

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 PRETRIAL STATEMENT

NOW COMES Defendant, by and through its attorneys, Plunkett Cooney, and for its Pretrial Statement, hereby states as follows:

Make a brief statement of your claims or defenses:

This case concerns a Freedom of Information Act request made by Plaintiffs to the City of Harbor Beach. The request was deemed to be from Plaintiff Thomas Lambert, and sought:

A) any and all records of discussion from, to, or between the City Council and the City Director regarding resolution #2016-92 (which does not allow non-law enforcement personnel to carry guns);

B) any and all records of discussion from, to, or between the City Council and the City Director from August 1, 2016 – October 3, 2016 regarding to the City's policy on firearms carried by employees;

C) and any and all documentation provided by the Harbor Beach City Council or the Director in relation to how the City's policy on firearms carried by employees may affect the City's insurance rates.

Due to the voluminous nature of Plaintiff's request, Defendant prepared an estimate of the employee time needed to gather documents and the costs involved and requested a deposit. When it was determined that a clerical error had occurred in calculating the costs, the City sent a modified deposit request correcting the clerical error. The deposit was never paid and therefore the documents were never sent. Defendant at all times acted in good faith in responding to Plaintiffs' FOIA. Defendant also relies upon the Answer and Affirmative Defenses that it filed in this matter.

What are the factual issues:

Plaintiffs are contending that their October 3, 2016 request should be viewed as three separate FOIA requests; Defendant asserts that Plaintiff made a single FOIA request.

Plaintiffs contend Defendant responded "in a format not authorized by FOIA"; Defendant maintains that it responded in accordance with FOIA and that there was no misunderstanding between Plaintiffs and Defendant concerning the FOIA request.

Plaintiffs assert that the cost estimate was excessive; Defendant's cost estimate was reasonable and, in fact, less than the actual cost to the City to provide.

Plaintiffs argue that there was confusion as to whether Plaintiff's purported FOIA request was granted by the City of Harbor Beach; correspondence between the parties confirms that there was no misunderstanding that the request was granted.

The burden to the City to conduct an examination and prepare documents as requested by Plaintiff, given the limited staff and the number of hours needed in light of other City business.

Whether Plaintiff paid the requested deposit.

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

Several of the above factual issues identified above are mixed questions of fact and law. This action falls wholly within the auspices of the Freedom of Information Act, MCL 15.231 et seq.

Relief sought (itemize damages):

Defendant is not seeking damages, but reserves the right to seek costs or sanctions when appropriate. Defendant denies that Plaintiff is entitled the damages he is seeking.

What amendments to pleadings are required?

Defendant does not currently require any such amendment. It is Defendant's understanding that Michigan Open Carry, Inc., intends to withdraw from this suit in light of Defendant's discovery responses.

State what discovery is required:

Defendant does not anticipate significant discovery, but reserves the right to serve interrogatories, requests to produce and/or requests to admit. Defendant also reserves the right to take Plaintiff's deposition in this matter, if deemed appropriate.

State any admissions or waivers (Ownership, ordinances, statutes, etc.):

Defendant relies upon the admissions/waivers made in its Answer to Plaintiffs' First Amended Complaint and has no additional admissions to make at this time.

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

Motions for summary disposition, motions to compel and/or motions in limine, if filed.

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

The trial of this action will be: a jury trial _____
a non-jury trial x

Estimated trial time: one day

(Optional Answer) Settlement possibilities and offers:

Defendant is willing to discuss potential settlements.

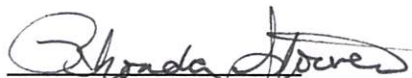
Special scheduling problems, if any (witness in service, reasons for trial priority, etc):

Defendant is not aware of any such issues at this time.

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

None of which Defendant is aware at this time.

Dated: 3/13/17



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

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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 3-13-17, 20

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

Signature 