

**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.

MOTION

CITY OF HARBOR BEACH,
Defendant

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**PLAINTIFF LAMBERT'S MOTION FOR SUMMARY
DISPOSITION ONLY AS COUNT I OF THE FILED COMPLAINT**

NOW COMES Plaintiff THOMAS LAMBERT, by counsel, and moves for summary disposition solely on Count I pursuant to MCR 2.116(C)(10). Because the City of Harbor Beach was not allowed to charge any fee under Section 4 of FOIA, there was and is no legal basis to delay production of requested records and documents. There is no material question of fact and Plaintiff is entitled to judgment on Count I as a matter of law. The Court is requested to order production of records sought from the three FOIA requests as made on October 3, 2016, and provide all other remedies, i.e. attorney fees, costs, and disbursements, MCL 15.240(6); punitive damages, MCL 15.240(7), and civil fines, MCL 15.240b, as warranted.

FACTS¹

In September 2016, the City of Harbor Beach voted to prohibit the “open carry” of handguns, 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, President of Michigan Open Carry, Inc, 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 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 three separate Oct 3 FOIA Requests specifically requested—

¹ For ease of clarity, the exhibits are attached and marked with the same letters as marked upon Plaintiff’s July 13, 2017 response brief filed by Plaintiff Lambert. However, Exhibits 17 and 18 are only part of this motion.

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, 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.

Exhibit 2 [hereinafter the "Wrubel Response"]. The City asserted no exemptions. *Id.* On the date of its response (October 7, 2016), the City of Harbor Beach had not posted or had otherwise maintained their FOIA procedures and guidelines and its written public summary on its website. **Exhibits 17 & 18** (screenshots from Oct 7, 2016).² Notwithstanding, the Wrubel Response was legally deficient for demanding fees, together with a number of other failures under the statute.

About two hours later, Plaintiff Lambert responded stating:

² As such, the City of Harbor Beach is barred from making any fee demands. MCL 15.234(1), (4). This is further discussed in the brief.

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 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.

Exhibit 4. Mr. Wrubel did not disclose that the City of Harbor Beach had not posted or maintained their FOIA procedures and guidelines and its written public summary on its website as required by FOIA on October 7, 2016. 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 (emphasis added).

On October 11, 2016, John T. Ferris, the City Attorney, issued an undated letter reconfirming that Section 4 of the FOIA applies³ and revised, again, the fee to \$190.00 based on two hours of copying⁴ and three hours locating. **Exhibit 6.** Attorney Ferris did not acknowledge or discuss that the City of Harbor Beach had not, on or before October 7, 2016, posted or maintained their FOIA procedures and guidelines and its written public summary on its website as required by FOIA in order to demand fees. The City Attorney's letter did not address any of the statutory provisions under MCL 15.234(1) and (4), 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:

³ Yet, Section 4 also has the website-posting requirements, which was not addressed by Attorney Ferris.

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

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 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(1) and (4), MCL 15.234(2) or MCL 15.234(3). **Exhibit 8.** And, again, the time to make this yet another alleged 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 17, 2016, Plaintiff Lambert filed an administrative appeal.⁵ **Exhibit 10.** The City Council never responded to the appeal as it was required under MCL 15.240 and MCL 15.240a.

Plaintiff Lambert 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. This motion for summary disposition now follows.

⁵ Under FOIA, an administrative appeal is not required prior to bringing a legal action under Section 10. It is required prior to bringing an action under Section 10a.

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 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).

ARGUMENT

FOIA mandates a policy of full disclosure. *Stone Street Capital, Inc v Bureau of State Lottery*, 263 Mich App 683, 687; 689 NW2d 541 (2004). The Michigan Legislature has categorically announced that:

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, consistent with this act. The people shall be informed so that they may fully participate in the democratic process.

MCL 15.231(2)(emphasis added). It makes no difference and is of no consequence why a citizen requests records or information, as the FOIA statute does not require the requester to make any showing of need for such records. See MCL 15.231 et seq; see also *Int'l Union, United Plant Guard Workers (UPGWA) v Dep't of State Police*, 422 Mich 432; 373 NW2d 713 (1985). Initial as well as future uses of information requested under FOIA are irrelevant in determining whether the information falls within exemption, as is the identity of the person seeking the information. *Taylor v Lansing Bd of Water & Light*, 272 Mich App 200, 205; 725 NW2d 84 (2006). Additionally, FOIA also does not

require a precise description of the actual records sought, as the statute's focus is on public access to *information*. *Detroit Free Press, Inc v City of Southfield*, 269 Mich App 275, 713 NW2d 28 (2005) (emphasis in original).

Plaintiff Lambert is only seeking summary disposition on Count I – failure to produce requested records. See Compl, Count I. Once a requester makes a demand for records, Section 5 of the FOIA 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.

The City of Harbor Beach did not do any of these. Thus, "the "[f]ailure to respond to a request pursuant to subsection (2) constitutes a public body's final determination to deny the request." MCL 15.235(3). Instead, the Wrubel Response demanded full payment of a FOIA fee in the amount of \$290.00 without splitting which part of the \$290.00 demand fee went with which request. **Exhibit 2**. In 2015, the *Freedom of Information Act* was drastically amended, particularly involving when public bodies make illegal demands for costs for production under FOIA. This was largely due to public bodies routinely abusing the costs provisions of FOIA to constructively deny access to records by placing monetary impediments to the production of public records a public body wishes to keep non-disclosed. MCL 15.234(1), as amended, provides:

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).

Subsection 4, in turn, requires the City to “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.” MCL 15.234(4). The statute also 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.” *Id.* “The Legislature’s use of the word ‘shall’ in a statute generally ‘indicates a mandatory and imperative directive.’” *Costa v Cmty Emergency Med Services, Inc*, 475 Mich 403, 409; 716 NW2d 236 (2006), quoting *Burton v Reed City Hosp Corp*, 471 Mich 745, 752; 691 NW2d 424 (2005). It is undisputed: the City of Harbor Beach maintains an official internet presence at www.harborbeach.com. As such, certain mandatory things had to happen before the City of Harbor Beach is entitled to demand a fee or good faith deposit: it must post the required documents on its website, MCL 15.234(4). The City did not.

The City failed to post online and thus cannot charge any fee.

On October 7, 2016, the City of Harbor Beach had not posted or maintained its procedures and guidelines and its written public summary on its website. See **Exhibit**

17 and 18.⁶ According to the documents' metadata⁷ of the documents posted online at www.harborbeach.com, those documents were not publicly posted until October 10, 2016—three days after the City made its official response demanding a FOIA fee. **Exhibit 15 and 16.** Because the City failed to meet the required legal prerequisites required under Section 4(4), the City's fee demand to Plaintiff was illegal and precluded by MCL 15.234(1). The only legally allowable fee on October 7, 2016 was \$0.00. Hence, this is why the only amount Plaintiff Lambert was consenting to was a "fee of \$0 for the completion of my request." **Exhibit 5.**

Because the City of Harbor Beach could not charge any FOIA fees due to its 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. Without a legal basis to withhold production of the requested documents, the City failed to produce the records as it was required to do pursuant to MCL 15.235(2)(a). When the requested records are not exempt from disclosure, the Court "shall order the public body to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location

⁶ These exhibits are screenshots of City of Harbor Beach's website on October 7, 2016 when searching for the terms "FOIA" and "Freedom." Nothing existed as of that date. If the Court were to search today, a FOIA webpage shows up (<http://www.harborbeach.com/SearchResults.aspx?Search=foia>) but reveals it was created on "10/10/2016 9:35:19 AM" which directly consistent with the metadata proofs in **Exhibits 15 and 16.**

⁷ Metadata is simply data that provides information about other data, like information that describes the properties of a digital file like when it was created, last modified, or deleted. See *Continental Group, Inc v KW Property Management*, 622 F Supp 2d 1357, 1362 fn3 (SD Fla 2009). In this case, the document properties section of a PDF can and does reveal when the PDFed copies of the procedures and guidelines and the written public summary were created. They were created on October 10, 2016—three days after the illegal fees were demand of Plaintiff Lambert on October 7, 2016.

of the public record.” MCL 15.240(4).⁸ Summary disposition and an order requiring production of the documents without costs is warranted and appropriate.⁹

OTHER MANDATORY REMEDIES

The Legislature has provided other penalties for violating FOIA. When a successful legal action results in ordered production of non-produced documents, the public body must pay reasonable attorney fees, costs, and disbursements of the action. MCL 15.240(6); *Amberg v City of Dearborn*, 497 Mich 28; 859 NW2d 674 (2014); see also MCL 15.240a(6). This “includes all such fees... related to achieving production of the public records.” *Meredith Corp v Flint*, 256 Mich App 703, 715; 671 NW2d 101 (2003)(emphasis in original). Additionally, if a “public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall order the public body to pay a civil fine of \$1,000.00, which shall be deposited into the general fund of the state treasury.” MCL 15.240(7). The court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of \$1,000.00 to the person seeking the right to inspect or receive a copy of a public record. *Id.* Lastly, if “a public body willfully and intentionally failed to comply with this act or otherwise acted in bad faith, the court shall order the public body to pay, in

⁸ If the Court accepts that the proper fee is \$0.00, then this is not a fee reduction case under Section 10a (see Counts II and III), but a wrongful denial under Section 10 because there was no basis to delay production of the sought records. Plaintiff Lambert has treated his requests as being denied. See **Exhibit 5** (“*consider my request denied*”). However, to the extent this Court would treat this as a wrongful fee case for failing to obey Section 4’s fee requirements, the order-based remedy is essentially the same: order production of the requested documents by “reduc[ing] the fee to a permissible amount.” MCL 15.240a(4). The proper amount is \$0.00. In reducing the fee from \$290.00 to \$0.00, the reduction is greater than 50% and the penalty of MCL 15.240a(6) and (7), and MCL 15.240b would apply in addition to the penalties under MCL 15.240(6) and MCL 15.240(7).

⁹ If this Court were to grant this request for summary disposition on Count I, the remaining two claims, Counts II and III, become moot.

addition to any other award or sanction, a civil fine of not less than \$2,500.00 or more than \$7,500.00 for each occurrence." MCL 15.240b.

As such, Plaintiff Lambert requests entry of an order requiring the City of Harbor Beach to—

1. award mandatory punitive damages of \$3,000.00 to Plaintiff Lambert pursuant to MCL 15.240(7)¹⁰ for three (3) separate FOIA requests wrongfully denied from Plaintiff as the person seeking to receive a copy of three sets of public records;
2. pay a mandatory fine of \$3,000.00 pursuant to MCL 15.240(7)¹¹ for three (3) FOIA requests arbitrarily and capriciously denied at \$1,000.00 per request to be paid to the State's general treasury;
3. pay a mandatory fine of \$15,000.00 pursuant to MCL 15.240b for improperly three (3) FOIA requests because the City acted willfully and intentionally or otherwise acted in bad faith denied with a proper penalty of \$5,000.00 per each of the three "occurrence[s]" to be paid to the State's general treasury; and
4. award attorney fees, costs, and disbursements in an amount to determined either by further motion practice or by entry of a bill of costs pursuant to MCL 15.240.^{12,13}

¹⁰ To the extent this Court would also find this case as a wrongful fee case under Section 10a, the additional punitive damages is an additional \$500.00.00 (see MCL 15.240a(7)); thusly being \$4,500.00 instead.

¹¹ To the extent this Court would also find this case as a wrongful fee case under Section 10a, the additional civil fine is an additional \$500.00 fine per occurrence (see MCL 15.240a(7)); thusly being \$4,500.00 instead.

¹² There are two ways known to handle this issue under law, given that such final-totals are on-going when a motion for summary disposition is filed. First, the Court may simply grant, generically, an award of attorney fees, costs, and disbursements, and then direct counsel to file a motion to determine the amount. This is because summary disposition can be granted pursuant to MCR 2.116(C)(10) "[e]xcept as to the amount of damages[]" there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." Or second, the Court has the authority to cause entry of the award of attorney fees, costs, and disbursements via a bill of costs. MCL 600.2405 provides that "[t]he following items may be taxed and awarded as costs unless otherwise directed:.. (2) Matters specially made taxable elsewhere in the statutes or rules.... (6) Any attorney fees authorized by statute or by court rule." MCR 2.625, in turn, provides the procedure for the entry of a Bill of Costs—

- (1) Each item claimed in the bill of costs, except fees of officers for services rendered, must be specified particularly.
- (2) The bill of costs must be verified and must contain a statement that
 - (a) each item of cost or disbursement claimed is correct and has been necessarily incurred in the action, and
 - (b) the services for which fees have been charged were actually performed.

MCR 2.625(G)(1)-(2).

Plaintiff Lambert acknowledges these penalties are piercing. Such is proper when the FOIA Coordinator was given numerous chances to get it right and the administrative appeal to the City Council was flatly and wrongfully ignored. The Legislature has given public bodies fair and full warning that they must halt, as a matter of clear public policy, the wrongfully denial of valid and reasonable FOIA requests, and to treat FOIA requests with the high level of respect the public policy of access-to-information deserves. The only way this is going to be achieved is if courts actively and properly punish such wrongful actions as required or recommended by the Legislature.

RELIEF REQUESTED

WHEREFORE, the Court is requested grant summary disposition to Plaintiff Lambert as a wrongful denial case pursuant to MCL 15.240(4) and MCR 2.116(C)(10) and order the production of all response records, without redactions, immediately. The Court is also requested to award attorney fees, costs, and disbursements and order a bill of costs to be submitted. Lastly, the Court is requested to impose punitive damages in the amount of \$3,000.00 (or \$4,500.00 if the additional penalties under Section 10a apply) payable to the Plaintiff and impose civil fines in the amount of \$18,000.00 (or \$19,500.00 if the additional penalties under Section 10a apply) payable to the state treasury as provided by statute.

¹³ To the extent this Court would review this case as a wrongful fee case under Section 10a, the same award of “reasonable attorneys fees, costs, and disbursements” is authorized. MCL 15.240a(6).

Date: August 2, 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

2nd day of August, 2017.

Philip L Ellison

PHILIP L. ELLISON
Attorney at Law

RESPECTFULLY SUBMITTED:

Philip L Ellison

OUTSIDE LEGAL COUNSEL PLC
BY PHILIP L. ELLISON (P74117)
Attorney for Plaintiff Lambert
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(989) 642-0055
(888) 398-7003 - fax
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**Electronic signature authorized by MCR 2.114(C)(3) and MCR 1.109(D)(1)-(2)



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

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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- 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.

- 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.
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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.

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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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President

Michigan Open Carry, Inc.



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

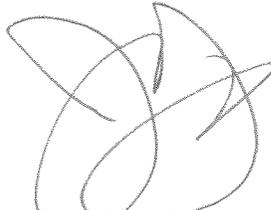
primarily benefitting the general public and that request to waive fees has been denied by the FOIA coordinator. This denial is related to a waiver of fees and not of your FOIA request.

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 faint, circular stamp or watermark.

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.

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

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: \$ _____

Number of Envelopes or Packages:

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:

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

x _____ = \$ 0

6b. Web Labor Cost

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

Actual Cost of Envelope or Packaging: \$ _____

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

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

*Expedited Shipping or Insurance as Requested: \$ _____

* Requestor has requested expedited shipping or insurance

Number:

x _____ = \$ _____

Costs:

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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MOC
mail

Tom Lambert <tlambert@

EXHIBIT

8

OUTSIDE LEGAL COUNSEL PLC
www.olcplc.com

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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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:

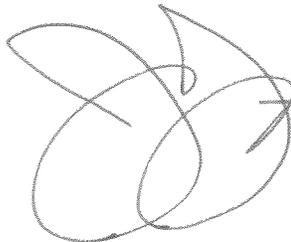
(8) In either the public body's initial response or subsequent response as described under section 5(2)(d), the public body may require a good-faith deposit from the person requesting information before providing the public records to the requestor if the entire fee estimate or charge authorized under 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 final flourish extending to the right.

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 <i>number of minutes</i>: _____, 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 <i>number of minutes</i>: _____, 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 _____ = \$ _____

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 ½ x 11-inch, single and double-sided): _____ cents per sheet
- Legal (8 ½ 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 _____ =

\$ _____

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:

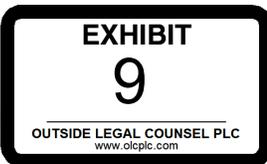
- (a) The final fee for the prior written request was not more than 105% of the estimated fee.
- (b) The public records made available contained the information being sought in the prior written request and are still in the City's possession.
- (c) The public records were made available to the individual, 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

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MOC
mail

Tom Lambert <tlambert@miopencarry.org>

EXHIBIT

10

OUTSIDE LEGAL COUNSEL PLC
www.olcplc.com

FOIA Fee Appeal

Tom Lambert <tlambert@miopencarry.org>

Mon, Oct 17, 2016 at 12:11 PM

To: Ron Wruble <rwruble@harborbeach.com>

Cc: Gary Booms <gary.s.booms@gmail.com>, "Ferris & Schwedler, P.C." <ferrisschwedler@gmail.com>, 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>, Brian Jeffs <bjeffs@miopencarry.org>

Mr. Wruble,

I am hereby appealing the fees the City of Harbor Beach is unlawfully attempting to charge for the FOIA request I submitted on October 3rd, 2016.

My appeal is based on the City's response submitted to me via Mr. Ferris on Oct. 14th, 2016, which I have attached. Please note the form submitted with the response is improperly dated as Oct. 11th, 2016. The correct date is Oct. 14th, as stated on the cover letter.

The following are the items I am appealing at this time. I hereby reserve the right to issue further appeals at a later date, or challenge the City's response altogether.

Labor Cost for Copying/Duplication:

- Under 15.234 (2), the City is not permitted to charge more than the actual cost of fringe benefits. Should the City's numbers be believed, an employee earning \$50,000 per year earns more than \$25,000 per year in benefits. Nearly \$30,000 with the initial numbers. Plus, 2 hours to make digital copies of records, most of which should already be in a digital format, is quite excessive.

MCL 15.234

(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:

Labor Costs to Locate:

- The City's stated "unusual circumstance" of "limited staff" used to justify charging for searching costs is not a nature of the request and is therefore impermissible under 15.234 (3).

MCL 15.234

(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.

Waiver: Public Interest:

- The requested information is in the public interest as it will assist Harbor Beach residents in determining how the City reached a public decision. The City's statement that this is not in the public interest is troubling. One would think the City would want its residents to have full knowledge of how the City reached a particular decision, and would have made this information available without being prompted.

Estimated Time Frame to Provide Records:

- The City has estimated 5 hours of work to produce the records and has previously stated that work has already commenced. However, in the City's last response, the City estimated a date of October 21, 2016 for the production of said records, which is well over week from the time work was indicated to have begun. Under these circumstances, I believe there is good cause to believe this estimate is not reasonably accurate as required by 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.

Deposit: Good Faith:

- Were the City to estimate its costs properly and in good-faith, the total costs would be under the amount necessary to justify a 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.

Deposit: Increased Deposit Due to Previous FOIA Fees Not Paid In Full

- The City has indicated that it is requiring an increased deposit before it begins a full public record search. 15.234 (11) contains numerous criteria, **ALL** of which must be met to justify a deposit of this nature. At this time **NONE** of the necessary criteria have been met and the City has provided no indication to the contrary.

MCL 15.234

(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.

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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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.”

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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.

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