

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
HON. GERALD M. PRILL

v

CITY OF HARBOR BEACH,

Defendant.

PHILIP L. ELLISON (P74117)
OUTSIDE LEGAL COUNSEL PLC
Attorney for Plaintiffs
P.O. Box 107
Hemlock, MI 48626
(989) 642-0055

AUDREY J. FORBUSH (P41744)
PLUNKETT COONEY
Attorney for Defendant
111 E. Court Street – Suite 1B
Flint, MI 48502
(810) 342-7014

DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

NOW COMES Defendant, the CITY OF HARBOR BEACH, by and through its attorneys, PLUNKETT COONEY, and for its Motion for Summary Disposition, hereby states as follows:

1. Plaintiff Thomas Lambert¹ filed this action pursuant to the Freedom of Information Act ("FOIA"), asserting that Defendant improperly denied his FOIA request(s)² and charged an improper fee for the search for those records.

¹ Plaintiffs indicated in their Pretrial Statement and at the pretrial conference that a voluntary dismissal would be entered as to Michigan Open Carry, Inc. (See Pls.' Pre-trial Statement, filed with this Court). Plaintiff has yet to file the dismissal; however, this Motion and Brief would apply equally to any claims as asserted by either Plaintiff.

² Plaintiffs' Amended Complaint alleges that his single FOIA submission should be deemed to be three separate requests. This assertion is not supported by law. See MCL 15.232(g)(1) (separate and distinct public records as a single request); MCL 15.232(i) (defining a "written request" under FOIA as "a" writing); See also 28 C.F.R. § 16.5(d)

2. Plaintiff's claim that his FOIA response was improperly denied is without merit. Defendant responded within the appropriate time frame and requested a deposit before providing the records as permitted by MCL 15.234(8). It is clear from the correspondence between the parties that Defendant was willing to provide the requested records upon payment of the deposit and fee as permitted by law.

3. Plaintiff never provided any deposit to Defendant; instead, Plaintiff initiated this action purporting to challenge the requested fee.

4. Pursuant to MCL 15.240(1)(b): "If a civil action is commenced under this subdivision [claiming an excessive fee], the public body is not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute."

5. Plaintiff's claim that the charge of \$251.87 is excessive is likewise without merit, as the City is entitled to a fee and also because Plaintiff requested and received a reduced fee calculation; this issue is therefore moot.

6. Defendant is therefore entitled to summary disposition pursuant to MCR 2.116(C)(10).

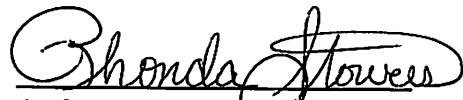
WHEREFORE Defendant prays this Honorable Court GRANT its Motion for Partial Summary Disposition, together with such additional relief as this Court deems just and proper.

(treating multiple requests from a single individual as a single request in determining whether "unusual circumstances" exist).

Respectfully submitted,

PLUNKETT COONEY

Dated: 5/23/17



Audrey J. Forbush (P41744)

Rhonda R. Stowers (P64083)

Attorneys for Defendant

(810) 342-7014

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BRIEF IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

NOW COMES Defendant, the CITY OF HARBOR BEACH, by and through its attorneys, PLUNKETT COONEY, and hereby states the following in support of its Motion for Summary Disposition.

Introduction

This case arises out of the Michigan Freedom of Information Act ("FOIA"). Count I asserts that the City of Harbor Beach improperly denied three separate FOIA requests. Count II contends that the City is barred under FOIA from charging any fee, whatsoever. Count III contends that the fee charged was excessive. These claims are without merit because Defendant timely and appropriately responded to the FOIA request (which was a

single request), because the City is entitled to a fee, and because Plaintiff Lambert³ sought and received a revised calculation of the fee at his request. Summary disposition of this matter is therefore proper.

Statement of Facts

For purposes of this Motion, only, Defendant will not dispute the following facts. Based on the undisputed facts, Defendant is entitled to a dismissal.

On October 3, 2016, Plaintiff Thomas Lambert submitted a FOIA request to the City of Woodhaven. (Ex. A to Pls.' Am. Compl., filed with this Court, p. 2). The request sought:

- Any and all records of discussion from, to, or between the Harbor Beach City Council and its members, and the City Director, in relation to resolution # 2016-92.
- Any and all records of discussion from, to, or between the Harbor Beach City Council and its members, and the City Director, from August 1st, 2016 through today, October 3rd, 2016, in relation to the City's policy on firearms carried by employees.
- Any and all documentation obtained by or provided by the Harbor Beach City Council or one of its members, or the City Director, relating to how the City's policy on firearms carried by employees may affect the City's insurance rates. (Id.)

The request was responded to on Friday, October 7, 2016. (Id.). In the response, the City provided a fee calculation of \$251.87 to provide the records and noted the time that it would take for the information to be collected by the City Director and the City Clerk. The City further stated: "The Clerk and I have blocked off time in our schedules to produce the information you requested on Monday, so we can meet your demand of Tuesday, October 11th." (Id.).

³ Again, it is Defendant's understanding that Plaintiff Michigan Open Carry, Inc., will be voluntarily dismissing this matter, based on its representations to the Court and to counsel.

Plaintiff Lambert objected to the response and the fee charged and requested “a revised response that complies with the FOIA.” (Exhibit 1, Correspondence). Accordingly, City Director Ron Wruble checked the FOIA Procedures and Guidelines and consulted with the City attorney, then responded on October 11, 2016 with a revised fee based on the compensation of the Deputy Clerk and foregoing the cost for copies. (Ex. 1). The response further indicated that the City was “short staffed currently, because of a scheduled day off and another person on maternity leave.” (Ex. 1). After additional correspondence between Plaintiff Lambert and the City Attorney, the fee was further reduced to \$180.20, and a deposit was requested in the amount of \$90.10. (Exhibit 2). Plaintiff never paid the deposit; instead, he filed an appeal of the amount charged, which was not granted. This lawsuit followed.

Motion Standard

A motion brought pursuant to MCR 2.116(C)(10) tests the factual support for a claim. *Smith v. Globe Life Ins. Co.*, 460 Mich. 446, 454-455 n.2 (1999); *Michigan Mut. Ins. Co. v. Dowell*, 204 Mich. App. 81 (1994). It is the party opposing the motion that has the burden of showing a genuine issue of material fact that would warrant the case to be submitted to trial. *Barry v. J & D Auto Dismantlers, Inc.*, 195 Mich. App. 476 (1992).

A party opposing a motion for summary disposition may not rest upon the mere allegations or denials in his pleadings, but must produce affidavits or other admissible documentary evidence to show that there is a genuine issue of material fact. *Smith, supra*; *Roberson v. Occupational Health Centers of America, Inc.*, 220 Mich. App. 322, 324-25 (1996); MCR 2.116(G)(4). The non-moving party must do more than raise some doubt as to the existence of a fact; the non-moving party must produce admissible evidence that

would be sufficient to require submission of the evidence to a jury. *Smith, supra*. If the non-moving party fails to meet this burden, summary disposition is appropriately entered. *Smith, supra*; MCR 2.116(G)(4).

Analysis

Plaintiff cannot establish that Defendant improperly withheld documents contrary to the Freedom of Information Act. Plaintiff's claim that the City is barred from charging any fee for records is not supported by law, and Plaintiff's claim that the fee calculation of \$251.87 was excessive is a moot point, as Plaintiff requested and received a revised fee calculation. Defendant is therefore entitled to summary disposition as a matter of law.

1. Plaintiff cannot establish a wrongful denial of records.

Plaintiff's first claim, that Defendant wrongfully denied three separate FOIA requests is simply not supported by the evidence or Michigan law. Plaintiff issued a single writing to the City of Harbor Beach; thus, he made one FOIA request. Plaintiff appears to be contending that his single submission constitutes three separate requests just because it asks for three different types of records. On the contrary, the Act recognizes that a single request may be seeking several separate and distinct public records. *See* MCL 15.232(g)(1). The analogous federal counterpart to the Michigan FOIA even treats multiple FOIA requests received from the same individual as a single request. 28 C.F.R. § 16.5(d). Plaintiff made a single request to the City of Harbor Beach, and should accordingly be deemed to have one FOIA request at issue.

That FOIA request was not unlawfully denied. The City's response clearly indicates that the request will be granted and processed upon deposit. The City specifically indicated that employees had blocked off significant time on the following Monday to assemble and

produce the requested documents upon receipt of a deposit. (Ex. 1). This, alone, must result in the denial of Plaintiff's claim.

Furthermore, it is well-established that a public body is not required to produce documents until the deposit is made. MCL 15.234(8) (“the public body may require a good-faith deposit from the person requesting information before providing the public records to the requestor”) (emphasis added); *Arabo v. Michigan Gaming Control Bd.*, 310 Mich. App. 370, 386–87 (2015) (stating “the public body's obligation to respond pursuant to MCL 15.235(2) would only arise once the requester had paid the deposit required. This would enable the public body to recover a portion of its costs before processing the request, as is clearly contemplated by the language of § 4(2) of the FOIA.”) (emphasis added). The Michigan Attorney General has also concluded that “once copies of the requested documents have been prepared, nothing in the FOIA precludes a public body from requiring that final payment in full be made prior to actual delivery of the copies to the requestor.” 1997-1998 Mich. Op. Att'y Gen. 131 (1998).

The payment of a requested deposit is not only a prerequisite to obtain the records, it is a prerequisite for a suit asserting that records were wrongfully withheld under FOIA. *Arabo, supra*. Here, Plaintiff never paid the deposit and therefore cannot assert that the City violated FOIA in not producing the requested records. His action is barred and summary disposition is warranted as to this claim on this basis as well.

2. The City is not barred from charging a fee.

Count II of Plaintiff's Amended Complaint asserts that Defendant did not provide any explanation of “unreasonably high costs,” that no such costs existed, and that the City's “asserting any fee” violates FOIA. (Pls.' Am. Compl., ¶ 28-29). This argument ignores the

fact that the City informed Plaintiff Lambert the City was “short staffed currently, because of a scheduled day off and another person on maternity leave.” (Ex. 1). The City’s response also notified Plaintiff of the number of hours in the eight-hour workday that would be spent by the City Director and the City Clerk to produce the documents (5 hours). (Ex. A to Pls.’ Am. Compl.). The City’s staffing issues constituted an unreasonably high cost in responding that justified the request for a fee in this instance.

There is no legal support for Plaintiff’s claim that the City cannot charge any fees under FOIA. There is no question that FOIA clearly allows for municipalities to charge fees for responding to FOIA requests. MCL 153234(1) (“A public body may charge a fee for a public record search, for the necessary copying of a public record for inspection, or for providing a copy of a public record if it has established, makes publicly available, and follows procedures and guidelines to implement this section as described in subsection (4).”).

The only prohibition against a municipality charging any fees under FOIA is if the municipality has failed to establish procedures and guidelines and has not created a written public summary. As explained by MCL 15.234(4):

A public body that has not established procedures and guidelines, has not created a written public summary, or has not made those items publicly available without charge as required in this subsection is not relieved of its duty to comply with any requirement of this act and shall not require deposits or charge fees otherwise permitted under this act until it is in compliance with this subsection.

The City of Harbor Beach has procedures and guidelines, which are publically available on its website. <http://www.harborbeach.com/DoingBusiness/FOIADocuments.aspx>, last accessed 5/21/17. The City’s written summary is also published and publicly available. *Id.* Contrary to Plaintiff’s assertions, Defendant is not barred from charging any fees under

FOIA, particularly where, as here, the nature of Plaintiff's request and the staffing issues presented unreasonably high costs for the City. Summary disposition must accordingly enter in Defendant's favor.

3. Plaintiff's claim that he was excessively charged \$251.87 is moot.

In filing this action, Plaintiff Lambert wholly ignores the fact that he requested and received a revised fee. His pleading does not challenge the revised fee, but relies on the \$251.87 initial fee calculation by the City as the basis for his claim. (Pls.' Am. Compl., ¶ 34). His claim is thus disingenuous and fails because it is moot. The fee calculation was revised prior to this action⁴ and there is no case or controversy for this Court on that basis. Plaintiff's Count III must accordingly be dismissed.

Under ordinary circumstances, the courts of this state will not consider moot questions or abstract propositions. *McDermott v. City of Detroit*, 16 Mich. App. 283 (1969); *Mulligan v. City of Kalamazoo*, 9 Mich. App. 713 (1968). "An issue is moot if an event has occurred that renders it impossible for the court to grant relief. An issue is also moot when a judgment, if entered, cannot for any reason have a practical legal effect on the existing controversy." *King v. Michigan State Police Dept.*, 303 Mich. App. 162, 192 (2013) (quoting *General Motors Corp. v. Department of Treasury*, 290 Mich. App. 355 (2010)).

As an example, in *Swinehart v. Secretary of State*, 27 Mich. App. 31 (1968), plaintiff obtained a driver's license during the pendency of his case against the Department of State to overturn its refusal to renew his prior license. The court reasoned it could provide no effectual relief, and it would be pointless to order the state to give Plaintiff a license when

⁴ It was also revised within the five-business-day-response window of FOIA.

he already had one. *Id.* at 321. The issue's mootness was demonstrated by the uselessness of any remedy the court could create to respond to the situation.

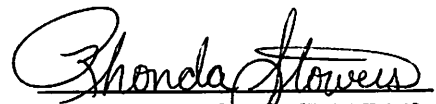
Applying the rule to the instant case, this Court cannot impose an effective remedy for Plaintiffs claimed injury. For this Court to address whether \$251.87 was an excessive fee that must be reduced is merely an academic question—the City has already reduced (pre-suit) the fee calculation associated with Plaintiff's FOIA request.⁵ It is pointless for the Court to rule that the City cannot charge \$251.87 when the City has already determined not to do so. The issue is moot and this claim is properly dismissed for lack of a case in controversy.


Conclusion

Summary disposition must enter in Defendant's favor in this matter. Defendant did not violate FOIA when it did not produce records that Plaintiff never paid the deposit for, and it has no obligation to produce them until the deposit is paid. The City is entitled to recover its fees associated with the production, and Plaintiff's claim that he was charged an excessive fee is moot. Defendant is entitled to summary disposition as a matter of law.

Respectfully submitted,

PLUNKETT COONEY


Audrey J. Forbush (P41744)
Rhonda R. Stowers (P64083)
Attorneys for Defendant
(810) 342-7014

Dated: 5/23/17 **PROOF OF SERVICE**
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on May 23, 2017
By: U.S. Mail FAX
 Hand Delivered Overnight Courier
 Certified Mail Other
Signature: 

Open.00560.70017.18482705-1

⁵ It should also be noted that the City has not sought the costs associated with duplication or mailing, which it is legally authorized to do.

EXHIBIT 1

Ron Wruble

From: Ron Wruble [rwruble@harborbeach.com]
Sent: Monday, October 10, 2016 12:31 PM
To: 'Tom Lambert'
Cc: 'Gary Booms'; 'ferrisschwedler@gmail.com'
Subject: RE: Harbor Beach FOIA Request

Mr. Lambert,

You are partially correct. I checked the FOIA Procedures and Guidelines and had it verified by the City's Attorney. We can only charge at the rate of the person with the lowest compensation that is qualified to prepare the information. That person is the Deputy Clerk. Her total compensation with benefits is \$38.02. The Clerk and I will be preparing the information.

It will be taking in excess of five hours to compile, but now instead of a cost of \$251.87 it will be reduced to \$190.10. The Deputy Clerks compensation of \$38.10 x 5 hours. There will be no copying charge. Let me know how to proceed.

I already started gathering the information. We may need an extension from Tuesday's deadline, because we are short

staffed currently, because of a scheduled day off and another person on maternity leave.

Ron Wruble
City Director
City of Harbor Beach

From: Tom Lambert [mailto:tlambert@miopencarry.org]
Sent: Friday, October 07, 2016 4:57 PM
To: Ron Wruble
Cc: Gary Booms; MIOC Board; Dean Greenblatt
Subject: Re: Harbor Beach FOIA Request

Mr. Wruble,

Thank you for your response.

Your response and the payment you have requested is wildly unlawful. I urge you to confer with council at your soonest convenience and review the relevant statutes.

I look forward to a revised response that complies with the FOIA.

Tom Lambert
President
Michigan Open Carry, Inc.

On Fri, Oct 7, 2016 at 1:44 PM, Ron Wruble <rwruble@harborbeach.com> wrote:

Mr. Lambert,

This e-mail is in response to your request for information pursuant to the Michigan Freedom of Information Act.

I have determined that it will take me a minimum of 3 hours and City Clerk Leslie Woycehoski a minimum of

2 hours to collect the information you have requested. The City Director's compensation, including benefits, is

\$55.09 per hour. The Clerk's total compensation, including benefits, is \$43.30 per hour. The total cost to produce the information is

\$251.87. You will need to have payment into City Hall prior to the information being released in the form of cash or money order.

I checked with Mayor Booms (who is also the FOIA Officer for the City) he indicated that the City will not waive the cost for the FOIA request.

Please let me know how you want to proceed. The Clerk and I have blocked off time in our schedules to produce the information you requested on Monday, so we can meet your demand of Tuesday, October 11th.

Ron Wruble

City Director

City of Harbor Beach

989-551-3393

From: Tom Lambert [mailto:tlambert@miopencarry.org]
Sent: Monday, October 03, 2016 5:52 PM
To: rwruble@harborbeach.com; lwoycehoski@harborbeach.com
Cc: MIOC Board
Subject: Harbor Beach FOIA Request

October 3rd, 2016

To whom it may concern,

Pursuant to the Michigan Freedom of Information Act (FOIA), Michigan Public Act 442 of 1976; MCL 15.231 et. seq., I am hereby requesting an opportunity to inspect or obtain copies of public records. I am hereby requesting the following from the City of Harbor Beach and the Harbor Beach City Council.

- Any and all records of discussion from, to, or between the Harbor Beach City Council and its members, and the City Director, in relation to resolution # 2016-92.

- Any and all records of discussion from, to, or between the Harbor Beach City Council and its members, and the City Director, from August 1st, 2016 through today October 3rd, 2016, in relation to the City's policy on firearms carried by employees.

- Any and all documentation obtained by or provided by the Harbor Beach City Council or one of its members, or the City Director, relating to how the City's policy on firearms carried by employees may affect the City's insurance rates.

Please inform me if the expected costs for searching and copying these documents will exceed \$20.00. However, I would like to request a waiver of all fees as the disclosure of the requested information is in the public interest and will contribute to the public's understanding and knowledge of the City's operations.

The FOIA requires a response to this request within five business days. Please respond to this request no later than Tuesday, October 11th.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal and notify me of the appeal procedures available.

Lastly, please make any copies generated under this request available electronically.

Tom Lambert

President

Michigan Open Carry, Inc.

EXHIBIT 2

City of Harbor Beach, Huron County
 766 State Street
 Harbor Beach, Michigan, 48441
 Phone: (989) 479- 3363

Detailed Cost Itemization

Freedom of Information Act Request Detailed Cost Itemization

Date: October 11, 2016 Prepared for Request No.: _____ Date Request Received: October 4, 2016

<p>The following costs are being charged in compliance with Section 4 of the Michigan Freedom of Information Act, MCL 15.234, according to the City's FOIA Policies and Guidelines.</p>			
<p>1. Labor Cost for Copying / Duplication</p> <p>This is the cost of labor directly associated with duplication of publication, including making paper copies, making digital copies, or transferring digital public records to be given to the requestor on non-paper physical media or through the Internet or other electronic means as stipulated by the requestor.</p> <p>This shall not be more than the hourly wage of the City's lowest-paid employee capable of necessary duplication or publication in this particular instance, regardless of whether that person is available or who actually performs the labor.</p> <p>These costs will be estimated and charged in 15-minute time increments all partial time increments must be rounded down. <i>If the number of minutes is less than one increment, there is no charge.</i></p> <p>Hourly Wage Charged: \$24.02 <u>OR</u> Hourly Wage with Fringe Benefit Cost: \$36.03 Multiply the hourly wage by the percentage multiplier: 50% (up to 50% of the hourly wage) and add to the hourly wage for a total per hour rate.</p> <p>Charge per Increment: <u>OR</u> Charge per increment: \$9.01</p> <p><input type="checkbox"/> Overtime rate charged as stipulated by Requestor (overtime is not used to calculate the fringe benefit cost)</p>	<p>To figure the number of increments, take the number of minutes: _____, divide by 15 -minute increments, and round down. Enter below:</p> <p>Number of increments x 8 =</p>	<p>1. Labor Cost \$ 72.08</p>	
<p>2. Labor Cost to Locate:</p> <p>This is the cost of labor directly associated with the necessary searching for, locating, and examining public records in conjunction with receiving and fulfilling a granted written request. This fee is being charged because failure to do so will result in unreasonably high costs to the City that are excessive and beyond the normal or usual amount for those services compared to the City's usual FOIA requests, because of the nature of the request in this particular instance, specifically:</p> <p>due to the limited staff available to process the request, the employee must take time away from normal work duties at the City of Harbor Beach expense.</p> <p>The City will not charge more than the hourly wage of its lowest-paid employee capable of searching for, locating, and examining the public records in this particular instance, regardless of whether that person is available or who actually performs the labor.</p> <p>These costs will be estimated and charged in 15-minute time increments; all partial time increments must be rounded down. <i>If the number of minutes is less than 15, there is no charge.</i></p> <p>Hourly Wage Charged: \$ 24.02 <u>OR</u> Hourly Wage with Fringe Benefit Cost: \$ 36.03 Multiply the hourly wage by the percentage multiplier: 50% (up to 50% of the hourly wage) and add to the hourly wage for a total per hour rate.</p> <p>Charge per increment: \$ <u>OR</u> Charge per increment: \$9.01</p> <p><input type="checkbox"/> Overtime rate charged as stipulated by Requestor (overtime is not used to calculate the fringe benefit cost)</p>	<p>To figure the number of increments, take the number of minutes: _____, divide by 15-minute increments, and round down. Enter below:</p> <p>Number of increments x 12 =</p>	<p>2. Labor Cost \$108.12</p>	

3a. Employee Labor Cost for Separating Exempt from Non-Exempt (Redacting):

(Fill this out if using a City employee. If contracted, use No. 3b instead).

The City will not charge for labor directly associated with redaction if it knows or has reason to know that it previously redacted the record in question and still has the redacted version in its possession.

This fee is being charged because failure to do so will result in unreasonably high costs to the City that are excessive and beyond the normal or usual amount for those services compared to the City's usual FOIA requests, because of the nature of the request in this particular instance, specifically: _____

This is the cost of labor of a City employee, including necessary review, directly associated with separating and deleting exempt from nonexempt information. This shall not be more than the hourly wage of the City's lowest-paid employee capable of separating and deleting exempt from nonexempt information in this particular instance, regardless of whether that person is available or who actually performs the labor.

These costs will be estimated and charged in 15-minute time increments; all partial time increments must be rounded down. If the number of minutes is less than 15, there is no charge.

Hourly Wage Charged: \$ _____

Charge per increment: \$ _____

OR

Hourly Wage with Fringe Benefit Cost: \$ _____

OR

Multiply the hourly wage by the percentage multiplier: _____%
(up to 50% of the hourly wage) and add to the hourly wage for a total per hour rate.

Charge per increment: \$ _____

To figure the number of increments, take the number of minutes: _____, divide by 15-minute increments, and round down.
Enter below:

Number of increments

x _____ =

3a. Labor Cost

\$ _____

Overtime rate charged as stipulated by Requestor (overtime is not used to calculate the fringe benefit cost)

3b. Contracted Labor Cost for Separating Exempt from Non-Exempt (Redacting):

(Fill this out if using a contractor, such as the attorney. If using in-house employees, use No. 3a instead.)

The City will not charge for labor directly associated with redaction if it knows or has reason to know that it previously redacted the record in question and still has the redacted version in its possession.

This fee is being charged because failure to do so will result in unreasonably high costs to the City that are excessive and beyond the normal or usual amount for those services compared to the City's usual FOIA requests, because of the nature of the request in this particular instance, specifically:

As this City does not employ a person capable of separating exempt from non-exempt information in this particular instance, as determined by the FOIA Coordinator, this is the cost of labor of a contractor (i.e.: outside attorney), including necessary review, directly associated with separating and deleting exempt information from nonexempt information. This shall not exceed an amount equal to 6 times the state minimum hourly wage rate of _____ (currently \$8.15).

Name of contracted person or firm: _____

These costs will be estimated and charged in 15-minute time increments (must be 15-minutes or more); all partial time increments must be rounded down. If the number of minutes is less than 15, there is no charge.

Hourly Cost Charged: \$ _____

Charge per increment: \$ _____

To figure the number of increments, take the number of minutes: _____, divide by 15-minute increments, and round down to: _____ increments. Enter below:

Number of increments

3b. Labor Cost

x _____ = \$ _____

4. Copying / Duplication Cost:

Copying costs may be charged if a copy of a public record is requested, or for the necessary copying of a record for inspection (for example, to allow for blacking out exempt information, to protect old or delicate original records, or because the original record is a digital file or database not available for public inspection).

No more than the actual cost of a sheet of paper, up to maximum 10 cents per sheet for:

- Letter (8 1/2 x 11-inch, single and double-sided): _____ cents per sheet
- Legal (8 1/2 x 14-inch, single and double-sided): _____ cents per sheet

No more than the actual cost of a sheet of paper for other paper sizes:

- Other paper sizes (single and double-sided): _____ cents / dollars per sheet

Actual and most reasonably economical cost of non-paper physical digital media:

- Circle applicable: Disc / Tape / Drive / Other Digital Medium Cost per item: _____

The cost of paper copies must be calculated as a total cost per sheet of paper. The fee cannot exceed 10 cents per sheet of paper for copies of public records made on 8-1/2- by 11-inch paper or 8-1/2- by 14-inch paper. A City must utilize the most economical means available for making copies of public records, including using double-sided printing, if cost saving and available.

Number of Sheets:

Costs:

x _____ = \$ _____

x _____ = \$ _____

x _____ = \$ _____

No. of items:

x _____ = \$ _____

4. Total Copy Cost

\$ 0

5. Mailing Cost:

The City will charge the actual cost of mailing, if any, for sending records in a reasonably economical and justifiable manner. Delivery confirmation is not required.

- The City *may* charge for the least expensive form of postal delivery confirmation.
- The City *cannot* charge more for expedited shipping or insurance unless specifically requested by the requestor.*

Actual Cost of Envelope or Packaging: \$ _____

Actual Cost of Postage: \$ _____ per stamp
 \$ _____ per pound
 \$ _____ per package

Actual Cost (least expensive) Postal Delivery Confirmation: \$ _____

*Expedited Shipping or Insurance as Requested: \$ _____

* Requestor has requested expedited shipping or insurance

Number of Envelopes or Packages:

x _____ = \$ _____
 x _____ = \$ _____
 x _____ = \$ _____
 x _____ = \$ _____
 x _____ = \$ _____
 x _____ = \$ _____

Costs:

5. Total Mailing Cost
 \$ 0

6a. Copying/Duplicating Cost for Records Already on City's Website:

If the public body has included the website address for a record in its written response to the requestor, and the requestor thereafter stipulates that the public record be provided to him or her in a paper format or non-paper physical digital media, the City will provide the public records in the specified format and may charge copying costs to provide those copies.

No more than the actual cost of a sheet of paper, up to maximum 10 cents per sheet for:

- Letter (8 1/2 x 11-inch, single and double-sided): _____ cents per sheet
- Legal (8 1/2 x 14-inch, single and double-sided): _____ cents per sheet

No more than the actual cost of a sheet of paper for other paper sizes:

- Other paper sizes (single and double-sided): _____ cents / dollars per sheet

Actual and most reasonably economical cost of non-paper physical digital media:

- Circle applicable: Disc / Tape / Drive / Other Digital Medium Cost per Item: _____

Requestor has stipulated that some / all of the requested records that are already available on the City's website be provided in a paper or non-paper physical digital medium.

Number of Sheets:

x _____ = \$ _____
 x _____ = \$ _____
 x _____ = \$ _____
 No. of Items:
 x _____ = \$ _____

Costs:

6a. Web Copy Cost
 \$ 0

6b. Labor Cost for Copying/Duplicating Records Already on City's Website:

This shall not be more than the hourly wage of the City's lowest-paid employee capable of necessary duplication or publication in this particular instance, regardless of whether that person is available or who actually performs the labor. These costs will be estimated and charged in 15-minute time increments (i.e.: 15-minutes or more); all partial time increments must be rounded down. If the number of minutes is less than 15, there is no charge.

Hourly Wage Charged: \$ _____ Charge per increment: \$ _____

OR

Hourly Wage with Fringe Benefit Cost: \$ _____ Charge per increment: \$ _____
 Multiply the hourly wage by the percentage multiplier: _____%
 and add to the hourly wage for a total per hour rate.

The City may use a fringe benefit multiplier greater than the 50% limitation, not to exceed the actual costs of providing the information in the specified format.

Overtime rate charged as stipulated by Requestor

To figure the number of increments, take the number of minutes: _____, divide by 15-minute increments, and round down. Enter below:

Number of increments
 x _____ = \$ 0

6b. Web Labor Cost

6c. Mailing Cost for Records Already on City's Website:

Actual Cost of Envelope or Packaging: \$ _____

Actual Cost of Postage: \$ _____ per stamp / per pound / per package

Actual Cost (least expensive) Postal Delivery Confirmation: \$ _____
 *Expedited Shipping or Insurance as Requested: \$ _____

* Requestor has requested expedited shipping or insurance

Number:
 x _____ = \$ _____
 x _____ = \$ _____
 x _____ = \$ _____
 x _____ = \$ _____

Costs:

6c. Web Mailing Cost
 \$ 0

Subtotal Fees Before Waivers, Discounts or Deposits:

Cost estimate
 Bill

Estimated Time Frame to Provide Records:

October 21, 2016

The time frame estimate is nonbinding upon the City, but the City is providing the estimate in good faith. Providing an estimated time frame does not relieve the City from any of the other requirements of this act.

- 1. Labor Cost for Copying: \$ 72.08
- 2. Labor Cost to Locate: \$ 108.12
- 3a. Labor Cost to Redact: \$ _____
- 3b. Contract Labor Cost to Redact: \$ _____
- 4. Copying/Duplication Cost: \$ _____
- 5. Mailing Cost: \$ _____
- 6a. Copying/Duplication of Records on Website: \$ _____
- 6b. Labor Cost for Copying Records on Website: \$ _____
- 6c. Mailing Costs for Records on Website: \$ _____

Fees Subtotal: \$ 180.20

Waiver: Public Interest

A search for a public record may be conducted or copies of public records may be furnished without charge or at a reduced charge if the City determines that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public record can be considered as primarily benefiting the general public.

All fees are waived OR All fees are reduced by: _____%

Subtotal Fees After Waiver: \$ _____

<p>Discount: Indigence A public record search must be made and a copy of a public record must be furnished without charge for the first \$20.00 of the fee for each request by an individual who is entitled to information under this act and who:</p> <p>1) Submits an affidavit stating that the individual is indigent and receiving specific public assistance, OR</p> <p>2) If not receiving public assistance, stating facts showing inability to pay the cost because of indigence.</p> <p>If a requestor is ineligible for the discount, the public body shall inform the requestor specifically of the reason for ineligibility in the public body's written response. An individual is ineligible for this fee reduction if ANY of the following apply:</p> <p>(i) The individual has previously received discounted copies of public records from the same public body twice during that calendar year, OR</p> <p>(ii) The individual requests the information in conjunction with outside parties who are offering or providing payment or other remuneration to the individual to make the request. A public body may require a statement by the requestor in the affidavit that the request is not being made in conjunction with outside parties in exchange for payment or other remuneration.</p> <p style="text-align: right;"><input type="checkbox"/> Eligible for Indigence Discount</p>	<p>Subtotal Fees After Discount (subtract \$20):</p>	<p>\$ _____</p>
<p>Discount: Nonprofit Organization A public record search must be made and a copy of a public record must be furnished without charge for the first \$20.00 of the fee for each request by a nonprofit organization formally designated by the state to carry out activities under subtitle C of the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000 and the federal Protection and Advocacy for Individuals with Mental Illness Act, if the request meets ALL of the following requirements:</p> <p>(i) Is made directly on behalf of the organization or its clients.</p> <p>(ii) Is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the Michigan Mental Health Code, 1974 PA 258, MCL 330.1931.</p> <p>(iii) Is accompanied by documentation of its designation by the state, if requested by the City.</p> <p style="text-align: right;"><input type="checkbox"/> Eligible for Nonprofit Discount</p>	<p>Subtotal Fees After Discount (subtract \$20):</p>	<p>\$ _____</p>
<p>Deposit: Good Faith The City may require a good-faith deposit in either its initial response or a subsequent response before providing the public records to the requestor if the entire fee estimate or charge authorized under this section exceeds \$50.00, based on a good-faith calculation of the total fee. The deposit cannot exceed 1/2 of the total estimated fee.</p> <p style="text-align: right;">Percent of Deposit: 50%</p>	<p>Date Paid:</p> <p>_____</p>	<p>Deposit Amount Required:</p> <p>\$ 90.10</p>
<p>Deposit: Increased Deposit Due to Previous FOIA Fees Not Paid In Full After a City has granted and fulfilled a written request from an individual under this act, if the City has not been paid in full the total amount of fees for the copies of public records that the City made available to the individual as a result of that written request, the City may require an increased estimated fee deposit of up to 100% of the estimated fee before it begins a full public record search for any subsequent written request from that individual if ALL of the following apply:</p> <p>(a) The final fee for the prior written request was not more than 105% of the estimated fee.</p> <p>(b) The public records made available contained the information being sought in the prior written request and are still in the City's possession.</p> <p>(c) The public records were made available to the individual, subject to payment, within the best effort estimated time frame given for the previous request.</p> <p>(d) Ninety (90) days have passed since the City notified the individual in writing that the public records were available for pickup or mailing.</p> <p>(e) The individual is unable to show proof of prior payment to the City.</p>		

<p>(f) The City calculates a detailed itemization, as required under MCL 15.234, that is the basis for the current written request's increased estimated fee deposit.</p> <p>A City can no longer require an increased estimated fee deposit from an individual if ANY of the following apply:</p> <p>(a) The individual is able to show proof of prior payment in full to the City, OR (b) The City is subsequently paid in full for the applicable prior written request, OR (c) Three hundred sixty-five (365) days have passed since the individual made the written request for which full payment was not remitted to the City.</p>	<p>Date Paid:</p> <p>_____</p>	<p>Percent Deposit Required:</p> <p>50%</p> <p>Deposit Required:</p> <p>\$ 90.10</p>
<p>Late Response Labor Costs Reduction</p> <p>If the City does not respond to a written request in a timely manner as required under MCL 15.235(2), the City must do the following:</p> <p>(a) Reduce the charges for labor costs otherwise permitted by 5% for each day the City exceeds the time permitted for a response to the request, with a maximum 50% reduction, if EITHER of the following applies:</p> <p>(i) The late response was willful and intentional, OR</p> <p>(ii) The written request included language that conveyed a request for information within the first 250 words of the body of a letter, facsimile, electronic mail, or electronic mail attachment, or specifically included the words, characters, or abbreviations for "freedom of information," "information," "FOIA," "copy", or a recognizable misspelling of such, or appropriate legal code reference for this act, on the front of an envelope, or in the subject line of an electronic mail, letter, or facsimile cover page.</p>	<p>Number of Days Over Required Response Time:</p> <p>_____</p> <p>Multiply by 5%</p> <p>= Total Percent Reduction:</p> <p>_____</p>	<p>Total Labor Costs</p> <p>\$ _____</p> <p>Minus Reduction</p> <p>\$ _____</p> <p>= Reduced Total Labor Costs</p> <p>\$ _____</p>
<p>The Public Summary of the City's FOIA Procedures and Guidelines is available free of charge from: Website: www.harborbeach.com Email: _____ Phone: 989.479.3363</p> <p>Address: 766 State Street, Harbor Beach, Michigan, 48441</p> <p>Request Will Be Processed, But Balance Must Be Paid Before Copies May Be Picked Up, Delivered or Mailed</p>	<p>Date Paid:</p> <p>_____</p>	<p>Total Balance Due:</p> <p>\$ 180.20</p>