

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

THOMAS LAMBERT and
MICHIGAN OPEN CARRY, INC,
Plaintiffs,

Case No.: 16-105456-CZ
Honorable Gerald M. Prill

v.

SUPPLEMENTAL FILING

CITY OF HARBOR BEACH,
Defendant

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

AUDREY J. FORBUSH (P41744)
RHONDA R. STOWERS (P64083)
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
aforbush@plunkettcooney.com

**SUPPLEMENTAL FILING RE: 1.) PLAINTIFF LAMBERT'S MOTION FOR SUMMARY
DISPOSITION ONLY AS COUNT I OF THE FILED COMPLAINT; & 2.) PLAINTIFFS'
OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY DISPOSITION**

NOW COMES Plaintiff THOMAS LAMBERT, by counsel, and offers this supplemental filing to provide newly issued discovery responses propounded by Defendant CITY OF HARBOR BEACH on August 17, 2017. Plaintiff LAMBERT has previously argued that because the City of Harbor Beach could not charge any FOIA fees regarding the three October 3, 2016 FOIA requests due to the failure to have posted or maintained on its website its procedures and guidelines and its written public summary, the fee-demand made on October 7, 2016 by City Manager Wrubel was improper and without any legal basis. This Court questioned whether those procedures and guidelines and its written public summary were, in fact, posted on the City's website on October 7,

2016. The answer, by judicial admission, is now undisputed no. The City of Harbor Beach now admits 1.) it directly and/or indirectly administers or maintains an official internet presence at www.harborbeach.com (Exhibit 19, ¶1) and neither the mandatory procedures and guidelines and its written public summary posted on October 7, 2016—the date the City illegally demanded a fee. (Exhibit 19, ¶¶2-3). The particular time when this Court reviews the prior actions of a public body is when it makes its formal response to the proffered FOIA requests—subsequent actions of the public body, the requester, and general events through the passage of time are not irrelevant to the Court’s inquiry. *State News v Mich State Univ*, 481 Mich 692, 703-704, 753 NW2d 20 (2008). Thusly, the only legally relevant date is October 7, 2016.

A request for admission is not a typical discovery device, but rather used to establish some of the material facts in a case without the necessity of formal proofs. These admissions are formal concessions “that have the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact.” *Radtke v Miller, Canfield, Paddock & Stone*, 453 Mich 413, 420; 551 NW2d 698 (1996). Therefore, it is judicially established that when the Wrubel Response demanded \$251.87, the correct fee was \$0.00 because a public can only charge a fee “if it has established, makes publicly available, and follows procedures and guidelines to implement this section as described in subsection (4).” MCL 15.234(1). Subsection 4(4) requires that “[i]f 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.” MCL 15.234(4). The City now concedes it directly and/or indirectly administers or maintains an official internet presence at www.harborbeach.com (Exhibit 19, ¶1) and

neither required document was posted on October 7, 2016. By failing to meet the requirements of Section 4(1) and 4(4) on the date of its formal response, the City was barred from demanding any fee and should have simply fulfilled the three FOIA requests. The City to date still has not fulfilled the requests. The City has illegally refused and otherwise wrongfully delayed disclosing or providing copies of a public records requested. Summary disposition in Plaintiff's favor is appropriate.

Date: August 21, 2017

RESPECTFULLY SUBMITTED:

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

21st day of August, 2017.

Philip L Ellison

PHILIP L. ELLISON
Attorney at Law

Philip L Ellison

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

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

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@olcplc.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 PLAINTIFF LAMBERT'S THIRD (AND RENEWED)
REQUEST FOR DISCOVERY**

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

1. **REQUEST TO ADMIT:** Admit the City of Harbor Beach directly and/or indirectly administers or maintains an official internet presence at www.harborbeach.com

RESPONSE: Admitted.

- a. **INTERROGATORY:** If the answer to the previous request for admission is anything other than a complete affirmation, identify with particularity the factual and/or legal basis (including full citations to all laws) for your denial, including the name, home and business address, and telephone

number of every person having first-hand knowledge of any portion of the facts or law; specify the substance of the facts or law that you or your attorney may seek to elicit from those persons and how those persons gained the information regarding those facts or law; and identify the contents of any written materials or computer data relied on in support of your denial (or attach copies to your answers to these discovery requests). If you are unable to admit or deny the request, identify all the information that you have available in your answer to this discovery request and specify why you cannot admit or deny the previous request for admission.

RESPONSE: Not applicable.

2. REQUEST TO ADMIT: Admit that the City of Harbor Beach's written public summary for FOIA was not posted on its website as of or before October 7, 2016.

RESPONSE: This request is objected to in that it seeks information that is not relevant nor reasonably calculated to lead to the discovery of relevant evidence. Without waiver of that objection, admitted.

- a. INTERROGATORY: If the answer to the previous request for admission is anything other than a complete affirmation, identify with particularity the factual and/or legal basis (including full citations to all laws) for your denial, including the name, home and business address, and telephone number of every person having first-hand knowledge of any portion of the facts or law; specify the substance of the facts or law that you or your attorney may seek to elicit from those persons and how those persons gained the information regarding those facts or law; and identify the contents of any written materials or computer data relied on in support of your denial (or attach copies to your answers to these discovery requests). If you are unable to admit or deny the request, identify all the information that you have available in your answer to this discovery request and specify why you cannot admit or deny the previous request for admission.

RESPONSE: Not applicable.

- b. PRODUCE: If the answer to the previous request for admission is anything other than a complete affirmation, produce and/all proof that the City of Harbor Beach's written public summary for FOIA were posted on its website as of or before October 7, 2016.

RESPONSE: Not applicable.

3. **REQUEST TO ADMIT:** Admit that the City of Harbor Beach's FOIA Policies and Procedures were not posted on its website as of or before October 7, 2016.

RESPONSE: This request is objected to in that it seeks information that is not relevant nor reasonably calculated to lead to the discovery of relevant evidence. Without waiver of that objection, admitted.

- a. **INTERROGATORY:** If the answer to the previous request for admission is anything other than a complete affirmation, identify with particularity the factual and/or legal basis (including full citations to all laws) for your denial, including the name, home and business address, and telephone number of every person having first-hand knowledge of any portion of the facts or law; specify the substance of the facts or law that you or your attorney may seek to elicit from those persons and how those persons gained the information regarding those facts or law; and identify the contents of any written materials or computer data relied on in support of your denial (or attach copies to your answers to these discovery requests). If you are unable to admit or deny the request, identify all the information that you have available in your answer to this discovery request and specify why you cannot admit or deny the previous request for admission.

RESPONSE: Not applicable.

- b. **PRODUCE:** If the answer to the previous request for admission is anything other than a complete affirmation, produce and/all proof that the City of Harbor Beach's FOIA Policies and Procedures were posted on its website as of or before October 7, 2016.

RESPONSE: Not applicable.

4. **PRODUCE:** All documents, including meeting minutes, that evidences that the City of Harbor Beach's City Council approved the FOIA Policies and Procedures and/or written public summary for FOIA.

RESPONSE: The requested documents are attached.

5. **INTERROGATORY:** Under oath, state the date the City of Harbor Beach's FOIA Policies and Procedures were posted on its website at www.harborbeach.com.

AS TO OBJECTIONS ONLY:

Respectfully submitted,

PLUNKETT COONEY

By Rhonda R. Stowers

AUDREY J. FORBUSH (P41744)
RHONDA R. STOWERS (P64083)
Attorneys for Defendant
Plaza One Financial Center
111 E. Court Street - Suite 1B
Flint, MI 48502
(810) 342-7014
afortbush@plunkettcooney.com

Dated: 8-17-17

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on 8-17-17, 20

By: U.S. Mail FAX
 Hand Delivered Overnight Courier
 Certified Mail Other

Signature

[Handwritten Signature]

IURAT

STATE OF MICHIGAN)
) ss
COUNTY OF)

The undersigned, first being duly sworn, deposes and says that he has read the foregoing, and knows the contents thereof, that the information contained therein is true and correct to the best of his knowledge and belief.

Ron Wruble
RON WRUBLE

The foregoing instrument was acknowledged, subscribed and sworn to before me, *Mary Jane Woychowski* this (Name of Notary)
16 day of August, 2017 by RON WRUBLE.

Mary Jane Woychowski
(Notary Signature)

Mary Jane Woychowski Notary Public
State of: *Michigan*
County of: *Huron*
Acting in the County of: *Huron*
My Commission expires: *2-1-19*

MARY JANE WOYCHOWSKI
NOTARY PUBLIC, STATE OF MI
COUNTY OF HURON
MY COMMISSION EXPIRES Feb 1, 2019
ACTING IN COUNTY OF

Open.00560.70017.18863471-1