15.240b. Very little, if any, case law exists from the appellate courts.*

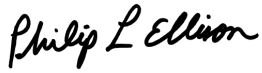
Date: February 6, 2017

RESPECTFULLY SUBMITTED:



**PROOF OF SERVICE**  
The undersigned certifies that a copy of the foregoing document(s) was served on parties or their attorney of record by 1.) emailing the same to the email addresses or record and 2.) mailing the same via US mail to their respective business address(es) as disclosed by the pleadings of record herein with postage fully prepaid, on the

6th day of February, 2017.



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\*\*Electronic signature authorized by MCR 2.114(C)(3) and MCR 1.109(D)(1)-(2)