

**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.

OPPOSITION

CITY OF HARBOR BEACH,
Defendant

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**PLAINTIFFS' OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY DISPOSITION**

In 2015, the *Freedom of Information Act* was drastically amended, particularly involving when public bodies make illegal demands for costs for production under FOIA. FOIA's Sections 4 and 10a deal with both. This case involves both and is a case of first impression as no appellate case law exists as to these newly post-2015 amendments.¹

The basic premise of this case is simple. Three FOIA requests were made upon the City of Harbor Beach. **Exhibit 1**. All three requests were answered will illegal fee

¹ Section 10a was added and provides a punitive damages penalty, plus attorney fees, costs, and disbursements for illegal costs. See MCL 15.240a. A second civil fine is also required under MCL 15.240b, also effective July 1, 2015.

demands. **Exhibit 2.** The requester, Thomas Lambert from Michigan Open Carry, Inc.,² informed the City of its illegal actions and still it never corrected them, even via an administrative appeal. Now, by motion, the City seeks to wash away its legal sins without penalty by blaming Plaintiff for not paying the demanded fee of \$190.10. The proper fee is \$0.00. The City has brought a partial motion for summary disposition pursuant to MCR 2.116(C)(10). This opposition brief follows.

FACTS

In September 2016, the City of Harbor Beach voted to prohibit open carry, in addition to concealed carry, for their employees after a local crossing guard inquired about the City's policy. See Kelly Krager, *Crossing Guard Fights for Right to Open Carry*, HURON CO VIEW, Sept 22, 2016, available at <https://goo.gl/sWoXeX> (**Exhibit 14**). The basis of their action was claimed to be for "liability" and insurance issues. When the proffered jurisdiction was questioned by open-carry advocates, the City declined to provide any documentation supporting their position.

In response, on October 3, 2016, Plaintiff THOMAS LAMBERT made three *Freedom of Information Act* requests seeking the following records from the City:

- a. *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.*
- b. *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.*
- c. *Any and all documentation obtained by or provided by the Harbor Beach City Council or one of its members, or the City Director, relating*

² Plaintiff Michigan Open Carry, Inc agrees that a voluntary dismissal without costs for itself is appropriate as discussed by Defendant City of Harbor Beach as outlined in Footnote 1 of the Motion. See **Exhibit 13.**

to how the City's policy on firearms carried by employees may affect the City's insurance rates.

Exhibit 1 [hereinafter the "Oct 3 FOIA Requests"]. The Oct 3 FOIA Requests specifically requested—

1. *"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"; and*
2. *if Defendant CITY OF HARBOR BEACH denies "any or all of this request, please cite each specific exemption you feel justifies the refusal and notify me of the appeal procedures available."*

Exhibit 1. On October 7, 2016, the City, by its City Director rather than its FOIA Coordinator, allegedly³ responded to the Oct 3 FOIA Requests stating as follows:

This e-mail is in response to your request (sic) 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.

³ It is unclear why Mayor Bloom is the FOIA "Officer" when no such position exists under the statute. Under the statute, Mayor Bloom might be the FOIA *Coordinator*, if assigned to that task. See MCL 15.236(1). Under statute, a city "shall designate an individual as the public body's FOIA coordinator" who "shall be responsible for accepting *and processing requests for the public body's public records under this act* and shall be responsible for approving a denial under section 5(4) and (5)." As such, the person who should have been responding was Mayor Bloom, and not Director Wrubel. This makes the Wrubel Response ineffective and improper as not being from Mayor Bloom.

Exhibit 2. [hereinafter the “Wrubel Response”]. Like many governments who do not take government transparency seriously, the Wrubel Response is legally deficient, and likely intentionally done to actively prevent the disclosure (or non-existence) of proper government records on a politically unpopular topic.

About two hours later, Plaintiff Lambert responded stating

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

Exhibit 3. Three days later, Mr. Wrubel further responded:

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 access 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 and extension from Tuesday’s deadline, because we are short staffed currently, because of a scheduled day off and another person on maternity leave.

Exhibit 4. Plaintiff Lambert responded later that day stating:

I am pleased you have already started gathering the information. Thank you.

*As to the fees you wish to charge, with respect I again implore you to review the entire FOIA, including all of Section 4, with counsel and comply with it fully. If you wish to charge a fee for the completion of this request, then **there are numerous burdens you must meet, almost none of which you have.** If you insist on charging a fee in a noncompliant manner, then I will interpret such as a denial of my request.*

At this time, with both the information you have and have not provided, I consent to a fee of \$0 for the completion of my request.

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

Exhibit 5.

On October 11, 2016, John T. Ferris, the City Attorney, issued an undated letter reconfirming that Section 4 of the FOIA applies and revised, again, the fee to \$190.00 based on two hours of copying⁴ and three hours locating. **Exhibit 6.** The time to make yet another fee-demand had passed. MCR 15.234(8). The City Attorney's letter did not address the provisions under MCL 15.234(2) or MCL 15.234(3).

On October 13, 2016, Plaintiff Lambert responded again, stating—

Thank you for your response on behalf of the City of Harbor Beach to my FOIA request. While your response did make necessary strides to comply with the FOIA, it still fell woefully short of both the law and the City's own policy. If you require evidence of this, then you may simply look no further than the Freedom of Information Act Request Detailed Cost Itemization form contained at the end of your response, where one need only examine the first page to see that the manner in which it was completed is conspicuously incomplete.

Further, the City's policy is unlawful in critical areas, most notably the provision requiring all fees to be paid prior to the fulfillment of the request.

*For a third time, I urge the City to **read the FOIA**, including the very portion you quoted in the City's last response. If the plain reading is not enough for you, then I suggest looking into how Public Act 563 of 2014 amended the FOIA, including the portion dealing with allowable deposits.*

At this point, time has run out for the City, without the City complying with the Act. To date, the statutory deadline has passed without the City providing the requested information, a compliant good faith estimation of fees, a compliant request for a good faith deposit, or a compliant request for an extension.

Despite the City's numerous and continued violations, here is what I'm willing to do at this point:

- 1. Accept the requested documentation at no cost and without further delay by the City, by the end of business on October, 14th. As all of the fee requests the City has submitted are improper, both under the FOIA and the City's policy, I believe this to be both reasonable and overdue.*

⁴ Plaintiff challenges whether it would take two hours to make a few copies.

2. *Or, pay actual costs not to exceed \$76.00 after receiving the requested documentation in full, on the condition that the City provide additional documentation proving the Deputy City Clerk receives a hourly wage of \$38.02 and provides an itemization of the final charge in accordance with the FOIA. As prior responses from Mr. Wruble indicated the \$38.02 number included benefits, but your response did not, I believe there is good cause to assume your response improperly attempts to charge benefits, outside of state law, the City's policy, and the form you submitted. Should the City be willing to prove this fee estimation is in compliance, then I will pay resulting properly assessed fees.*
3. *Or, consider my request denied. As I stated previously, I would consider any further attempts to charge a fee in a noncompliant manner as a denial of my request.*

Again, I must stress that the City's statutorily provided deadline has passed. Please understand that this is my final attempt to provide the City with a suitable means of compliance. Justifying fees in a compliant manner is solely a burden of the City, which means responsibility for noncompliance is entirely the City's. If the City is unwilling or unable to fully meet this burden, then this does not release the City from its duty to otherwise comply with the FOIA. The City has already been provided three attempts which I feel is more than generous.

I urge the City to comply with the FOIA and release the requested information at its soonest ability.

Exhibit 7 (emphasis in original).

City Attorney Ferris again responded and again re-revised the demanded fee downward to \$180.20 without explanation, and again failed to address the fee provisions under MCL 15.234(2) or MCL 15.234(3). **Exhibit 8.** And, again, the time to make this yet another recalculation (fourth?) fee-demand had passed. MCR 15.234(8). The fourth response from Plaintiff Lambert brought about no further compliance by the City. **Exhibit 9.**

On October 10, 2016, Plaintiff Lambert filed an administrative appeal pursuant to MCL 15.240(1)(a). The City Council of the City of Harbor Beach never responded to the appeal as it was required under MCL 15.240.

Plaintiffs brought suit in December 2016. The complaint was pled in three counts: one for failure to grant the Oct 3 Requests and two regarding illegal fee demands. Specifically, Plaintiff Lambert, after generally outlining the above-facts, charged that

1. The City failed to grant the Oct 3 FOIA Requests and, by operation of law, the Oct 3 FOIA Requests were individually denied (Count I);
2. The City is/was not entitled to charge a fee because there is no “unreasonably high costs” and that the City failed to specifically identify the nature of these unreasonably high costs by the Wrubel Response (Count II); and
3. The City demanded of a total fee of \$251.87 for three FOIA requests was in excess of the allowable fee and was illegal under Michigan’s Freedom of Information Act because, by the Wrubel Response, because the City a.) did not calculate the fee using the hourly wage of its lowest-paid employee capable of searching for, locating, and examining the public records, b.) calculated and utilized an hourly fee which is exceeded the statutory cap, c.) charged more than the actual cost of benefits provided to city employees in calculating the hourly rates charged, d.) demanded a deposit exceeding 1/2 of the total estimated fee in violation of MCL 15.234(8), and e.) failed to reduce the charges for labor costs as the required penalty pursuant to MCL 15.234(9)(a) (Count III).

First Am Compl, ¶¶18-38. Plaintiff Lambert demanded relief as follows:

- 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.

First Am Compl, ¶39(a)-(h). The FOIA statute provides the City “shall not charge more than the hourly wage of its lowest-paid employee capable of searching for, locating, and examining the public records in the particular instance regardless of whether that person is available or who actually performs the labor.” This was conceded by the City. See **Exhibit 4**. However, the FOIA statute also provides that when calculating labor costs, the City may add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits if it clearly notes the percentage multiplier used to account for benefits in the detailed itemization described in subsection (4). MCL 15.234(2)

Discovery ensued and revealed three key facts:

1. The hourly wage of the lowest-paid capable employee is the deputy clerk Mary Jane Woychowski (see **Exhibit 11, ¶1**);

2. Her hour wage at \$24.02 per hour (see **Exhibit 11, ¶1**); and
3. A fifty-percent capped increase to the applicable labor charge amount to cover or partially cover the cost of fringe benefits would equal an additional \$12.01, for a total statutory capped amount of \$36.03, see **Exhibit 11, p. 2**.

However, the City charged in excess of this amount until at least October 14, 2016—a date well-beyond the expressed deadline of MCL 15.235 and 15.234(8).

Despite massive illegalities, the City now seeks partial summary disposition on some of the issues in Plaintiff's First Amended Complaint arguing that the three FOIA requests were not denied because Plaintiff Lambert failed to pay the required fee demanded (without stating which fee, compare **Exhibits 2, 4, 6, and 8**, is actually demanded despite four recalculations). However, the City fails to note its fee demand was and is illegal. This opposition now follows.

STANDARD OF REVIEW

A motion brought pursuant to MCR 2.116(C)(10) tests a claim's factual support. MCR 2.116(C)(10) permits summary disposition when, except as to damages, there is no genuine issue regarding any material fact, and the moving party is entitled to judgment as a matter of law. *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993). Summary disposition is to be granted under MCR 2.116(C)(10) when there exists no single genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Steward v Panek*, 251 Mich App 546, 555; 652 NW2d 232 (2002). If it appears to the court that the opposing party, rather than the moving party, is entitled to summary disposition on an issue, the court may render decision in favor of the opposing party. MCR 2.116(I)(2); see also *1300 LaFayette East Coop, Inc v Savoy*, 284 Mich App 522, 525; 773 NW2d 57 (2009).

ARGUMENT

I. Plaintiff's three FOIA requests have *not* been granted and thus are deemed denied.

FOIA is very clear about the methodology a public body must undertake regarding a response to a FOIA request. Once a requester makes a demand for records, Section 5 of the statute dictates the City's obligations: "a public body shall respond to a request for a public record within 5 business days after the public body receives the request by doing 1 of the following: (a) Granting the request; (b) Issuing a written notice to the requesting person denying the request; (c) Granting the request in part and issuing a written notice to the requesting person denying the request in part; (d) Issuing a notice extending for not more than 10 business days the period during which the public body shall respond to the request." MCL 15.235(2)(a)-(d). These are the only options of a public body. Nowhere does the statute provide, as claimed by the City, that a public body may simply ignore these obligations until there is receipt of the total fee calculated when it sees fit.⁵ Instead, MCL 15.234(8) provides

In either the public body's initial response or subsequent response as described under section 5(2)(d), the public body may require a good-faith deposit from the person requesting information 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 described in subsection (4). Subject to subsection (10), the deposit shall not exceed 1/2 of the total estimated fee, and a public body's request for a deposit shall include a detailed itemization as required under subsection (4).

Here, the City's response was illegal by demanding the full amount and not merely 1/2 of the total estimated fee. See **Exhibit 2** ("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."). Notwithstanding, Section 4(8) does not

⁵ For purposes of this motion, Plaintiff Lambert asserts the proper fee is \$0.00.

excuse a public body from either granting or denying the requests as required by Section 5 as MCL 15.234(8) allows for the one-half good-faith deposit “[i]n either the public body's initial response or subsequent [extension] response.”⁶ As such, if the City’s position is that it properly responded, that contention must be rejected because the City failed to properly respond by either producing the records or responding with notice of granting the request with a demand for an amount of money limited to a good faith deposit capped at “1/2 of the total estimated fee.”

II. The City is barred from charging any fee in this case.

a. Created and posted documents after the FOIA request and response.

Under the FOIA statute,

A public body shall establish procedures and guidelines to implement this act and shall create a written public summary of the specific procedures and guidelines relevant to the general public regarding how to submit written requests to the public body and explaining how to understand a public body’s written responses, deposit requirements, fee calculations, and avenues for challenge and appeal. The written public summary shall be written in a manner so as to be easily understood by the general public.

If the public body directly or indirectly administers or maintains an official internet presence, it shall post and maintain the procedures and guidelines and its written public summary on its website.

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.

MCL 15.234(4). In short, if the City lacked its procedures and guidelines and written public summary on its website on October 7, 2016 when it responded, the City is barred

⁶ In support, the City cites *Arabo v Michigan Gaming Ctrl Bd*, 310 Mich App 370 (2015). *Arabo* involved a cost dispute involving the Section 4 cost provisions before the 2015 amendment. The undersigned was counsel of record in *Arabo*. Because the law changed on July 1, 2015, *Arabo* is no longer relevant for post-July 1, 2015 FOIA requests.

from charging a fee. The City's procedures and guidelines and written public summary is posted online at <http://www.harborbeach.com/DoingBusiness/FOIADocuments.aspx>. However, according the document properties tab of each document, these documents were not created and posted online until October 10, 2016. See **Exhibit 15 and 16**. In other words, when the City responded on October 7, 2016, it was legally prohibited from asserting any fee. It was only after this case was brought to the forefront that the City clearly tried to published, after the fact, the needed procedures and guidelines and written public summary to support its illegal fee. Because these documents did not exist when the Oct 3 Requests were made or responded to, the City is barred from asserting any fee.

b. Failed to prove unreasonably high costs and specifically identify the nature of these unreasonably high costs.

Additionally, the Michigan FOIA statute is clear:

A fee... *shall not* be charged for the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in section 14 *unless* [1.] failure to charge a fee would result in unreasonably high costs to the public body because of the nature of the request in the particular instance, and [2.] the public body specifically identifies the nature of these unreasonably high costs.

MCL 15.234(3). As such, two things must happen before the City may charge a fee in response to a FOIA request: 1.) there must be an "unreasonably high costs to the public body" and 2.) the public body must specifically identify the nature of these unreasonably high costs. Neither has been showed by the City via the Wrubel Response or its motion.
Id.

The second element is easiest to resolve this issue: the City never "specifically identifie[d]" the nature of these unreasonably high costs in the Wruble Response. **Exhibit 2.** As such, the City is precluded from charging a fee (i.e. "shall not"). Because it

failed its duty to specifically identify the nature of these unreasonably high costs, the fee to be charged must be zero. The burden is clearly on the public body to fulfill this obligation before demanding a fee. *Detroit Free Press, Inc v Dept of Atty Gen*, 271 Mich App 418, 423; 722 Nw2d 277 (2006)(“the Attorney General [i.e. public body] failed to provide sufficient evidence to show why the \$60 labor fee was necessary to avoid an unreasonably high cost to the department.”). This makes sense as FOIA is a pro-disclosure statute, *Swickard v Wayne Cty Medical Examiner*, 438 Mich 536, 544; 475 NW2d 304 (1991), that must be interpreted broadly to ensure public access, *Practical Political Consulting, Inc v Sec of State*, 287 Mich App 434, 465; 789 NW2d 178 (2010). Allowing a public body to forgo fulfilling its required burden would be contrary to a public policy of positive disclosure and act as an improper legal burden to ensuring public access. In FOIA fee dispute cases, the trial court must “insist that [the public body] defendant comply with the computation section of the FOIA... in calculating costs.” *Tallman v Cheboygan Area Schs*, 183 Mich App 123, 130-131; 454 NW2d 171 (1990)(emphasis added).

As for the first element, the City has not offered any factual or legal basis why filing three simple FOIA requests⁷ regarding a documentation on a policy it enacted only a short time before would constitute not only high cost, but “*unreasonably high costs*” under *Detroit Free Press*.⁸

⁷ Because these are three separate requests, the City would have to separately prove the unreasonably high costs to the public body and that it specifically identified the nature of these unreasonably high costs separately for each FOIA request on the Oct 3 Requests. It did not do so by the Wruble Response nor by its motion for summary disposition.

⁸ In drafting the statute, the Legislature required that the public body prove not only high costs but the greater amount of *unreasonably high costs*. *In re MCI Telecom Compl*, 460 Mich 396, 414; 596 NW2d 164 (1999)(every word in a statute should be given meaning).

Due to these failures, the Court is requested to grant summary disposition pursuant to MCR 2.116(I)(2) in favor of Plaintiff Lambert on the issue that the proper fee is \$0.00 by application of MCL 15.234(3) and/or MCL 15.234(4). There is no material question of fact remaining on this issue.

III. The fee issue is not moot.

For its final argument, the City claims the cost issue is moot because it has reduced its fee from \$251.87 to a lower amount. Plaintiff asserts the proper legal fee is \$0.00 pursuant to MCL 15.234(3) or (4).⁹

Moreover, the City's assertion that there is a lack of controversy because it revised its unlawful \$251.87 calculation is meritless. Plaintiff challenges the City to cite any statute, rule, or precedence that allows the City to revise its response. He asked via discovery and the City failed to identify any such provision. **Exhibit 12, ¶10.** Moreover, the fee-demand can only be made either in the public body's initial response or subsequent response as described under section 5(2)(d). MCL 15.234(8). There is no legal authority to allow a public body to correct its demanded fee in a revised or amended response (which would then be pass the five day deadline under Section 5). Notwithstanding, the issue is largely academic because the proper fee, as pled by Plaintiff, is \$0.00, not the reduced amounts of \$190.10, \$190.00 or \$180.10. Compare **Exhibits 2, 4, 6, and 8.** As such, an active controversy exists as to the actual lawful amount the City can charge to fulfill the three FOIA requests. Plaintiff has specifically made a demand for this Court to make this determination. See Compl, ¶39(d).¹⁰

⁹ But even assuming this Court rejects this argument, the maximum fee is an hourly rate of 24.02 and not \$38.10.

¹⁰ WHEREFORE, Plaintiff THOMAS LAMBERT and/or Plaintiff MICHIGAN OPEN CARRY, INC respectfully requests this Court to... [d]etermine the correct costs that that Defendant CITY OF HARBOR

RELIEF REQUESTED

WHEREFORE, the Court is requested grant cross-summary disposition in favor of Plaintiff solely on the issue of the proper fee being \$0.00 pursuant to MCL 15.234(3) and MCR 2.116(I)(2), and deny Defendant City of Harbor Beach’s motion for summary disposition in full. All other issues not challenged or resolved are to be reserved for trial.

Date: July 13, 2017

RESPECTFULLY SUBMITTED:

Philip L Ellison

OUTSIDE LEGAL COUNSEL PLC
BY PHILIP L. ELLISON (P74117)
Attorney for Plaintiffs
PO Box 107 · Hemlock, MI 48626
(989) 642-0055
(888) 398-7003 - fax
pellison@olcplc.com

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

13th day of July, 2017.

Philip L Ellison

PHILIP L. ELLISON
Attorney at Law

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

BEACH may actual[ly] 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



MOC
mail

Tom Lambert <tlambert@miopencarry.org>



Harbor Beach FOIA Request

Tom Lambert <tlambert@miopencarry.org>
To: rwruble@harborbeach.com, lwoycehoski@harborbeach.com
Cc: MiOC Board <board@miopencarry.org>
Bcc: Casey Armitage <cmodena13@gmail.com>

Mon, Oct 3, 2016 at 5:51 PM

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.



MOC
mail

Tom Lambert <tlambert@miopencarry.org>



Harbor Beach FOIA Request

Ron Wruble <rwruble@harborbeach.com>
To: Tom Lambert <tlambert@miopencarry.org>
Cc: Gary Booms <gary.s.booms@gmail.com>

Fri, Oct 7, 2016 at 1:44 PM

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

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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.

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- 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.



MOC
mail

EXHIBIT

3

OUTSIDE LEGAL COUNSEL PLC
www.olicplc.com

Tom Lambert <tlambert@miopencarry.org>

Harbor Beach FOIA Request

Tom Lambert <tlambert@miopencarry.org>

Fri, Oct 7, 2016 at 4:57 PM

To: Ron Wruble <rwruble@harborbeach.com>

Cc: Gary Booms <gary.s.booms@gmail.com>, MiOC Board <board@miopencarry.org>, Dean Greenblatt <dgg@mnsi.net>

Bcc: Casey Armitage <cmodena13@gmail.com>, Lobbying <lobbying@miopencarry.org>

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.

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Tom Lambert

President

Michigan Open Carry, Inc.



MOC
mail

EXHIBIT

4

OUTSIDE LEGAL COUNSEL PLC
www.olepc.com

Tom Lambert <tlambert@

Harbor Beach FOIA Request

Ron Wruble <rwruble@harborbeach.com>

Mon, Oct 10, 2016 at 12:30 PM

To: Tom Lambert <tlambert@miopencarry.org>

Cc: Gary Booms <gary.s.booms@gmail.com>, ferrisschwedler@gmail.com

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,

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City Director

City of Harbor Beach

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MOC
mail

Tom Lambert <tlambert@miopencarry.org>



Harbor Beach FOIA Request

Tom Lambert <tlambert@miopencarry.org>

Mon, Oct 10, 2016 at 4:12 PM

To: Ron Wruble <rwruble@harborbeach.com>

Cc: Gary Booms <gary.s.booms@gmail.com>, ferrisschwedler@gmail.com, MiOC Board <board@miopencarry.org>, Dean Greenblatt <dgg@mnsi.net>

Bcc: Casey Armitage <cmodena13@gmail.com>, Lobbying <lobbying@miopencarry.org>, NickSomberg@gmail.com

Mr. Wruble,

I am pleased you have already started gathering the information. Thank you.

As to the fees you wish to charge, with respect I again implore you to review the entire FOIA, including all of Section 4, with counsel and comply with it fully. If you wish to charge a fee for the completion of this request, then there are numerous burdens you must meet, almost none of which you have. If you insist on charging a fee in a non-compliant manner, then I will interpret such as a denial of my request.

At this time, with both the information you have and have not provided, I consent to a fee of \$0 for the completion of my request.

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

Thank you,

Tom Lambert
President
Michigan Open Carry, Inc.

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City of Harbor Beach

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Tom Lambert

President

Michigan Open Carry, Inc.



Tom Lambert <tlambert@

EXHIBIT

6

OUTSIDE LEGAL COUNSEL PLC
www.olcplc.com

FOIA request

Ferris & Schwedler, P.C. <ferrisschwedler@gmail.com>
To: tlambert@miopencarry.org, Ron Wruble <rwruble@harborbeach.com>

Tue, Oct 11, 2016 at 4:37 PM

Please see the attachment.

Kelli L. McGrath
Legal Assistant to John T. Ferris

Ferris & Schwedler, P.C.

237 E. Huron Avenue, Bad Axe, Michigan 48413

Telephone: (989) 269-9571

Fax: (989) 269-6484

ferrisschwedler@gmail.com

The transmitted documents are intended only for the use of the individual or entity named above, and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of the documents transmitted with this transmittal sheet is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone at the above number.

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FERRIS & SCHWEDLER, P.C.

ATTORNEYS AND COUNSELORS AT LAW

237 EAST HURON AVENUE

BAD AXE, MICHIGAN 48413

(989) 269-9571

FAX: (989) 269-6484

JOHN T. FERRIS

JOHN D. SCHWEDLER

JULIENNE M. FERRIS

Mr. Tom Lambert:

Please be advised that I am the Attorney for the City of Harbor Beach and this letter is in response to your FOIA request on October 3, 2016. Thank you for inquiring into the cost of the City of Harbor Beach complying with your FOIA request. The City of Harbor Beach is allowed to charge a fee that doesn't exceed the hourly rate of the lowest-paid employee capable of performing the task.

Under MCLA 15.234:

Sec. 4.

(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). Subject to subsections (2), (3), (4), (5), and (9), the fee shall be limited to actual mailing costs, and to the actual incremental cost of duplication or publication including labor, the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in section 14. Except as otherwise provided in this act, if the public body estimates or charges a fee in accordance with this act, the total fee shall not exceed the sum of the following components:

(a) That portion of labor costs directly associated with the necessary searching for, locating, and examining of public records in conjunction with receiving and fulfilling a granted written request. The public body shall not charge more than the hourly wage of its lowest-paid employee capable of searching for, locating, and examining the public records in the particular instance regardless of whether that person is available or who actually performs the labor. Labor costs under this subdivision shall be estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down.

The Deputy Clerk for the City of Harbor Beach is compensated at an hourly rate of \$38.02 and the total cost of producing the FOIA request would be approximately \$190.10. The information that has been requested will take a total of five hours for city employees to compile. In certain circumstances the FOIA coordinator for the City of Harbor Beach may waive the fees associated with FOIA requests. For your request, the FOIA request is not considered to be

primarily benefitting the general public and that request to waive fees has been denied by the FOIA coordinator. This denial is related to a waiver of fees and not of your FOIA request.

Enclosed is a summary of our FOIA policy and a cost itemized fee sheet for your request. The City of Harbor Beach is able to produce the request after the established fee has been paid.

If you have any questions regarding the above, please feel free to call me.

Sincerely yours,

FERRIS & SCHWEDLER, P.C.

A handwritten signature in black ink, appearing to be "John T. Ferris", written over a circular stamp or seal.

By: John T. Ferris

JTF/hlf

CITY OF HARBOR BEACH

Public Summary of FOIA Procedures and Guidelines

**It is the public policy of this state that all persons
(except those persons incarcerated in state or local correctional facilities)
are entitled to full and complete information regarding the affairs of government and
the official acts of those who represent them as public officials and public employees.**

The people shall be informed so that they may fully participate in the democratic process.

Consistent with the Michigan Freedom of Information Act (FOIA), Public Act 442 of 1976, the following is the Written Public Summary of the City's FOIA Procedures and Guidelines relevant to the general public.

This is only a summary of the City's FOIA Procedures and Guidelines. For more details and information, copies of the City's FOIA Procedures and Guidelines are available at no charge at any City office and on the City's website: www.harborbeach.com.

1. How do I submit a FOIA request to the City?

- A request must sufficiently describe a public record so as to enable the City to find it.
- Please include the words "FOIA" or "FOIA Request" in the request to assist the City in providing a prompt response.
- Requests to inspect or obtain copies of public records prepared, owned, used, possessed or retained by the City may be submitted on the City's FOIA Request Form, in any other form of writing (letter, fax, email, etc.), or by verbal request.
 - Any verbal request will be documented by the City on the City's FOIA Request Form.
 - No specific form to submit a written request is required. However a FOIA Request Form and other FOIA-related forms are available for your use and convenience on the City's website at www.harborbeach.com, and at City Hall.
- Written requests may be delivered to the City Hall in person or by mail at 766 State Street, Harbor Beach, MI 48441.
- Requests may be faxed to: (989) 479-3343. To ensure a prompt response, faxed requests should contain the term "FOIA" or "FOIA Request" on the first/cover page.
- Requests may be emailed to: lwoycehoski@harborbeach.com. To ensure a prompt response, email requests should contain the term "FOIA" or "FOIA Request" in the subject line.

2. What kind of response can I expect to my request?

- Within 5 business days after receiving a FOIA request the City will issue a response. If a request is received by fax or email, the request is deemed to have been received on the following business day. The City will respond to your request in one of the following ways:
 - - Grant the request,
 - Issue a written notice denying the request,
 - Grant the request in part and issue a written notice denying in part the request,
 - Issue a notice indicating that due to the nature of the request the City needs an additional 10 business days to respond, or
 - Issue a written notice indicating that the public record requested is available at no charge on the City's website
- If the request is granted, or granted in part, the City will ask that payment be made for the allowable fees associated with responding to the request before the public record is made available.
- If the cost of processing the request is expected to exceed \$50, or if you have not paid for a previously granted request, the City will require a deposit before processing the request.

3. What are the City's deposit requirements?

- If the City has made a good faith calculation that the total fee for processing the request will exceed \$50.00, the City will require that you provide a deposit in the amount of 50% of the total estimated fee. When the City requests the deposit, it will provide you a non-binding best efforts estimate of how long it will take to process the request after you have paid your deposit.
- If the City receives a request from a person who has not paid the City for copies of public records made in fulfillment of a previously granted written request, the City will require a deposit of 100% of the estimated processing fee before it begins to search for the public record for any subsequent written request when **all** of the following conditions exist:
 - The final fee for the prior written request is not more than 105% of the estimated fee;
 - The public records made available contained the information sought in the prior written request and remain in the City's possession;
 - The public records were made available to the individual, subject to payment, within the best effort time frame estimated by the City to provide the records;
 - Ninety (90) days have passed since the City notified the individual in writing that the public records were available for pickup or mailing;
 - The individual is unable to show proof of prior payment to the City; and
 - The City has calculated an estimated detailed itemization that is the basis for the current written request's increased fee deposit.
- The City will not require the 100% estimated fee deposit if any of the following apply:
 - The person making the request is able to show proof of prior payment in full to the City;
 - The City is subsequently paid in full for all applicable prior written requests; or

- Three hundred sixty five (365) days have passed since the person made the request for which full payment was not remitted to the City.

4. How does the City calculate FOIA processing fees?

The Michigan FOIA statute permits the City to charge for the following costs associated with processing a request:

- Labor costs associated with copying or duplication, which includes making paper copies, making digital copies, or transferring digital public records to non-paper physical media or through the Internet.
- Labor costs associated with searching for, locating and examining a requested public record, when failure to charge a fee will result in unreasonably high costs to the City.
- Labor costs associated with a review of a record to separate and delete information exempt from disclosure, when failure to charge a fee will result in unreasonably high costs to the City.
- The cost of copying or duplication, not including labor, of paper copies of public records. This may include the cost for copies of records already on the City's website if you ask for the City to make copies.
- The cost of computer discs, computer tapes or other digital or similar media when the requester asks for records in non-paper physical media. This may include the cost for copies of records already on the City's website if you ask for the City to make copies.
- The cost to mail or send a public record to a requestor.

Labor Costs

- All labor costs will be estimated and charged in 15-minute increments, with all partial time increments rounded down. If the time involved is less than 15 minutes, there will be no charge.
- Labor costs will be charged at the hourly wage of the lowest-paid City employee capable of doing the work in the specific fee category, regardless of who actually performs work.
- Labor costs will also include a charge to cover or partially cover the cost of fringe benefits. City may add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits, but in no case may it exceed the actual cost of fringe benefits.
- Overtime wages will not be included in labor costs unless agreed to by the requestor; overtime costs will not be used to calculate the fringe benefit cost.
- Contracted labor costs will be charged at the hourly rate of \$48.90 (6 times the state minimum hourly wage)

A labor cost will not be charged for the search, examination, review and the deletion and separation of exempt from nonexempt information unless failure to charge a fee would result in unreasonably high costs to the City. Costs are unreasonably high when they 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 the particular instance. The City must specifically identify the nature of the unreasonably high costs in writing.

Copying and Duplication

The City must use the most economical method for making copies of public records, including using double-sided printing, if cost-saving and available.

Non-paper Copies on Physical Media

- The cost for records provided on non-paper physical media, such as computer discs, computer tapes or other digital or similar media will be at the actual and most reasonably economical cost for the non-paper media.
- This cost will be charged only if the City has the technological capability necessary to provide the public record in the requested non-paper physical media format.

Paper Copies

- Paper copies of public records made on standard letter (8 ½ x 11) or legal (8 ½ x 14) sized paper will not exceed \$.10 per sheet of paper.
- Copies for non-standard sized sheets will reflect the actual cost of reproduction.

Mailing Costs

- The cost to mail public records will use a reasonably economical and justified means.
- The City may charge for the least expensive form of postal delivery confirmation.
- No cost will be made for expedited shipping or insurance unless you request it.

Waiver of Fees

The cost of the search for and copying of a public record may be waived or reduced if in the sole judgment of the FOIA Coordinator a waiver or reduced fee is in the public interest because it can be considered as primarily benefitting the general public. The City Council may identify specific records or types of records it deems should be made available for no charge or at a reduced cost.

5. How do I qualify for an indigence discount on the fee?

The City will discount the first \$20.00 of fees for a request if you submit an affidavit stating that you are:

- Indigent and receiving specific public assistance; or

- If not receiving public assistance, stating facts demonstrating an inability to pay because of indigence.

You are **not** eligible to receive the \$20.00 discount if you:

- Have previously received discounted copies of public records from the City twice during the calendar year; or
- Are requesting information on behalf of other persons who are offering or providing payment to you to make the request.

An affidavit is sworn statement. For your convenience, the City has provided an Affidavit of Indigence for the waiver of FOIA fees on the back of the City FOIA Request Form, which is available on the City's website: www.harborbeach.com.

6. May a nonprofit organization receive a discount on the fee?

A nonprofit organization advocating for developmentally disabled or mentally ill individuals that is 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, Public Law 106-402, and the protection and advocacy for individuals with mental illness act, Public Law 99-319, may receive a \$20.00 discount if the request meets all of the following requirements in the Act:

- Is made directly on behalf of the organization or its clients.
- Is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the mental health code, 1974 PA 258, MCL 330.1931.
- Is accompanied by documentation of its designation by the state, if requested by the public body.

7. How may I challenge the denial of a public record or an excessive fee?

Appeal of a Denial of a Public Record

If you believe that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, you may appeal to the City Council by filing a written appeal of the denial with the office of the City Director.

The appeal must be in writing, specifically state the word "appeal," and identify the reason or reasons you are seeking a reversal of the denial. You may use the City FOIA Appeal Form (To Appeal a Denial of Records), which is available on the City's website: www.harborbeach.com.

Within 10 business days of receiving the appeal the City Council will respond in writing by:

- Reversing the disclosure denial;
- Upholding the disclosure denial; or
- Reverse the disclosure denial in part and uphold the disclosure denial in part.

Whether or not you submitted an appeal of a denial to the City Council, you may file a civil action in Huron County Circuit Court within 180 days after the City's final determination to deny your request. If you prevail in the civil action the court will award you reasonable attorneys' fees, costs and

disbursements. If the court determines that the City acted arbitrarily and capriciously in refusing to disclose or provide a public record, the court shall award you damages in the amount of \$1,000.

Appeal of an Excess FOIA Processing Fee

If you believe that the fee charged by the City to process your FOIA request exceeds the amount permitted by state law, you must first appeal to the City Council by filing a written appeal for a fee reduction to the office of the City Director.

The appeal must specifically state the word “appeal” and identify how the required fee exceeds the amount permitted. You may use the City FOIA Appeal Form (To Appeal an Excess Fee), which is available at the City Hall and on the City’s website: www.harborbeach.com.

Within 10 business days after receiving the appeal, the City Council will respond in writing by:

- Waiving the fee;
- Reducing the fee and issue a written determination indicating the specific basis that supports the remaining fee;
- Upholding the fee and issue a written determination indicating the specific basis that supports the required fee; or
- Issuing a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the City Council will respond to the written appeal.

Within 45 days after receiving notice of the City Council’s determination of the processing fee appeal, you may commence a civil action in Huron County Circuit Court for a fee reduction. If you prevail in the civil action by receiving a reduction of 50% or more of the total fee, the court may award all or appropriate amount of reasonable attorneys’ fees, costs and disbursements. If the court determines that the City acted arbitrarily and capriciously by charging an excessive fee, court may also award you punitive damages in the amount of \$500.

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: \$38.02 Charge per increment: \$ 9.50 <u>OR</u> Hourly Wage with Fringe Benefit Cost: \$ _____ <u>OR</u> 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.</p> <p><input type="checkbox"/> Overtime rate charged as stipulated by Requestor (<i>overtime is not used to calculate the fringe benefit cost</i>)</p>	<p>To figure the number of increments, take the <i>number of minutes</i>: _____, divide by 15 -minute increments, and round down. Enter below:</p> <p>Number of increments</p> <p>x 8 =</p>	<p>1. Labor Cost</p> <p>\$ 76</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>_____</p> <p>_____</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: \$ 38.02 Charge per increment: \$ 9.50 <u>OR</u> Hourly Wage with Fringe Benefit Cost: \$ _____ <u>OR</u> 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.</p> <p><input type="checkbox"/> Overtime rate charged as stipulated by Requestor (<i>overtime is not used to calculate the fringe benefit cost</i>)</p>	<p>To figure the number of increments, take the <i>number of minutes</i>: _____, divide by 15-minute increments, and round down. Enter below:</p> <p>Number of increments</p> <p>x 12 =</p>	<p>2. Labor Cost</p> <p>\$ 114</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: \$ _____
 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.

OR
 Charge per increment: \$ _____

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

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

Number of increments

3a. Labor Cost

x _____ =

\$ _____

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 employee, 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:

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

x _____ = \$ _____

No. of Items:

x _____ = \$ _____

Costs:

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: \$ _____

Number of Envelopes or Packages:

x _____ = \$ _____

x _____ = \$ _____

x _____ = \$ _____

x _____ = \$ _____

x _____ = \$ _____

x _____ = \$ _____

Costs:

5. Total Mailing Cost
 \$ 0

* Requestor has requested expedited shipping or insurance

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:	Costs:
x _____ =	\$ _____
x _____ =	\$ _____
x _____ =	\$ _____
No. of Items:	
x _____ =	\$ _____
	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: \$ _____ OR
 Multiply the hourly wage by the percentage multiplier: _____% Charge per increment: \$ _____
 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	6b. Web Labor Cost
x _____ =	\$ 0

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:	Costs:
x _____ =	\$ _____
x _____ =	\$ _____
x _____ =	\$ _____
x _____ =	\$ _____
	6c. Web Mailing Cost
	\$ 0

Subtotal Fees Before Waivers, Discounts or Deposits:

Cost estimate

Bill

Estimated Time Frame to Provide Records:

_____ (days or date)

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: \$ 76.00
- 2. Labor Cost to Locate: \$ 114.00
- 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: \$ 190.00

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: \$ _____

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:

- 1) Submits an affidavit stating that the individual is indigent and receiving specific public assistance, **OR**
- 2) If not receiving public assistance, stating facts showing inability to pay the cost because of indigence.

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:

- (i) The individual has previously received discounted copies of public records from the same public body twice during that calendar year, **OR**
- (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.

Eligible for Indigence Discount

Subtotal Fees After Discount (subtract \$20): \$ _____

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:

- (i) Is made directly on behalf of the organization or its clients.
- (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.
- (iii) Is accompanied by documentation of its designation by the state, if requested by the City.

Eligible for Nonprofit Discount

Subtotal Fees After Discount (subtract \$20): \$ _____

<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>Deposit Amount Required: \$ 95.00</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. (b) The public records made available contained the information being sought in the prior written request and are still in the City's possession. (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. (d) Ninety (90) days have passed since the City notified the individual in writing that the public records were available for pickup or mailing. (e) The individual is unable to show proof of prior payment to the City. (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>Percent Deposit Required: _____ %</p> <p>Deposit Required: \$ _____</p>
<p>Late Response Labor Costs Reduction 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>Multiply by 5% = Total Percent Reduction: _____</p>	<p>Total Labor Costs \$ _____</p> <p>Minus Reduction \$ _____</p> <p>= Reduced Total Labor Costs \$ _____</p>
<p>The Public Summary of the City's FOIA Procedures and Guidelines is available free of charge from: Website: www.harborbeachmi.org 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>Total Balance Due: \$ 190.00</p>



MOC
mail

Tom Lambert <tlambert@miopencarry.org>



FOIA request

Tom Lambert <tlambert@miopencarry.org>

Thu, Oct 13, 2016 at 3:35 PM

To: "Ferris & Schwedler, P.C." <ferrisschwedler@gmail.com>, Ron Wruble <rwruble@harborbeach.com>, Gary Booms <gary.s.booms@gmail.com>

Cc: MiOC Board <board@miopencarry.org>, Dean Greenblatt <dgg@mnsi.net>, Nick Somberg <NickSomberg@gmail.com>

Bcc: Lobbying <lobbying@miopencarry.org>, Casey Armitage <cmodena13@gmail.com>

Mr. Ferris,

Thank you for your response on behalf of the City of Harbor Beach to my FOIA request. While your response did make necessary strides to comply with the FOIA, it still fell woefully short of both the law and the City's own policy. If you require evidence of this, then you may simply look no further than the Freedom of Information Act Request Detailed Cost Itemization form contained at the end of your response, where one need only examine the first page to see that the manner in which it was completed is conspicuously incomplete.

Further, the City's policy is unlawful in critical areas, most notably the provision requiring all fees to be paid prior to the fulfillment of the request.

For a third time, I urge the City to **read the FOIA**, including the very portion you quoted in the City's last response. If the plain reading is not enough for you, then I suggest looking into how Public Act 563 of 2014 amended the FOIA, including the portion dealing with allowable deposits.

At this point, time has run out for the City, without the City complying with the Act. To date, the statutory deadline has passed without the City providing the requested information, a compliant good-faith estimation of fees, a compliant request for a good-faith deposit, or a compliant request for an extension.

Despite the City's numerous and continued violations, here is what I'm willing to do at this point:

1. Accept the requested documentation at no cost and without further delay by the City, by the end-of-business on October, 14th. As all of the fee requests the City has submitted are improper, both under the FOIA and the City's policy, I believe this to be both reasonable and overdue.
2. Or, pay actual costs not to exceed \$76.00 **after** receiving the requested documentation in full, on the condition that the City provide additional documentation proving the Deputy City Clerk receives a hourly wage of \$38.02 and provides an itemization of the final charge in accordance with the FOIA. As prior responses from Mr. Wruble indicated the \$38.02 number included benefits, but your response did not, I believe there is good cause to assume your response improperly attempts to charge benefits, outside of state law, the City's policy, and the form you submitted. Should the City be willing to prove this fee estimation is in compliance, then I will pay resulting properly assessed fees.
3. Or, consider my request denied. As I stated previously, I would consider any further attempts to charge a fee in a non-compliant manner as a denial of my request.

Again, I must stress that the City's statutorily provided deadline has passed. Please understand that this is my final attempt to provide the City with a suitable means of compliance. Justifying fees in a compliant manner is **solely** a burden of the City, which means responsibility for noncompliance is entirely the City's. If the City is unwilling or unable to fully meet this burden, then this does not release the City from its duty to otherwise comply with the FOIA. The City has already been provided three attempts which I feel is more than generous.

I urge the City to comply with the FOIA and release the requested information at its soonest ability.

Tom Lambert
President
Michigan Open Carry, Inc.

On Tue, Oct 11, 2016 at 4:37 PM, Ferris & Schwedler, P.C. <ferrisschwedler@gmail.com> wrote:

Please see the attachment.

Kelli L. McGrath
Legal Assistant to John T. Ferris

Ferris & Schwedler, P.C.

237 E. Huron Avenue, Bad Axe, Michigan 48413

Telephone: (989) 269-9571

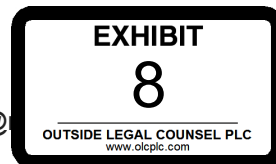
Fax: (989) 269-6484

ferrisschwedler@gmail.com

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Tom Lambert <tlambert@



FOIA

Ferris & Schwedler, P.C. <ferrisschwedler@gmail.com>

Fri, Oct 14, 2016 at 3:56 PM

To: tlambert@miopencarry.org

Cc: rwruble@harborbeach.com

Please see the attached letter from Mr. Ferris.

Hilary L. Fox

Legal Assistant to John T. Ferris

Legal Assistant to Julienne M. Ferris

Ferris & Schwedler, P.C.

237 E. Huron Avenue, Bad Axe, Michigan 48413

Telephone: (989) 269-9571

Fax: (989) 269-6484

ferrisschwedler@gmail.com

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786K

FERRIS & SCHWEDLER, P.C.

ATTORNEYS AND COUNSELORS AT LAW

237 EAST HURON AVENUE

BAD AXE, MICHIGAN 48413

(989) 269-9571

FAX: (989) 269-6484

JOHN T. FERRIS

JOHN D. SCHWEDLER

JULIENNE M. FERRIS

October 14, 2016

Mr. Lambert:

In regards to the statutory deadline passing, that is incorrect. The City of Harbor Beach's Freedom of Information Act states that when a request is made, the governmental body has 5 days to respond to the request. The State of Michigan's Freedom of Information Act, also, has the same 5 day response time. Here, the city has complied within the allotted time by responding with an email sent on October 11, 2016. In our previously sent email the city was granting your request not denying your request subject to a good faith detailed itemized sheet. Due to the limited staff available to process the request, the employee must take time away from normal work duties at township expense.

City of Harbor Beach Section 3:

Processing a Request Unless otherwise agreed to in writing by the person making the request, the City will issue a response within 5 business days of receipt of a FOIA request. If a request is received by fax, email or other electronic transmission, the request is deemed to have been received on the following business day. The City will respond to a request in one of the following ways:

- Grant the request.
- Issue a written notice denying the request.
- Grant the request in part and issue a written notice denying in part the request.
- Issue a notice indicating that due to the nature of the request the City needs an additional 10 business days to respond for a total of no more than 15 business days. Only one such extension is permitted
 - Issue a written notice indicating that the public record requested is available at no charge on the City's website.

MCLA 15.235:

(2) Unless otherwise agreed to in writing by the person making the request, a public body shall respond to a request for a public record within 5 business days after the public body receives the request by doing 1 of the following:

- (a) Granting the request.
- (b) Issuing a written notice to the requesting person denying the request.
- (c) Granting the request in part and issuing a written notice to the requesting person denying the request in part.
- (d) Issuing a notice extending for not more than 10 business days the period during which the public body shall respond to the request. A public body shall not issue more than 1 notice of extension for a particular request.

In regards to your concerns about the City of Harbor Beach charging a good faith deposit outside the amount allowed under Michigan's Freedom of Information Act. Our good faith estimate is for the compensation of employees who will be undertaking the retrieval, procurement, copying and/or any other task involved in making the documents available for you.

Harbor Beach FOIA

Section 3: Processing a Request

If the cost of processing a FOIA request is expected to exceed \$50 based on a good-faith calculation, or if the requestor has not paid in full for a previously granted request, the City will require a good-faith deposit pursuant to Section 4 of this policy before processing the request.

Section 4: Fee Deposits If the fee estimate is expected to exceed \$50.00 based on a good-faith calculation, the requestor will be asked to provide a deposit not exceeding one-half of the total estimated fees. If a request for public records is from a person who has not paid the City in full for copies of public records made in fulfillment of a previously granted written request, the FOIA Coordinator will require a deposit of 100% of the estimated processing fee before beginning to search for a public record for any subsequent written request by that person when all of the following conditions exist:

- The final fee for the prior written request is not more than 105% of the estimated fee;
- The public records made available contained the information sought in the prior written request and remain in the City's possession;
- The public records were made available to the individual, subject to payment, within the time frame estimated by the City to provide the records;
- Ninety (90) days have passed since the FOIA Coordinator notified the individual in writing that the public records were available for pickup or mailing;
- The individual is unable to show proof of prior payment to the City; and
- The FOIA Coordinator has calculated a detailed itemization that is the basis for the current written request's increased estimated fee deposit.

MCLA 15.234:

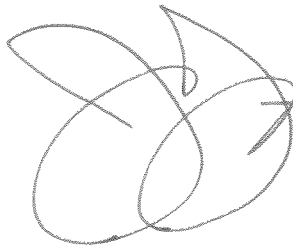
(8) In either the public body's initial response or subsequent response as described under section 5(2)(d), the public body may require a good-faith deposit from the person requesting information before providing the public records to the requestor if the entire fee estimate or charge authorized under this section exceeds \$50.00, based on a good-faith calculation of the total fee described in subsection (4). Subject to subsection (10), the deposit shall not exceed 1/2 of the total estimated fee, and a public body's request for a deposit shall include a detailed itemization as

required under subsection (4). The response shall also contain a best efforts estimate by the public body regarding the time frame it will take the public body to comply with the law in providing the public records to the requestor. The time frame estimate is nonbinding upon the public body, but the public body shall provide the estimate in good faith and strive to be reasonably accurate and to provide the public records in a manner based on this state's public policy under section 1 and the nature of the request in the particular instance. If a public body does not respond in a timely manner as described under section 5(2), it is not relieved from its requirements to provide proper fee calculations and time frame estimates in any tardy responses. Providing an estimated time frame does not relieve a public body from any of the other requirements of this act.

Enclosed is a summary of the Harbor Beach FOIA policy and a cost itemized sheet for your request. The City of Harbor Beach is able to produce the request after the established fee has been paid.

Sincerely,

FERRIS & SCHWEDLER, P.C.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom, identifying the signatory as John T. Ferris.

By: John T. Ferris

JTF/hlf

Enclosures

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: \$ _____

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

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

\$ _____

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 employee, 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

x _____ =

3b. Labor Cost

\$ _____

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:

x _____ =

x _____ =

x _____ =

No. of Items:

x _____ =

Costs:

\$ _____

\$ _____

\$ _____

\$ _____

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: \$ _____

OR

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

Charge per increment: \$ _____

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

6b. Web Labor Cost

x _____ =

\$ 0

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:

Costs:

x _____ =

\$ _____

x _____ =

\$ _____

x _____ =

\$ _____

x _____ =

\$ _____

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:

\$ _____

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:

- 1) Submits an affidavit stating that the individual is indigent and receiving specific public assistance, **OR**
- 2) If not receiving public assistance, stating facts showing inability to pay the cost because of indigence.

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:

- (i) The individual has previously received discounted copies of public records from the same public body twice during that calendar year, **OR**
- (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.

Eligible for Indigence Discount

Subtotal Fees After Discount (subtract \$20):

\$ _____

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:

- (i) Is made directly on behalf of the organization or its clients.
- (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.
- (iii) Is accompanied by documentation of its designation by the state, if requested by the City.

Eligible for Nonprofit Discount

Subtotal Fees After Discount (subtract \$20):

\$ _____

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.

Percent of Deposit: 50%

Date Paid:

Deposit Amount Required:

\$ 90.10

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:

- (a) The final fee for the prior written request was not more than 105% of the estimated fee.
- (b) The public records made available contained the information being sought in the prior written request and are still in the City's possession.
- (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.
- (d) Ninety (90) days have passed since the City notified the individual in writing that the public records were available for pickup or mailing.
- (e) The individual is unable to show proof of prior payment to the City.

<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>Percent Deposit Required: 50%</p> <p>Deposit Required: \$ 90.10</p>
<p>Late Response Labor Costs Reduction 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>Multiply by 5% = Total Percent Reduction: _____</p>	<p>Total Labor Costs \$ _____</p> <p>Minus Reduction \$ _____</p> <p>= Reduced Total Labor Costs \$ _____</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 <u>Balance Must Be Paid Before</u> Copies May Be Picked Up, Delivered or Mailed</p>	<p>Date Paid: _____</p>	<p>Total Balance Due: \$ 180.20</p>



MOC
mail

Tom Lambert <tlambert@mi



FOIA

Tom Lambert <tlambert@miopencarry.org>

Fri, Oct 14, 2016 at 4:14 PM

To: "Ferris & Schwedler, P.C." <ferrisschwedler@gmail.com>, Ron Wruble <rwruble@harborbeach.com>, Gary Booms <gary.s.booms@gmail.com>

Cc: MiOC Board <board@miopencarry.org>, Dean Greenblatt <dgg@mnsi.net>, Nick Somberg <NickSomberg@gmail.com>

Bcc: Lobbying <lobbying@miopencarry.org>, Casey Armitage <cmodena13@gmail.com>

Mr. Ferris,

I have noticed that the City's latest response has changed from it's previous response. Is this an admission that the previous response was not in compliance with Section 4?

Tom Lambert
President
Michigan Open Carry, Inc.

On Fri, Oct 14, 2016 at 3:56 PM, Ferris & Schwedler, P.C. <ferrisschwedler@gmail.com> wrote:

Please see the attached letter from Mr. Ferris.

Hilary L. Fox
Legal Assistant to John T. Ferris

Legal Assistant to Julienne M. Ferris

Ferris & Schwedler, P.C.

237 E. Huron Avenue, Bad Axe, Michigan 48413

Telephone: (989) 269-9571

Fax: (989) 269-6484

ferrisschwedler@gmail.com

The transmitted documents are intended only for the use of the individual or entity named above, and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of the documents transmitted with this transmittal sheet is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone at the above number.

(c) Three hundred sixty-five days have passed since the individual made the written request for which full payment was not remitted to the public body.

Late Response Labor Costs Reduction:

- The City did not indicate a late cost reduction. My request was considered received by the City on Oct. 4th. The City's response was submitted on Oct. 14th which is three days outside of the statutory limit. A reduction of no less than 15% should be applied under 15.234 (9).

MCL 15.234

(9) If a public body does not respond to a written request in a **timely manner as required under section 5(2)**, the public body shall do the following:

(a) **Reduce the charges for labor costs otherwise permitted under this section by 5% for each day the public body exceeds the time permitted under section 5(2)** for a response to the request, with a maximum 50% reduction, if either of the following applies:

(i) The late response was willful and intentional.

(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.

(b) If a charge reduction is required under subdivision (a), fully note the charge reduction on the detailed itemization described under subsection (4).

NOTE: If the City does not wish to claim that its response submitted on Oct. 14 is its "initial" response, then I will assume the City's first attempted response submitted by Mr. Wruble on Oct. 7th to be the "initial" response. In this case, the City would need to provide the requested information now, without any further delay, and without charge as that attempted response was entirely non-compliant. Further, as the City did not take an extension under 15.235 (2)(d), the City's initial response is the only time where the City is allowed to require a good-faith deposit under 15.234 (8).

MCL 15.234

(8) **In either the public body's initial response or subsequent response as described under section 5(2)(d)**, the public body may require a good-faith deposit from the person requesting information 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 described in subsection (4). Subject to subsection (10), the deposit shall not exceed 1/2 of the total estimated fee, and a public body's request for a deposit shall include a detailed itemization as required under subsection (4). The response shall also contain a best efforts estimate by the public body regarding the time frame it will take the public body to comply with the law in providing the public records to the requestor. The time frame estimate is nonbinding upon the public body, but the public body shall provide the estimate in good faith and strive to be reasonably accurate and to provide the public records in a manner based on this state's public policy under section 1 and the nature of the request in the particular instance. If a public body does not respond in a timely manner as described under section 5(2), it is not relieved from its requirements to provide proper fee calculations and time frame estimates in any tardy responses. Providing an estimated time frame does not relieve a public body from any of the other requirements of this act.

MCL 15.235

(2) Unless otherwise agreed to in writing by the person making the request, **a public body shall respond to a request for a public record within 5 business days after the public body receives the request** by doing 1 of the following:

(a) Granting the request.

(b) Issuing a written notice to the requesting person denying the request.

(c) Granting the request in part and issuing a written notice to the requesting person denying the request in part.

(d) Issuing a notice extending for not more than 10 business days the period during which the public body shall respond to the request. A public body shall not issue more than 1 notice of extension for a particular request.

Full Balance Paid Before Release Requirement:

- The City is requiring that the full balance be paid prior to releasing the requested documents. 15.234 (8) only allows for a maximum 50% of the estimated cost or final charge to be required as a good-faith deposit prior to **providing** the requested records.

MCL 15.234

(8) In either the public body's initial response or subsequent response as described under section 5(2)(d), the public body may require a good-faith deposit from the person requesting information **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 described in subsection (4). Subject to subsection (10), the deposit shall not exceed 1/2 of the total estimated fee, and a public body's request for a deposit shall include a detailed itemization as required under

subsection (4). The response shall also contain a best efforts estimate by the public body regarding the time frame it will take the public body to comply with the law in providing the public records to the requestor. The time frame estimate is nonbinding upon the public body, but the public body shall provide the estimate in good faith and strive to be reasonably accurate and to provide the public records in a manner based on this state's public policy under section 1 and the nature of the request in the particular instance. If a public body does not respond in a timely manner as described under section 5(2), it is not relieved from its requirements to provide proper fee calculations and time frame estimates in any tardy responses. Providing an estimated time frame does not relieve a public body from any of the other requirements of this act.

The Entire Response:


- Even after four separate attempts, by multiple City employees, including two by an attorney, over the span of more than a week, the City still has not complied with its duty under the FOIA, yet is still attempting to improperly assess a fee contrary to 15.234. During the time since my request, two other FOIA requests have been fulfilled on time, or early, and at no cost, by two other public bodies. The numerous troubles experienced in this case seem to be unique to the City of Harbor Beach. I therefore believe it is reasonable at this time to question whether or not the the City is acting in good-faith to comply with its duty. The information requested is simple, yet the City still delays.

MCL 15.234

(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). Subject to subsections (2), (3), (4), (5), and (9), the fee shall be limited to actual mailing costs, and to the actual incremental cost of duplication or publication including labor, the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in section 14. Except as otherwise provided in this act, if the public body estimates or charges a fee in accordance with this act, the total fee shall not exceed the sum of the following components:

I again urge the City to cease further delay and release the requested information at its soonest ability.

Tom Lambert
President
Michigan Open Carry, Inc.

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786K

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
(888) 398-7003 – fax
pellison@oleplc.com

AUDREY J. FORBUSH (P41744)
PLUNKETT COONEY
Attorney for Defendant
Plaza One Financial Center
111 E. Court Street – Suite 1B
Flint, MI 48502
(810) 342-7014
(810) 232-3159 – fax
afortbush@plunkettcooney.com

DEFENDANT'S ANSWERS TO PLAINTIFFS' SECOND REQUEST FOR DISCOVERY

NOW COMES the Defendant, **CITY OF HARBOR BEACH**, by and through its attorneys, **PLUNKETT COONEY**, and for its Answers to Plaintiff's Second Request for Discovery, states as follows:

1. **INTERROGATORY:** Who is the lowest pay employee capable of fulfilling the Oct 3 FOIA Requests; please specify name, address, title, and compensation of this individual.

ANSWER: Deputy Treasurer/Deputy Clerk, Mary Jane Woychowski. That individual may be reached care of counsel. The amount of her compensation is provided on the attached documents.

City of Harbor Beach Wage and Fringe Benefit Summary

The below graph supports requests numbered 10, 11, 12, 18,19, 20, 26, 27 and 28
 All figures below are based on costs for the employee during the month of October 2016

Employee	Title	Base Wage per hour	Social Security and Medicare per hour	Blue Cross Blue Shield Health Insurance per hour	Employer Portion of Pension Contribution per hour	Life Insurance, Short & Long Term Disability per hour	Workers Compensation per hour	Grand Total per hour
Ron Wruble	City Director	34.61	2.65	12.06	5.82	0.47	0.08	\$ 55.69
Leslie Woycehoski	Clerk	24.40	1.87	12.43	4.11	0.47	0.06	\$ 43.34
Mary Jane Woychowski	Deputy Clerk	24.02	1.84	7.91	4.04	0.47	0.06	\$ 38.34

Blue Cross Blue Shield Details

Supporting Documents are attached

	Per Month	Per Year	Per Hour
Ron Wruble	\$ 2,089.60	\$ 25,075.20	\$ 12.06
Leslie Woycehoski	\$ 2,153.80	\$ 25,845.60	\$ 12.43
Mary Jane Woychowski	\$ 1,371.33	\$ 16,455.96	\$ 7.91

Employer Portion of Pension Details

Supporting Documents are attached

The City contributes to the employees pension based on a percentage as determined by the Municipal Employees' Retirement System of Michigan (MERS).
 The employees listed above are all part of the Division named "DptHds/NonUn", and in October 2016 the City was contributing 16.83% of wages for this division.

Life Insurance, Short & Long Term Disability Details

Supporting Documents are attached

	Per Month	Per Year	Per Hour
Ron Wruble	\$ 82.14	\$ 985.68	\$ 0.47
Leslie Woycehoski	\$ 82.14	\$ 985.68	\$ 0.47
Mary Jane Woychowski	\$ 82.12	\$ 985.44	\$ 0.47

Workers Compensation Details

Supporting Documents are attached

Workers Compensation for Clerical is \$0.45 per \$100.00, but the City's experience modifier and dividend credit reduced it to \$0.24 per \$100 of payroll.
 This amounts to .24% per hour and is calculated above.

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
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DEFENDANT'S ANSWERS TO PLAINTIFFS' FIRST REQUEST FOR DISCOVERY

NOW COMES the Defendant, **CITY OF HARBOR BEACH**, by and through its attorneys, **PLUNKETT COONEY**, and for its Answers to Plaintiff's First Request for Discovery, states as follows:

1. **INTERROGATORY:** Does the City of Harbor Beach treat the October 3, 2016 FOIA Requests (copy attached as Exhibit A) as being from 1.) Thomas Lambert (personally); OR 2.) Michigan Open Carry, Inc; OR 3.) both.

RESPONSE: The request was deemed to be from Thomas Lambert, personally.

2. Admit that MCR 2.111(F)(3) requires that the City of Harbor Beach "*must state the facts constituting*" any affirmative defense so raised, as explained by *Tyra v Organ Procurement Agency of Mich*, 850 NW2d 667, 671 (Mich. Ct. App. 2013) reversed in part on other grounds __ Mich __; 2015 Mich. LEXIS 1633 (July 22, 2015).

RESPONSE: Exhibit A is incorporated by reference.

7. INTERROGATORY: As for Affirmative Defense No. 6, at what specific dollar amount does a FOIA request reach (or become) an “unreasonably high cost” associated with compiling materials; please provide the specific dollar amount and how that amount was selected.

RESPONSE: This interrogatory is objected to in that it is vague, overly broad, and cannot be responded to in its present form. Without waiver of that objection, each FOIA request is considered individually depending on several factors, including the amount of time necessary and the employees needed to respond to the particular FOIA request, the location of the records, and the demands of business of the City at that time. Thus, there is no set specific dollar amount.

8. PRODUCE: any and all policies in effect on or before Oct 3, 2016 which delineates “unreasonably high costs” under FOIA with all other lesser cost requests.

RESPONSE: The FOIA policies are available on the City’s website at <http://www.harborbeach.com/DoingBusiness/FOIADocuments.aspx>

9. PRODUCE: all written policy or written notice that the FOIA Coordinator designated someone, other than himself or herself, on or before Oct 3, 2016 in relation to Affirmative Defense No. 7.

RESPONSE: The FOIA policies are available on the City’s website at <http://www.harborbeach.com/DoingBusiness/FOIADocuments.aspx> In further response, the directive in this instance was verbal.

10. INTERROGATORY: List all policies, laws, statutes, regulations, or like-kind legal documents which allows a public body to “revise” its response” to a proffered Freedom of Information Act request.

a. PRODUCE: all documents cited in Interrogatory No. 10.

RESPONSE: This interrogatory is objected to in that it is vague, overly broad, and unduly burdensome to this Defendant, as it essentially requires Defendant to provide a compendium of FOIA law to Plaintiff and impermissibly shifts the burden of proof to Defendant. The FOIA law, statutes, regulations and like-kind legal documents are of a public nature and equally available to Plaintiff. The FOIA policies are available on the City’s website at <http://www.harborbeach.com/DoingBusiness/FOIADocuments.aspx>

11. INTERROGATORY: List with particularity all documents sought by the Oct 3 Requests which were “not have been prepared, owned, used or have been in the possession

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EXHIBIT

14

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2016-09-22 / Front Page

Crossing guard fights for right to open carry

By Kelly Krager

Editor • kkrager@mihomepaper.com

HARBOR BEACH — A crossing guard who works for the City of Harbor Beach is fighting a recent decision by city council that bans open carry of a firearm while on the job.

Casey Armitage, who aids students crossing the intersection of 5th and Trescott streets on their way to and from school, believes she should be able to protect the children from more than speeding vehicles and careless drivers.

The council voted 5-0 during its Sept. 6 regular meeting to update the city personnel handbook to include the open carry prohibition. The handbook previously prohibited concealed carry while on duty.

Mayor Gary Booms said the decision not only protects the city from liability, it protects children and people on the street from being casualties in an accident caused by an armed civilian who does not have training or experience equal to what police officers possess.

During council's Sept. 6 meeting, Armitage, who has a license to carry a concealed pistol, argued against the open carry ban. The council asked her to submit data supporting her opinion, and it would consider taking another look at the rule.

Armitage not only contacted other local government offices, she also appeared on a YouTube video with The FireArmGuy. During the five-minute episode, Armitage argues that she should be

allowed to fight back if the terror that has struck schools throughout the country visits her hometown.

“When seconds count, police officers take minutes to get there. And, I’m sorry, but when something is happening, my first reaction is not to pick up my cell phone. I’m not thinking about making a call. I’m thinking about taking action,” she said in the video.

During Monday’s regular city council meeting, Armitage told the board she contacted several municipalities to ask about their open carry policies and found many do not address the issue. Among those municipalities are the City of Caseville, Cass City, Elkton, Port Austin and Owendale, she said.

“None of these municipalities are reporting insurance rate hikes. No one from any of these other municipalities had ever thought of making further restrictions on the law already provided by the state and federal government. So, I say to you the council, you prove to me that the liability insurance will be affected. I have found no cause for concern,” she said.

She said she found most local governments allow employees who have a valid CPL to carry a firearm.

“To the best of my knowledge, Harbor Beach is the only municipality in Huron County restricting its employees’ lawful carry,” Armitage said.

Booms said the city is researching gun laws, but the policy is unlikely to be changed in the near future. He added that the local municipalities that do not have an open carry policy might simply have not had to consider the situation.

“Just because certain municipalities don’t have a gun policy doesn’t mean they aren’t thinking of one. Now that this has been brought to light, they might adopt one,” he said. “... Once it’s brought up and people know about it, they might change their policies.”

[Return to top](#)

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CITY OF HARBOR BEACH FOIA Procedures

Preamble: Statement of Principles

It is the policy of the City of Harbor Beach that all persons, Michigan Freedom of Information Act (FOIA), are entitled of government and the official acts of those who represent shall be informed so that they fully participate in the democ

The City's policy with respect to FOIA requests is to compl FOIA requests in a consistent, fair, and even-handed manne

The City acknowledges that it has a legal obligation to disci pursuant to a FOIA request. The City acknowledges that so identified under FOIA in order to ensure the effective operation of individuals.

Document Properties

FOIA POLICES PROCEDURES city.pdf

Description: Description Advanced

Document Title: Robinson; Clyde

Author: Robinson; Clyde

Author Title:

Description:

Description Writer:

Keywords:

Copyright Status: Unknown

Copyright Notice:

Copyright Info URL:

Created: 10/10/2016 9:10:10 AM

Modified: 10/10/2016 9:10:10 AM

Application: Microsoft® Word 2013

Format:

Commas can be used to separate keywords

Go To URL...

OK

EXHIBIT

15

OUTSIDE LEGAL COUNSEL PLC

www.olcplc.com

CITY OF HARBOR BEACH

Public Summary of FOIA Procedures and Guidelines

It is the public policy of this state that all persons (except those persons incarcerated in state prisons) are entitled to full and complete information regarding the official acts of those who represent them and their offices.

The people shall be informed so that they may fully exercise their rights.

Consistent with the Michigan Freedom of Information Act, the City of Harbor Beach has adopted the following Public Summary of the City's FOIA Procedures and Guidelines:

This is only a summary of the City's FOIA Procedures and Guidelines. For more information, please contact the City's FOIA Officer or visit the City's website: www.harborbeach.com.

1. How do I submit a FOIA request to the City?

- A request must sufficiently describe a public record.

The screenshot shows the 'Document Properties' dialog box for the file 'FOIA POLICY SUMMARY city.pdf'. The 'Description' tab is active, displaying the following metadata:

- Title:** FOIA POLICY SUMMARY city.pdf
- Author:** Robrison, Clyde
- Subject:**
- Keywords:**
- Created:** 10/10/2016 9:10:56 AM
- Modified:** 10/10/2016 9:10:56 AM
- Application:** Microsoft Word 2013
- PDF Producer:** Microsoft Word 2013
- PDF Version:** 1.4
- Location:**
- File Size:**
- Page Size:**
- Tagged PDF:**

Additional fields visible include 'Document Title', 'Author', 'Description', 'Description Writer', 'Keywords', 'Copyright Status', 'Copyright Notice', and 'Copyright Info URL'. A note at the bottom states: 'Commas can be used to separate keywords'. The dialog also shows 'Created', 'Modified', and 'Application' information.