

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

THOMAS LAMBERT,  
Plaintiffs,

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

v.

**MOTION**

CITY OF HARBOR BEACH,  
Defendant

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**MOTION FOR RECONSIDERATION AND/OR REHEARING**

NOW COMES Plaintiff THOMAS LAMBERT, by counsel, and moves for reconsideration and/or rehearing on the Court's decision to dismiss Counts II and III under his First Amended Complaint. Plaintiff is raising two errors.

***Paying a Deposit***

The Court faulted Plaintiff for not having first paid an alleged required deposit as a condition of initiating and maintaining its statutory claims made pursuant to Section 10a of FOIA (MCL 15.240a). In support of that ruling, the Court cited *Arabo v Mich Gaming Control Bd*, 310 Mich App 370; 872 NW2d 223 (2015). The *Arabo* Court specifically noted and distinguished the same:

The FOIA was recently amended. See 2014 PA 563. The amended act provides a procedure for challenging the fees charged by a public body responding to a FOIA

request and provides for monetary damages and punitive damages, in certain situations, to be paid both to the public treasury and the requester. See MCL 15.240a. The amendatory act will take effect on July 1, 2015.

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We therefore consider [Arabo's] appeal under the previous... version of the FOIA.

*Arabo*, 310 Mich App at 374 fn 1. The palpable error is that *Arabo* interpreted the FOIA statute as existing prior to the 2014/2015 amendments. *Id.* In 2014, Section 4 of FOIA was as follows:

*(1) A public body may charge a fee for a public record search, the necessary copying of a public record for inspection, or for providing a copy of a public record. Subject to subsections (3) and (4), 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. 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 public body 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. A public record search shall be made and a copy of a public record shall be furnished without charge for the first \$ 20.00 of the fee for each request to an individual who is entitled to information under this act and who submits an affidavit stating that the individual is then receiving public assistance or, if not receiving public assistance, stating facts showing inability to pay the cost because of indigency.*

*(2) A public body may require at the time a request is made a good faith deposit from the person requesting the public record or series of public records, if the fee authorized under this section exceeds \$ 50.00. The deposit shall not exceed 1/2 of the total fee.*

*(3) In calculating the cost of labor incurred in duplication and mailing and the cost of examination, review, separation, and deletion under subsection (1), a public body may not charge more than the hourly wage of the lowest paid public body employee capable of retrieving the information necessary to comply with a request under this act. Fees shall be uniform and not dependent upon the identity of the requesting person. A public body shall utilize the most economical means available for making copies of public records. 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 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 the public body specifically identifies the nature of these unreasonably high costs. A public body shall establish and publish procedures and guidelines to implement this subsection.*

*(4) This section does not apply to public records prepared under an act or statute specifically authorizing the sale of those public records to the public, or if the amount of the fee for providing a copy of the public record is otherwise specifically provided by an act or statute.*

MCL 15.234 (pre-amendment). A fairly short and vague statute within no enforcement mechanism for wrongful fee demands. There was no Section 10a (MCL 15.240a) in existence either.<sup>1</sup>

Then Public Act 563 of 2014 changed the FOIA legal landscape. It drastically revamped Section 4 to read as follows:

*(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.*

*(b) That portion of labor costs, including necessary review, if any, directly associated with the separating and deleting of exempt information from nonexempt information as provided in section 14. For services performed by an employee of the public body, the public body shall not charge more than the hourly wage of its lowest-paid employee capable of separating and deleting exempt information from nonexempt information in the particular instance as provided in section 14, regardless of whether that person is available or who actually performs the labor. If a public body does not*

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<sup>1</sup> This is why *Arabo* had to use only equitable relief.

*employ a person capable of separating and deleting exempt information from nonexempt information in the particular instance as provided in section 14 as determined by the public body's FOIA coordinator on a case-by-case basis, it may treat necessary contracted labor costs used for the separating and deleting of exempt information from nonexempt information in the same manner as employee labor costs when calculating charges under this subdivision if it clearly notes the name of the contracted person or firm on the detailed itemization described under subsection (4). Total labor costs calculated under this subdivision for contracted labor costs shall not exceed an amount equal to 6 times the state minimum hourly wage rate determined under section 4 of the workforce opportunity wage act, 2014 PA 138, MCL 408.411 to 408.424. Labor costs under this subdivision shall be estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down. A public body shall not charge for labor directly associated with redaction under section 14 if it knows or has reason to know that it previously redacted the public record in question and the redacted version is still in the public body's possession.*

*(c) For public records provided to the requestor on nonpaper physical media, the actual and most reasonably economical cost of the computer discs, computer tapes, or other digital or similar media. The requestor may stipulate that the public records be provided on nonpaper physical media, electronically mailed, or otherwise electronically provided to him or her in lieu of paper copies. This subdivision does not apply if a public body lacks the technological capability necessary to provide records on the particular nonpaper physical media stipulated in the particular instance.*

*(d) For paper copies of public records provided to the requestor, the actual total incremental cost of necessary duplication or publication, not including labor. The cost of paper copies shall be calculated as a total cost per sheet of paper and shall be itemized and noted in a manner that expresses both the cost per sheet and the number of sheets provided. The fee shall not 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 public body shall utilize the most economical means available for making copies of public records, including using double-sided printing, if cost saving and available.*

*(e) The cost of labor directly associated with duplication or publication, including making paper copies, making digital copies, or transferring digital public records to be given to the requestor on nonpaper physical media or through the internet or other electronic means as stipulated by the requestor. The public body shall not charge more than the hourly wage of its lowest-paid employee capable of necessary duplication or publication in the particular instance, regardless of whether that person is available or who actually performs the labor. Labor costs under this subdivision may be*

*estimated and charged in time increments of the public body's choosing; however, all partial time increments shall be rounded down.*

*(f) The actual cost of mailing, if any, for sending the public records in a reasonably economical and justifiable manner. The public body shall not charge more for expedited shipping or insurance unless specifically stipulated by the requestor, but may otherwise charge for the least expensive form of postal delivery confirmation when mailing public records.*

*(2) When calculating labor costs under subsection (1)(a), (b), or (e), fee components shall be itemized in a manner that expresses both the hourly wage and the number of hours charged. The public body may also 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). Subject to the 50% limitation, the public body shall not charge more than the actual cost of fringe benefits, and overtime wages shall not be used in calculating the cost of fringe benefits. Overtime wages shall not be included in the calculation of labor costs unless overtime is specifically stipulated by the requestor and clearly noted on the detailed itemization described in subsection (4). 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 public body 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. A public record search shall be made and a copy of a public record shall be furnished without charge for the first \$20.00 of the fee for each request by either of the following:*

*(a) An individual who is entitled to information under this act and who submits an affidavit stating that the individual is indigent and receiving specific public assistance or, if not receiving public assistance, stating facts showing inability to pay the cost because of indigency. If the requestor is eligible for a requested discount, the public body shall fully note the discount on the detailed itemization described under subsection (4). 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 under this subsection from the same public body twice during that calendar year.*

*(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.*

*(b) A nonprofit organization formally designated by the state to carry out activities under subtitle C of the 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, or their successors, 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 mental health code, 1974 PA 258, MCL 330.1931.*

*(iii) Is accompanied by documentation of its designation by the state, if requested by the public body.*

*(3) A fee as described in subsection (1) 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 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 the public body specifically identifies the nature of these unreasonably high costs.*

*(4) 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 shall make the procedures and guidelines publicly available by providing free copies of the procedures and guidelines and its written public summary both in the public body's response to a written request and upon request by visitors at the public body's office. A public body that posts and maintains procedures and guidelines and its written public summary on its website may include the website link to the documents in lieu of providing paper copies in its response to a written request. A public body's procedures and guidelines shall include the use of a standard form for detailed itemization of any fee amount in its responses to written requests under this act. The detailed itemization shall clearly list and explain the allowable charges for each of the 6 fee components listed under subsection (1) that compose the total fee used for estimating or charging purposes. Other public bodies may use a form created by the department of technology, management, and budget or create a*

*form of their own that complies with this subsection. 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. Notwithstanding this subsection and despite any law to the contrary, a public body's procedures and guidelines under this act are not exempt public records under section 13.*

*(5) If the public body directly or indirectly administers or maintains an official internet presence, any public records available to the general public on that internet site at the time the request is made are exempt from any charges under subsection (1)(b). If the FOIA coordinator knows or has reason to know that all or a portion of the requested information is available on its website, the public body shall notify the requestor in its written response that all or a portion of the requested information is available on its website. The written response, to the degree practicable in the specific instance, shall include a specific webpage address where the requested information is available. On the detailed itemization described in subsection (4), the public body shall separate the requested public records that are available on its website from those that are not available on the website and shall inform the requestor of the additional charge to receive copies of the public records that are available on its 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 other form as described under subsection (1)(c), the public body shall provide the public records in the specified format but may use a fringe benefit multiplier greater than the 50% limitation in subsection (2), not to exceed the actual costs of providing the information in the specified format.*

*(6) A public body may provide requested information available in public records without receipt of a written request.*

*(7) If a verbal request for information is for information that a public body believes is available on the public body's website, the public employee shall, where practicable and to the best of the public employee's knowledge, inform the requestor about the public body's pertinent website address.*

*(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.*

*(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).*

*(10) This section does not apply to public records prepared under an act or statute specifically authorizing the sale of those public records to the public, or if the amount of the fee for providing a copy of the public record is otherwise specifically provided by an act or statute.*

*(11) Subject to subsection (12), after a public body has granted and fulfilled a written request from an individual under this act, if the public body has not been paid in full the total amount under subsection (1) for the copies of public records that the public body made available to the individual as a result of that written request, the public body may require a 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 public body's possession.*

*(c) The public records were made available to the individual, subject to payment, within the time frame estimate described under subsection (7).*

*(d) Ninety days have passed since the public body 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 public body.*

*(f) The public body calculates a detailed itemization, as required under subsection (4), that is the basis for the current written request's increased estimated fee deposit.*

*(12) A public body shall no longer require an increased estimated fee deposit from an individual as described under subsection (11) if any of the following apply:*

*(a) The individual is able to show proof of prior payment in full to the public body.*

*(b) The public body is subsequently paid in full for the applicable prior written request.*

*(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.*

*(13) A deposit required by a public body under this act is a fee.*

MCL 15.234 (post-amendment). Public Act 563 of 2014 also added a new, previously non-existing statutory cause of action for improper fees demands by public bodies, MCL 15.240a ("Section 10a"). It provides:

*(1) If a public body requires a fee that exceeds the amount permitted under its publicly available procedures and guidelines or section 4, the requesting person may do any of the following:*

*(a) If the public body provides for fee appeals to the head of the public body in its publicly available procedures and guidelines, submit to the head of the public body a written appeal for a fee reduction that specifically states the word "appeal" and identifies how the required fee exceeds the amount permitted under the public body's available procedures and guidelines or section 4.*

*(b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, in the court of claims, for a fee reduction. The action must be filed within 45 days after receiving the notice of the required fee or a determination of an appeal to the head of a public body. If a civil action is commenced against the public body under this subdivision, the public body is not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute.<sup>[2]</sup> An action shall not be filed under this subdivision unless 1 of the following applies:*

*(i) The public body does not provide for appeals under subdivision (a).*

*(ii) The head of the public body failed to respond to a written appeal as required under subsection (2).*

*(iii) The head of the public body issued a determination to a written appeal as required under subsection (2).*

*(2) Within 10 business days after receiving a written appeal under subsection (1)(a), the head of a public body shall do 1 of the following:*

*(a) Waive the fee.*

*(b) Reduce the fee and issue a written determination to the requesting person indicating the specific basis under section 4 that supports the remaining fee. The determination shall include a certification from the head of the public body that the statements in the determination are accurate and that the reduced fee amount complies with its publicly available procedures and guidelines and section 4.*

*(c) Uphold the fee and issue a written determination to the requesting person indicating the specific basis under section 4 that supports the required fee. The determination shall include a certification from the head of the public body that the statements in the determination are accurate and that the fee amount complies with the public body's publicly available procedures and guidelines and section 4.*

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<sup>2</sup> Query: where is the requirement to pay the good faith deposit (as required by this Court's September 8, 2017 ruling) when the Legislature created and authorized this legal action?

*(d) Issue a notice extending for not more than 10 business days the period during which the head of the public body must respond to the written appeal. The notice of extension shall include a detailed reason or reasons why the extension is necessary. The head of a public body shall not issue more than 1 notice of extension for a particular written appeal.*

*(3) A board or commission that is the head of a public body is not considered to have received a written appeal under subsection (2) until the first regularly scheduled meeting of that board or commission following submission of the written appeal under subsection (1)(a).*

*(4) In an action commenced under subsection (1)(b), a court that determines the public body required a fee that exceeds the amount permitted under its publicly available procedures and guidelines or section 4 shall reduce the fee to a permissible amount. Venue for an action against a local public body is proper in the circuit court for the county in which the public record or an office of the public body is located. The court shall determine the matter de novo, and the burden is on the public body to establish that the required fee complies with its publicly available procedures and guidelines and section 4. Failure to comply with an order of the court may be punished as contempt of court.*

*(5) An action commenced under this section and an appeal from an action commenced under this section shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.*

*(6) If the requesting person prevails in an action commenced under this section by receiving a reduction of 50% or more of the total fee, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages under subsection (7).*

*(7) If the court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by charging an excessive fee, the court shall order the public body to pay a civil fine of \$500.00, which shall be deposited in the general fund of the state treasury. The court may also award, in addition to any actual or compensatory damages, punitive damages in the amount of \$500.00 to the person seeking the fee reduction. The fine and any damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.*

*(8) As used in this section, "fee" means the total fee or any component of the total fee calculated under section 4, including any deposit.*

Yet, nowhere in the statutory language of revised Section 4 or newly created Section 10a does it require the good faith deposit be first given to the City, as a prerequisite, for initiating or maintaining an illegal-fee claim under Section 10a. See MCL 15.240a(1)(b). A court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself. E.g. *Omne Financial, Inc v Shacks, Inc*, 460 Mich 305, 311; 596 NW2d 591 (1999).<sup>3</sup> Similarly, courts are not permitted to add provisions or requirements to statutes under the guise of interpretation. *In re Wayne Co Prosecutor*, 232 Mich App 482, 486; 591 NW2d 359 (1998). This Court has committed palpable error in reading something—a non-existing prerequisite—into new statutory cause of action based on a prior decision which was interpreting the predecessor statute that has since been completely rewritten and amended. As such, this Court erred in dismissing Plaintiff’s Counts II and III for non-payment of a good faith deposit. The City is still violating FOIA by seeking any fee related to these FOIA requests.<sup>4</sup>

***Determination Date***

At the September 8, 2017 hearing, the Court “found” that the City of Harbor Beach’s actual ‘final determination’ was made on October 14, 2016. If that is true, then the request must still be deemed denied because it was beyond the deadline allowed by

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<sup>3</sup> This is principle is recited literally hundreds and hundreds of times by Michigan case law. This Court only need to shepherdize *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002) to verify the same.

<sup>4</sup> Plaintiff alleged in his First Amended Complaint that the fee demand is illegally excessive because a public body can only charge all or a portion of a fee when failure to do so “would result in unreasonably high costs to the public body because of the nature of the request in the particular instance, and the public body specifically identifies the nature of these unreasonably high costs.” See MCL 15.234(3). Plaintiff alleged as part of Count II the fee of \$180.10 even after October 14, 2016 is still illegally demanded by the City. The City has offered no proof the fee demanded is an unreasonably high cost because of the nature of the request in the particular instance.

the statute. The Oct 3rd Requests were deemed received October 4, 2016. MCL 15.235(1). Five business days later is October 11, 2016. Failure to provide its ‘final determination’ by this date deems the requests denied. MCL 15.235(3). Michigan case law is clear in applying the same:

The FOIA sets forth specific requirements that must be followed in filing and responding to information requests. Unless otherwise agreed to in writing, a public body must respond to a request for a public record within five business days after it receives the request, and the failure to so respond constitutes a final determination to deny the request.

*Thomas v City of New Baltimore*, 254 Mich App 196, 201; 657 NW2d 530 (2002). As such, it is legally impossible for the City to have legally issued a valid ‘final determination’ beyond the five business day deadline on October 14, 2016. The absolute latest it could have was October 11, 2016. As such, the Court has clearly committed error in finding a proper response well-beyond the statutory required deadline. There is absolutely no legal methodology available to the City to allow it to revise and re-revise and further re-revise its ‘final response’ beyond the five business day deadline.<sup>5</sup> Again, a court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself. *Omne Financial*, 460 Mich at 311. The Court, here, as improperly done so. Reconsideration is required.

### STANDARD OF REVIEW

A motion for reconsideration/rehearing may be properly granted by the Court at any time for any reason or when the moving party demonstrates palpable error by which the court and the parties have been misled and show that a different disposition must result from correction of the error. *Meyer & Anna Prentis Family Foundation, Inc v Barbara*

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<sup>5</sup> To be clear, Plaintiff still maintains for appellate purposes the only relevant date is October 7, 2016. See *State News v Mich State Univ*, 481 Mich 692; 753 NW2d 20 (2008).

*Ann Karmanos Cancer Institute*, 266 Mich App 39, 52-53; 698 NW2d 900 (2005) (“a trial court has unrestricted discretion to review its previous decision”); MCR 2.119(F)(3). The parties are neither entitled to a hearing nor is the non-moving party entitled to a responsive filing unless the court otherwise directs. MCR 2.119(F)(2). The plain language of the court rule does not categorically prohibit a trial court from granting a motion for reconsideration even if the motion presents the same issues initially argued and decided. *Bakian v Nat’l City Bank (In re Estate of Moukalled)*, 269 Mich App 708, 714; 714 NW2d 400 (2006). In plain terms, a court may take a second look without penalty to the parties or the court. *Id.*

#### **RELIEF REQUESTED**

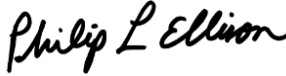
This Court improperly added words and requirements to the amended and newly enacted sections of the FOIA statute which does not actually contain the Court-created obligation to first pay an illegal good-faith deposit before a Section 10a claim lies. A Section 10a claim does not require, by its plain text, any pre-payment of an illegal fee. *Arabo* was decided about the law as existing before Section 10a became effective. Secondly, October 14, 2016 cannot ever be, legally, a proper response date. MCL 15.235(2)-(3). The Court is requested to reconsider its decision and reverse its grant of summary disposition on Counts II and III. Absent correction, Plaintiff will be appealing this case to the Court of Appeals.

Date: September 17, 2017

**PROOF OF SERVICE**

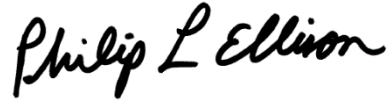
The undersigned certifies that a copy of the foregoing document(s) was served on parties or their attorney of record by 1.) emailing the same to the email addresses or record and 2.) mailing the same via US mail to their respective business address(es) as disclosed by the pleadings of record herein with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

17th day of September, 2017.



PHILIP L. ELLISON  
Attorney at Law

RESPECTFULLY SUBMITTED:



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