

**STATE OF MICHIGAN
IN THE COURT OF APPEALS**

MICHIGAN OPEN CARRY, INC,
Plaintiff-Petitioner/Appellant,

Court of Appeals Case No.: 344936
Court of Claims Case No.: 18-000058-MZ

v.

MICHIGAN DEPARTMENT OF STATE
POLICE also commonly known as the
MICHIGAN STATE POLICE,
Defendant/Appellee

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APPELLANT MICHIGAN OPEN CARRY, INC'S BRIEF ON APPEAL

ORAL ARGUMENT REQUESTED

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STATEMENT OF JURISDICTION

The Michigan Court of Appeals has jurisdiction to entertain and adjudicate this appeal of right pursuant to MCR 7.202(6)(a), MCR 7.203(A)(1), and MCL 600.6446(1) as the August 3, 2018 *Opinion* issued by the assigned Court of Claims judge constitutes a final order with an appeal by right.

STATEMENT OF QUESTION(S) PRESENTED

- I. Did the Court of Claims error in refusing to determine what “list of expenditures” means vis-à-vis the September 28, 2017 FOIA request?

Appellant/Plaintiff answers: Yes

- II. Did the Court of Claims error in refusing to determine what “list of expenditures” means for purposes of sought *Lash*-styled relief?

Appellant/Plaintiff answers: Yes

- III. Did the Court of Claims error in dismissing this case pursuant to MCR 2.116(C)(10), including Counts I and II of the First Amended Complaint?

Appellant/Plaintiff answers: Yes

INTRODUCTION

FOIA is a pro-disclosure directive to public bodies. *Herald Co v Bay City*, 463 Mich 111, 119; 614 NW2d 873 (2000). Under the Firearms Act, the Michigan Department of State Police (“the Department”) was required to annually provide “[a] list of expenditures made by the department of state police from money received under this act, regardless of purpose.” MCL 28.425e(5)(m). For years, the Department has failed its obligation by instead providing what is a summary of expenditures based on six broad categories. See **Exhibit O, ¶¶7-9**. In other words, it has failed its legal duty. So, Plaintiff Michigan Open Carry, Inc made a FOIA request requesting that the Department produce—

A list of expenditures made by the Department of State Police from money received under the Firearms Act (1927 PA 372, MCL 28.421 et. seq.), regardless of purpose, between October 1, 2015 to September 30, 2016.

The Department professes it “granted” the request by providing a mere summary of expenditures; yet it did not provide the list of expenditures. The Court of Claims granted summary disposition by concluding that there *is* a material dispute between the parties as to what constitutes a “list of expenditures,”¹ and thusly the Department

¹ The Court is reading that statement correctly; the Court of Claims granted summary disposition despite a material issue being in dispute.

is entitled to summary disposition. The Court suggested the “issue would seem better left to an action for declaratory or injunctive relief” rather than fulfilling the FOIA request.² This clearly was in error. Reversal is required.

FACTS³

Plaintiff MICHIGAN OPEN CARRY, INC is a Michigan not-for-profit public advocacy organization that promotes the lawful open carry of holstered handguns.

First Am Ver Compl, ¶1. Plaintiff has long believed the Department is hiding how it is expending certain collected fees for conceal-carry licensing fees. Plaintiff wants to know and is entitled to the same and Michigan law directs that we “cannot hold our officials accountable if we do not have the information upon which to evaluate their actions.” *Practical Political Consulting v Sec’y of State*, 287 Mich App 434, 464; 789 NW2d 178 (2010). When government begins closing doors, it selectively controls information rightfully belonging to the people; and selective information is misinformation. *Detroit Free Press v Ashcroft*, 303 F3d 681, 683 (CA 6, 2002).

² However, as discussed below, Plaintiff *did* seek this type of relief. **First Am Ver Compl, ¶28(f)**; see also Argument, ¶II, *infra*.

³ All references to Exhibit ___ refer to the exhibits attached to filing in the record entitled Plaintiff’s *Response in Opposition to 06/01/2018 Motion for Summary Disposition*, dated June 5, 2018. They are re-attached hereto for this Court’s convenience.

On September 28, 2017, Plaintiff made a FOIA request requesting that the Department produce—

A list of expenditures made by the Department of State Police from money received under the Firearms Act (1927 PA 372, MCL 28.421 et. seq.), regardless of purpose, between October 1, 2015 to September 30, 2016.

Exhibit A. In essence, the Department should have simply provided a list of expenditures, i.e. accounting records, listing the monies the State Police expended from received conceal-carry licensing fees. “The response to this Freedom of Information Act request was expected to include accounting and/or budgetary-like records showing how each and every dollar of the ~\$8 million [in] fees collected by the Michigan Department of State Police is spent.” **Exhibit O, ¶10.** Plaintiff did not ask for a mere *summary* of expenditures and never asked for a copy of any specific publication. It sought specific *information*. To aid in that search for all the expenditure records, it was explained merely “[f]or your convenience” that “this information is required by law to be posted to the Department’s website per Section 5e of 1927 PA 372, MCL 28.425e(5)(m).” *Id.* Critically, Plaintiff never asked for a copy of any document that was already on the Department’s public annual report posted on its website. And why would it. Website publications are already publicly available.

Plaintiff and its members have long believed the Department is using the conceal-carry licensing fees as a backdoor fund-generating tax and also to act as an impediment to obtaining licensing by cost constraints for those who cannot avoid the same. **Exhibit O, ¶¶3-5.** The Department has been less than clear in its annual reports. *Id.*, ¶8. The current fee is at least \$115.00 after fingerprinting. See e.g. *Concealed Pistol Application and Instructions*, Michigan State Police, https://www.michigan.gov/msp/0,4643,7-123-1878_1591_3503_4654-10929--,00.html. Discovery provided in this case has already confirmed games are being played by the Department. For example, emails turned over in discovery thus far have revealed that over \$10 million was collected in fees for the relevant period; yet, their report only lists \$8 million. Compare **Exhibit L, p. 3⁴** with **Exhibit M, Batestamp MSP000052.** Firearm fees are also being used to support dozens of five and six figure salaries of unrelated employees across the Department. **Exhibit M, Batestamp MSP000052, MSP000057.**

MCL 28.425e(5)(m) provides—

⁴ The irrelevant pages of **Exhibit L** have been removed for brevity. A full copy is available at [https://www.michigan.gov/documents/msp/Oct. 2015-Sept. 2016 CPL Annual Report 560961 7.pdf](https://www.michigan.gov/documents/msp/Oct._2015-Sept._2016_CPL_Annual_Report_560961_7.pdf).

The department of state police shall by January 1 of each year file with the secretary of the senate and the clerk of the house of representatives, and post on the department of state police's internet website, an annual report setting forth all of the following information for the state for the previous fiscal year: ***

(m) A *list of expenditures* made by the department of state police from money received under this act, regardless of purpose.

In other words, the Department is supposed to already be publishing the list of expenditures—not a mere total—per the *Firearms Act*, and then publicly publishing this specifically listed full data set on its website. MCL 28.425e(5)(m). However, whether the Department is properly meeting its statutory obligation or not, Plaintiff wants the lists of expenditures and made a demand for the same via its September 28, 2017 FOIA request.⁵

In response to Plaintiff's September 28, 2017 FOIA request and instead of actually providing the list of expenditures, the Department provided a written statement asserting—

Your request is granted. The records you have requested are available on the department's website at http://www.michigan.gov/msp/0,4643,7-123-1878_1591_3503_4654-77621--,00.html.

⁵ The Department has seemingly long refused to actually comply with this disclosure provision under the *Firearms Act* statute as it would problematically reveal that the collected fees are generating far more funds more than necessary to run the conceal-carry licensing process. In the 2015/2016 fiscal year, the Department collected over \$8 million or \$10 million (depending on which data from the Department one believes). **Exhibit L, p. 3; Exhibit M, Batestamp MSP000052.**

Exhibit G. A copy of that webpage is attached as **Exhibit K.** The report corresponding to the date range listed in the FOIA request is also attached as **Exhibit L.** This report actually cited by the Department wholly fails to provide any “list” of expenditures. *Id.* Instead, it provides an overly vague *summary* or *compilation* of expenditures. In other words, the Department failed to provide the specific ‘list of expenditures’ as requested by Plaintiff, but rather revealed only a small summary of general categorical totals with seventy-five percent of their reported expenses (nearly \$6 million) collectively grouped into a generic category of ‘support systems.’

CONCEALED PISTOL LICENSING ANNUAL REPORT STATEWIDE TOTALS REVENUE AND EXPENDITURES OCTOBER 1, 2015 - SEPTEMBER 30, 2016	
Revenue	
Actual revenue from fees paid for CPL applications ⁵ :	\$ 8,020,921
Five year CPL revenue average:	\$ 5,012,806
Expenditures ⁶	
MCL 28.424, 28.425a, 28.425d, 28.428 ⁷ :	\$ 57,902
MCL 28.425, 28.425c, 28.425m ⁸ :	\$ 38,285
MCL 28.425b, 28.425e, 28.426 ⁹ :	\$ 1,799,429
Support systems utilized by the CPL unit:	\$ 5,425,305
Carryforward set aside for AFIS upgrade:	\$ 700,000

Exhibit L, p. 3. This does not even remotely fulfill Plaintiff's September 28, 2017 FOIA request. Plaintiff's president, Thomas Lambert, even explicitly explained the same to the FOIA Coordinator before bringing suit—

The link you provided in your response (http://www.michigan.gov/msp/0,4643,7-123-1878_1591_3503_4654-77621--,00.html) does not direct one to a list of expenditures in a particular date range, but rather to a list of annual reports on Concealed Pistol Licenses dating back to 2003.

With respect to the link you provided, I will say that I have already looked through these reports many times and that it was the lack of the inclusion of information I seek that triggered this FOIA request.

In order to avoid any possible confusion going forward, please note that *I am not requesting a list of reports, I am not requesting a summary of expenditures, nor am I requesting a list of expenditure categories. I am specifically looking for a list of expenditures as provided for in MCL 28.425e(5)(m).*

Exhibit I (emphasis added). Plaintiff appealed to the head of the Department (see MCL 15.240) and the Director of the Department offered no corrections to the FOIA Coordinator's violation. **First Am Ver Compl, ¶12.**

In March 2018, Plaintiff sued making two claims: wrongful denial under FOIA and, in the alternative, a *Hartzell*⁶ claim. Instead of focusing on those two claims, the

⁶ *Hartzell v Mayville Sch Dist*, 183 Mich App 782; 455 NW2d 411 (1990). A *Hartzell* claim provides if responsive records do not exist, a public body cannot remain silent as it is “inconsistent with the purposes of the FOIA for a public body to remain silent, knowing that a requested record does not exist, and force the requesting party to file a lawsuit in order to ascertain that the document does not exist.”

Department, by counsel, filed a motion “to dismiss” attacking everything but the two claims actually made. To make sure things were clear for the confused litigator, Plaintiff filed an amended complaint to simplify the pleading for the Department’s understanding. Notwithstanding, the amended complaint makes the exact same two claims and seeks the same relief. See **First Am Ver Compl.**

Concurrent with the service of the verified complaint, Plaintiff also propounded discovery requests including an interrogatory requiring the Department to—

[i]dentify (name, address, telephone number, email address) the name(s) of each and every employee/agent/contractor/official within or on behalf of the Michigan Department of State Police who is responsible for compiling the list of expenditures made by the Department of State Police from money received under the Firearms Act as required by MCL 28.425e(5)(m).

Exhibit N, ¶4. The reason is not a mystery; Plaintiff intended to depose this person to marshal evidence that there are, in fact, responsive accountings listing the expenditures—dollar by dollar—as actually existing. The Department minimally identified Amanda Baker. *Id.*

The Department moved for summary disposition before discovery was essentially started, much less completed⁷, and before the deposition of Amanda Baker

⁷ The scheduling order in this case left discovery open until October 2018.

has been even attempted to be undertaken. In a surprise move, the Court of Claims granted the motion. The opinion correctly explained that—

Count I of plaintiffs amended complaint alleges a violation of FOIA because plaintiff contends the website to which plaintiff was directed did “not contain the actual information, i.e., the list of expenditures, demanded by [plaintiff] by its Sept 28 FOIA request.” Count II of the complaint—which is pled in the alternative—asserts a so-called “*Hartzell* FOIA Claim.”

Opinion, p. 3. The Court of Claims also correctly recited that “plaintiff contends that defendant did not grant its request because the information to which defendant directed plaintiffs attention, i.e., the information on the website, was not the information plaintiff sought in its request.” *Id.*, at 5. However, the Court erred when it concluded that the website report had “provided a ‘list of expenditures’ as provided in MCL 28.425e(5)(m)” and “the Court is hard-pressed to conclude that defendant violated its obligations under FOIA.” *Id.*, at 6. This was in error. This appeal now follows.

STANDARD OF REVIEW

This Court reviews de novo a trial court’s decision on a motion for summary disposition. *DeFrain v State Farm Mut Auto Ins Co*, 491 Mich 359, 366; 817 NW2d 504 (2012). However, FOIA causes an unusual twist for typical case procedures. As the defendant and public body, the Department solely bears the burden of proving

that the refusal/denial was properly justified under FOIA. MCL 15.240(4); *Federated Publications, Inc v City of Lansing*, 467 Mich 98, 109; 649 NW2d 383 (2002). A requester need not prove anything. If a public body fails to meet its burden, the Court must order disclosure. *Hopkins v Duncan Twp*, 294 Mich App 401, 409; 812 NW2d 27 (2011).

FOIA PRINCIPLES AND MEMORANDUM OF LAW

Michigan appellate courts have repeatedly and consistently described FOIA as a “pro-disclosure statute,” e.g. *Herald Co, supra*, at 119; *Swickard v Wayne Co Med Examiner*, 438 Mich 536, 544; 475 NW2d 304 (1991), which must be interpreted broadly to ensure proper public access, e.g. *Practical Political, supra*, at 465. “FOIA is a manifestation of this state’s public policy favoring public access to government information, recognizing the need that citizens be informed as they participate in democratic governance, and the need that public officials be held accountable for the manner in which they perform their duties.” *Manning v East Tawas*, 234 Mich App 244, 248; 593 NW2d 649 (1999). 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). FOIA provides “that ‘a person’ has a right to inspect, copy, or receive public records upon providing a written request to the FOIA coordinator of the public body.” *Detroit Free Press, Inc v City of Southfield*, 269 Mich App 275, 290; 713 NW2d 28 (2005). “Under FOIA, a public body must disclose all public records that are not specifically exempt under the act.” *Hopkins, supra*, at 409; see also MCL 15.233(1).

ARGUMENT

I. The Court of Claims erred in not deciding whether the Department provided a general “summary” of expenditures rather than the requested specific “list” of expenditures.

The trial court in this case violated one of its most basic duties. “It is a judge’s duty to decide all cases within his jurisdiction that are brought before him....” *Pierson v Ray*, 386 US 547, 554 (1967). Further, “[i]t is the duty of a judge wherever possible to resolve rights of citizens upon the facts and arguments that are presented in an adversary context exposed to public view...” *Military Audit Project v Bush*, 418 F Supp 876, 878 (DDC 1976). Correctly, the Court of Claims recounts that—

Plaintiffs argument rests on its interpretation of MCL 28.425e(5)(m) and on its own view of how detailed the “list of expenditures” must be in order to satisfy the statute. The problem with that argument, at least for purposes of this FOIA action, is that this interpretation is plaintiff’s alone, and plaintiff readily admits that defendant does not share that view of the statute.

Plaintiff's argument, and citation of Lambert's e-mail, highlights the real issue in this case: plaintiff interprets MCL 28.425e(5)(m) in one manner, and defendant interprets it in another manner.

Opinion, p. 6-7. That is true; there is a dispute. Therefore, under *Pierson* and *Bush*, it became the trial court judge's immediate duty to decide what is meant by "list of expenditures." Instead of answering that question squarely presented by the parties, the Court concluded it "would not sanction that approach" and instead directed that the "issue would seem better left to an action for declaratory or injunctive relief." *Id.*, **at 7.** The Court of Claims erred and is wrong to pass on the issue. Plaintiff is claiming that the Department failed to provide the demanded 'list of expenditures' it is entitled to received under its September 28, 2017 FOIA request. It was the trial court's solemn duty to decide the issue and not fob off the question for another future case framed in the alternate form preferred by the judge, rather than the parties.

The Court of Claims also took issue with the presentation of the disputed legal question of what constitutes a "list of expenditures" under MCL 28.425e(5)(m) via a FOIA case and directed that the "issue would seem better left to an action for declaratory or injunctive relief." However, Plaintiff *did* ask for this relief—

WHEREFORE, Plaintiff/Petitioner MOC requests this Court... enter an order pursuant to *Lash v Traverse City*, 479 Mich 180 (2007) commanding Defendant MICHIGAN DEPARTMENT OF STATE POLICE to comply with MCL 28.425e(5)(m) henceforth by posting on

Defendant MICHIGAN DEPARTMENT OF STATE POLICE's internet website an annual report setting forth a list of expenditures made by the Defendant MICHIGAN DEPARTMENT OF STATE POLICE from money received under the *Firearms Act*, regardless of purpose and disclose the same to Plaintiff/Petitioner MOC.

First Am Ver Compl, ¶128(f). In *Lash*, the Supreme Court explained where a public body violates its statutory duty but the Legislature provides no private cause of action, a defendant “could enforce the statute by seeking injunctive relief pursuant to MCR 3.310, or declaratory relief pursuant to MCR 2.605(A)(1).” *Lash v Traverse City*, 479 Mich 180, 196; 735 NW2d 628 (2007). Here, the Department has violated FOIA by failing properly respond to Plaintiff's September 28, 2017 FOIA request demanding a list of expenditures, but it also *separately* violated MCL 28.425e(5)(m) which can be remedies by *Lash*-authorized relief. So even if the Court of Claims correctly thought an action “for declaratory or injunctive relief” is better styled, that relief was specifically sought. Courts are to “look to the relief asked.” *Howard v Bouwman*, 251 Mich App 136, 146; 650 NW2d 114 (2002). Simply not answering the legal question presented was in error. Reversal of the refusal to decide is required.

II. The Court erred in granting summary disposition to the Department on the wrongful denial claim under the Freedom of Information Act.

“The Freedom of Information Act declares that it is the public policy of this state to entitle all persons to complete information regarding governmental affairs so that they may participate fully in the democratic process.” *Grebner v Clinton Charter Twp*, 216 Mich App 736, 740; 550 NW2d 265 (1996); see also *Bitterman v Village of Oakley*, 309 Mich App 53, 60; 868 NW2d 642 (2015). “[A] public body must disclose all public records that are not specifically exempt under the act.” *King v Mich State Police Dep’t*, 303 Mich App 162, 176; 841 NW2d 914 (2013). Failure to do so is actionable. MCL 15.240(4).

Here, the Court of Claims erred in prematurely granting summary disposition pursuant to MCR 2.116(C)(10) to the Department. Summary disposition under MCR 2.116(C)(10) is premature if it is granted before discovery on a disputed issue is complete. *Marilyn Froling Revocable Living Trust v Bloomfield Hills Country Club*, 283 Mich App 264, 292; 769 NW2d 234 (2009). A party believing that summary disposition is premature is obligated to “provide some independent evidence that a factual dispute exists.” *Michigan Nat’l Bank v Metro Institutional Food Serv, Inc*, 198 Mich App 236, 241; 497 NW2d 225 (1993). This includes supplying an affidavit under

MCR 2.116(H) “indicating the probable testimony of witnesses whose affidavits in support of the plaintiff[s] contentions could not be procured.” *Marilyn Froling*, supra, at 293 fn 60. Here, there is a dispute whether a list of expenditures exists in the custody or control of the Department.

A. The affidavit of Thomas Lambert provides the basis to deny the Department summary disposition.

Plaintiff’s president, Thomas Lambert, provided an MCR 2.116(H)⁸ affidavit.

Exhibit O. He explained that “[a]s part of our advocacy work, Michigan Open Carry, Inc noticed that the Michigan Department of State Police were not reporting the specific *list of expenditures* as MCL 28.425e(5)(m) dictates, but rather only a small summary of general categories with vague descriptions like ‘support systems.’” *Id.*,

¶8. As such, “Michigan Open Carry, Inc then filed a Freedom of Information Act request with the Michigan Department of State Police seeking the actual list of

⁸ A party may show by affidavit that the facts necessary to support the party's position cannot be presented because the facts are known only to persons whose affidavits the party cannot procure. MCR 2.116(H)(1). The affidavit must (a) name these persons and state why their testimony cannot be procured, and (b) state the nature of the probable testimony of these persons and the reason for the party's belief that these persons would testify to those facts. MCR 2.116(H)(1)(a)-(b). When this kind of affidavit is filed, the court may enter an appropriate order, i.e. denying the summary disposition motion or allowing additional time to permit further depositions, answers to interrogatories, or other discovery. MCR 2.116(H)(2)(a)-(b).

expenditures.” *Id.*, ¶19. In the MCR 2.116(H) affidavit, Lambert further averred that “[i]nstead of providing the accounting and/or budgetary-like records, the Michigan Department of State Police provided a website link to the same small list of general category totals (having vague descriptions) instead of the list of expenditures requested” and thusly the Department “did not fulfill Michigan Open Carry, Inc’s September 28, 2017 FOIA request.” *Id.*, ¶¶12-13.

To support that the Department had responsive records consisting of a list of expenditures, Plaintiff conducted initial discovery (**Exhibit N**), allowing Lambert to aver that Amanda Baker is the director of the Department’s Budget and Financial Services Division and is the person who has the necessary facts that actual responsive records of a list of expenditures are available, existing, and disclosable from the Michigan Department of State Police. **Exhibit O, ¶¶18, 20**. This also allowed Lambert to aver that Amanda Baker was not asked to see or to retrieve these records containing the demanded information sought by Plaintiff’s September 28, 2017 FOIA request. *Id.* Lambert also averred—

Amanda Baker specifically has these facts because Amanda Baker, as the director of the Michigan Department of State Police's Budget and Financial Services Division, has been identified, by discovery from the Michigan Department of State Police, as being an “employee / agent / contractor / official within or on behalf of the Michigan Department of State Police who is responsible for compiling the list of expenditures made by the Department of

State Police from money received under the Firearms Act as required by MCL 28.425e(5)(m).”

Id., ¶21; see also Exhibit N, ¶4. This makes sense, because such specific lists of expenditures must exist; otherwise, it would be impossible to calculate *aggregate totals* if lists of expenditures did not exist for the Department accountants to tubulate.⁹ It would be a shocking marvel if the Department could create a cumulative summary of expenditures in the millions of dollars as it did in Exhibit L if it does not have the underlying specific data to make the cumulative calculations. The ‘list of expenditures’ records clearly and reasonably exists, and the deposition of Amanda Baker will supply the necessary evidence. The premature dismissal of the wrongful denial FOIA claim should be reversed.

B. The Department falsely asserts it fulfilled Plaintiff’s FOIA request.

The Department asserts it fulfilled Plaintiff’s September 28, 2017 request when it provided the website link to the summary totals, rather than providing the requested list of expenditures. That is not true. There is, at least, a material question of fact regarding what the plaintiff requested. Exhibit O, ¶¶18-21. Plaintiff

⁹ The Department has never asserted in its premature motion for summary disposition that the list of expenditures does not exist.

requested “a *list of expenditures* made by the Department of State Police from money received under the *Firearms Act...*” **Exhibit A**. The report which the Department asserts (under oath in response to an interrogatory) contains the “list” of expenditures is on page 3 of the OCTOBER 1, 2016 - SEPTEMBER 30, 2016 CONCEALED PISTOL LICENSING ANNUAL REPORT. **Exhibit N, ¶1**. That report is/was attached to both the First Amended Verified Complaint and hereto. **Exhibit L**. The Department is clearly and sorely misguided; page 3 does not have any *list* of expenditures—it has only five vague *totals* of expenditures. **Exhibit L, p. 3**. Sum aggregates are not a “list” of expenditures. To the extent the Department was confused, Plaintiff, by its president Thomas Lambert, specifically explained to the FOIA Coordinator prior to suit that—

With respect to the link you provided, I will say that I have already looked through these reports many times and that it was the lack of the inclusion of information I seek that triggered this FOIA request.

In order to avoid any possible confusion going forward, please note that *I am not requesting a list of reports, I am not requesting a summary of expenditures, nor am I requesting a list of expenditure categories. I am specifically looking for a list of expenditures as provided for in MCL 28.425e(5)(m).*

Exhibit I.

C. Only a sufficiently descriptive request is needed to allow the public body to find public records containing the information sought.

The Supreme Court has explained “FOIA does not establish detailed requirements for a valid request.” *Herald Co, supra*, at 120. The Legislature “did not impose detailed or technical requirements as a precondition for granting the public access to information,” but instead “simply required that any request be sufficiently descriptive to allow the public body to find public records *containing the information sought*.” *Id.* at 121. The Supreme Court “note[s] that it would be odd indeed to ask a party who has no access to public records to attempt specifically to describe them.” *Id.* Rather, a request is sufficient when it allows the public body to find the requested information within a public record. *Id.* Plaintiff has been clear: it does not want summaries or aggregates; it wants the list of expenditures.

D. Plaintiff never asked for the Concealed Pistol License Annual Report.

Here, Plaintiff never asked for production of the “CONCEALED PISTOL LICENSE ANNUAL REPORT FOR OCT 1, 2015 TO SEPT 30, 2016”—a specific public record. Instead, Plaintiff asked *for information*—a “list of expenditures made by the Department of State Police from money received under the *Firearms Act* (1927 PA 372, MCL 28.421 et. seq.), regardless of purpose, between October 1, 2015 to September 30, 2016.”

Exhibit A. In other words, the Department produced a single public record which *does not* contain the information Plaintiff actually sought. And Plaintiff believes this was done intentionally for political reasons running contrary to the political advocacy position of Plaintiff. **Exhibit O, ¶11.** Plaintiff’s FOIA request sufficiently describes the information sought—i.e. list of expenditures. Yet, the Department produced something else—a summary of expenditures. This is an obvious and indisputable violation of the FOIA.¹⁰ Summary disposition should have been denied. The Court of Claims erred and reversal is required.

III. In the alternative, and to the extent the Amanda Baker deposition reveals the non-existence of the records, a *Hartzell* claim lies.

Count II has been pled in the alternative to Count I. A plaintiff is permitted to plead in the alternative even where proof of one claim must defeat the existence of another. *Abel v Eli Lilly & Co*, 418 Mich 311, 335; 343 NW2d 164 (1984); MCR 2.111(A)(2). When a public body fails to properly issue a denial indicating that records containing responsive information do not exist and a lawsuit is required to reveal the nonexistence, a public body is still liable under FOIA. E.g. *Hartzell, supra; Petersen*

¹⁰ As noted above, the deposition of Amanda Baker would reveal the list of expenditures actually exists. **Exhibit O, ¶¶18-22.** Plaintiff asserts it must exist because it would be impossible to have aggregate totals if lists of individual expenditures did not exist for the accountants to calculate.

v Charter Twp of Shelby, unpublished decision of the Court of Appeals, issued May 1, 2018 (Docket No. 336301)(attached as **Exhibit P**). A public body has more than just the duty to produce non-exempt documents. “FOIA requires disclosure of the fact that a document does not exist” in addition to the legal duty of production of requested records. *Hartzell, supra*, at 789. While the nonexistence of a public record is a defense for the failure to produce or allow access to the record, “it is not a defense to the failure to respond to a request for a document with the information that it does not exist.” *Id.*, at 787; see also MCL 15.235(5). This is because “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.

MCL 15.235(2)(a)-(d). “A certificate” is required to be issued declaring “that the public record does not exist under the name given by the requester or by another name reasonably known to the public body” if a public body cannot actually produce the

public records sought, i.e. they do not exist. MCL 15.235(5)(b). Any other basis for denial must also be specified, in writing, but a certificate is not otherwise required. MCL 15.235(5)(a). FOIA is intended primarily as a pro-disclosure directive to public bodies. *Swickard, supra*, at 544. When a successful legal action results under a *Hartzell* claim, the public body must still pay reasonable attorney fees, costs, and disbursements of the action because the requester is a prevailing party. MCL 15.240(6); *Hartzell, supra*; *Petersen, supra*. This includes when a litigant is forced to sue only to later have the public body concede the public record never actually existed in the first place. *Id.*

As of current, it is unclear whether the Department actually has accounting records (i.e. a list) of expenditures made by the Department of State Police from money received under the *Firearms Act* (1927 PA 372, MCL 28.421 et. seq.), regardless of purpose, between October 1, 2015 to September 30, 2016. **Cf Exhibit M.** Normal deposition-based discovery will confirm, under oath, if the Department has such records. However, Count II is pled in the alternative and only becomes operative in the unlikely event¹¹ responsive records do not actually exist. Plaintiff

¹¹ It would be odd that the Department could create a summary of expenditures in the millions of dollars as it did in **Exhibit L** if it does not have the underlying list of specific data to make the calculation.

believes, however, these records containing the list of expenditures do exist, and the money has possibly been spent on inappropriate purchases. The Department did not provide any certificate of nonexistence of accounting records or lists of expenditures. In reality, it is Plaintiff's belief—which discovery will bear out—that the Department is trying to hide what it is actually spending (or misspending) conceal-carry application fee dollars on to avoid advocacy by groups like Plaintiff asking legislators to take away those funds from the Department, i.e. lowering lawful carry application fees by legislative changes. **Exhibit O, ¶11.** A lot of odd expenditures can be stuffed under the label of "support systems" totaling nearly \$6 million annually, and this case seeks to bear that out. Again, we "cannot hold our officials accountable if we do not have the information upon which to evaluate their actions." *Practical Political Consulting, supra*, at 464.

CONCLUSION

This case is simply about government transparency compliance. Plaintiff wants the information it demanded—a list of expenditures. Instead, it was provided merely a general form of cumulative summary rather than the specific information itself. It is believed this was done intentionally. As such, summary disposition in favor of Department before discovery was complete was in error. The MCR 2.116(H)

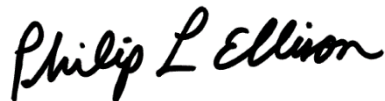
affidavit shows that discovery will reveal the Department has that information and is hiding the same. Reversal is required.

RELIEF REQUESTED

WHEREFORE, this Court is requested to reverse the August 3, 2018 opinion of the Court of Claims, vacate its order granting summary disposition to the Department, and remand with instructions to proceed with this action including allowing the deposition of Amanda Baker. Upon remand, this Court is also directed to require the Court of Claims to address, if appropriate, the other forms of relief that are mandated or authorized by *Lash*, MCL 15.240(6), MCL 15.240(7), and MCL 15.240b. A standard award of appellate courts is also requested. MCR 7.219.

Date: August 10, 2018

RESPECTFULLY SUBMITTED:



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



MOC
mail

Tom Lambert



miopencarry.org>

MSP FOIA Request

Tom Lambert <tlambert@miopencarry.org>
To: MSP-FOI@michigan.gov
Cc: MiOC Board <board@miopencarry.org>
Bcc: Dean Greenblatt <dgg@mnsi.net>

Thu, Sep 28, 2017 at 12:00 PM

To whom it may concern,

On behalf of Michigan Open Carry, Inc., and 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 Michigan Department of State Police:

- A list of expenditures made by the Department of State Police from money received under the Firearms Act (1927 PA 372, MCL 28.421 et. seq.), regardless of purpose, between October 1, 2015 to September 30, 2016.

For your convenience, please note that this information is required by law to be posted to the Department's website per Section 5e of 1927 PA 372, [MCL 28.425e](#) (5)(m).

(5) The department of state police shall by January 1 of each year file with the secretary of the senate and the clerk of the house of representatives, and post on the department of state police's internet website, an annual report setting forth all of the following information for the state for the previous fiscal year:

(m) A list of expenditures made by the department of state police from money received under this act, regardless of purpose.

I am also hereby requesting a waiver of all fees as the disclosure of the requested information is in the public interest, as well as required by law, and will contribute to the public's understanding and knowledge of the Department of State Police's operations.

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.

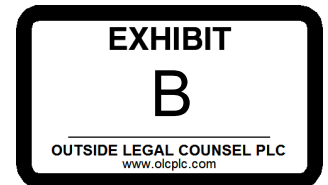
Thank you,

Tom Lambert
President
Michigan Open Carry, Inc.



STATE OF MICHIGAN
DEPARTMENT OF STATE POLICE
LANSING

RICK SNYDER
GOVERNOR



COL. KRISTE KIBBEY ETUE
DIRECTOR

10/05/2017

TOM LAMBERT
MICHIGAN OPEN CARRY INC
XX
XX, MI 00000

NOTICE OF EXTENSION

Subject: CR-20048219; FIREARMS ACT;

Dear TOM LAMBERT:

The Michigan Department of State Police has received your request for public records under the Michigan Freedom of Information Act (FOIA), MCL 15.231 *et seq.*

We are extending the time for responding to your request by ten (10) business days, as permitted under MCL 15.235, Section 5(2)(d). Therefore, a written notice will be issued to you on or before October 19, 2017.

If you have any questions concerning this matter, please feel free to contact our office at 517-241-1934 or email MSP-FOI@michigan.gov. You may also write to us at the address listed below and enclose a copy of this correspondence.

To review a copy of the Department's written public summary, procedures and guidelines, go to www.michigan.gov/msp.

Sincerely,

LANCE GACKSTETTER
Freedom of Information Unit
Michigan State Police

EXHIBIT
C
OUTSIDE LEGAL COUNSEL PLC
www.olcplc.com



STATE OF MICHIGAN
DEPARTMENT OF STATE POLICE
RECORDS RESOURCE UNIT
P.O. BOX 30634
LANSING, MICHIGAN 48909

Celebrating 100 Years of Service

*** LANSING MI 489 10/6/17 ***

PRESORTED
FIRST CLASS

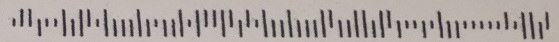


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Michigan Open Carry Inc
Tom Lambert
Po Box 16184
Lansing MI 48901

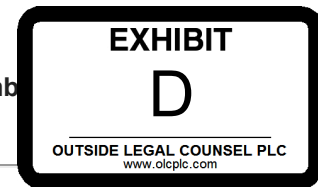
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MOC
mail

Tom Lambert



miopencarry.org>

FOIA Denial APPEAL

Tom Lambert <tlambert@miopencarry.org>
 To: EtueK@michigan.gov
 Cc: MSP-FOI@michigan.gov, MiOC Board <board@miopencarry.org>

Tue, Oct 10, 2017 at 1:30 PM

Col. Etue,

Pursuant to Section 10 of the Michigan Freedom of Information Act (FOIA), MCL 15.240(1)(a), I am hereby appealing the DENIAL of my FOIA request submitted to the Michigan Department of State Police (MSP) on September 28th, 2017, which I have attached as "MOC FOIA Request".

My request is for a list of expenditures made by the Department of State Police from money received under the Firearms Act (1927 PA 372, MCL 28.421 et. seq.), regardless of purpose, between October 1, 2015 to September 30, 2016.

As noted in my request, this information is statutorily required to be posted to the MSP's publicly available website on a yearly basis pursuant to MCL 28.425e(5)(m).

Background

On September 28th, 2017 at 12:00pm, I submitted on behalf of Michigan Open Carry, Inc. a FOIA request to the Michigan Department of State Police, pursuant to the FOIA, attached as "MOC FOIA Request". The request contained "FOIA" in both the subject line and within the first 250 words of the letter.

Per the MSP's publicly available FOIA Procedures and Guidelines, attached as "MSP Procedures and Guidelines", available at http://www.michigan.gov/msp/0,4643,7-123-1878_63999---,00.html, the request was submitted via email to MSP-FOI@michigan.gov.

Approximately 1 minute after sending the request, I received an email from MSP-FOI@michigan.gov with the subject line "**AUTOMATIC REPLY**", attached as "MSP Automatic Reply". The reply acknowledged the receipt of my request and indicated a response would be sent pursuant to the FOIA.

Under MCL 15.235 (1), because the request was sent via electronic mail, the request was considered received by the MSP one business day after it was sent, that date being September 29th, 2017.

Per MCL 15.235 (2), a public body who receives a request under the FOIA shall respond to a request for public information within 5 business days after the public body receives the request, doing one of four things. (a) granting the request, (b) denying the request, (c) granting in part and denying in part, or (d) extending the deadline to respond for not more than 10 business days.

As of October 10th, 2017, other than the initial automated reply, the MSP has not responded to the request.

Per MCL 15.235 (3), a failure of a body to respond to a qualifying request pursuant to Subsection 2, MCL 15.235 (2), "*constitutes a public body's final determination to deny the request*".

Per MCL 15.240 (1), "*If a public body makes a final determination to deny all or a portion of a request, the requesting person may do 1 of the following at his or her option: (a) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial. (b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, the court of claims, to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request.*"

This appeal follows

Reasons for Appeal

By not responding to my request pursuant to the FOIA, as the automated reply indicated would happen, the MSP has improperly denied my request. To date, no exemptions have been declared and no justifications to deny my request have been provided.

The Firearms Act mandates that the MSP report the information I have requested to legislative leadership, as well as post it publicly online by January 1st of each year.

MCL 28.425e(5)(m)

(5) The department of state police shall by January 1 of each year file with the secretary of the senate and the clerk of the house of representatives, **and post on the department of state police's internet website**, an annual report setting forth all of the following information for the state for the previous fiscal year:

(m) A list of expenditures made by the department of state police from money received under this act, regardless of purpose.

The FOIA requires a public body to notify a requestor if the information requested is available on the public body's public website, and direct the requestor to where the information can be obtained.

MCL 15.234 (5)

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

Further, if the MSP does not have the documents that I have requested, the FOIA still requires the disclosure of the fact that the requested documents do not exist (*Hartzell v Mayvill Community Sch Dist*, 183 Mich App 782; 455 NW2d 411 (1990)).

Action Requested

I ask that you please reverse the arbitrary denial of my request and comply with the FOIA fully at your soonest opportunity.

Lastly, please know that I'm happy to work with the MSP in good faith to obtain this information, if the MSP is willing to do the same.

Tom Lambert
President
Michigan Open Carry, Inc.

3 attachments

MOC FOIA Request.pdf
109K



MSP Procedures and Guidelines.pdf
126K



MSP Automatic Reply.pdf
78K



MOC
mail

Tom Lambert



miopencarry.org>

MSP FOIA Request

MSP-FOI <MSP-FOI@michigan.gov>
To: Tom Lambert <tlambert@miopencarry.org>
Cc: MiOC Board <board@miopencarry.org>

Tue, Oct 10, 2017 at 3:19 PM

Good afternoon, Mr. Lambert:

Attached is the response to your Freedom of Information Act request below.

Thank you,

MSP-FOI

From: Tom Lambert [mailto:tlambert@miopencarry.org]
Sent: Thursday, September 28, 2017 12:01 PM
To: MSP-FOI
Cc: MiOC Board
Subject: MSP FOIA Request

To whom it may concern,

On behalf of Michigan Open Carry, Inc., and 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 Michigan Department of State Police:

- A list of expenditures made by the Department of State Police from money received under the Firearms Act (1927 PA 372, MCL 28.421 et. seq.), regardless of purpose, between October 1, 2015 to September 30, 2016.

For your convenience, please note that this information is required by law to be posted to the Department's website per Section 5e of 1927 PA 372, [MCL 28.425e \(5\)\(m\)](#).

(5) The department of state police shall by January 1 of each year file with the secretary of the senate and the clerk of the house of representatives, and post on the department of state police's internet website, an annual report setting forth all of the following information for the state for the previous fiscal year:

(m) A list of expenditures made by the department of state police from money received under this act, regardless of purpose.

I am also hereby requesting a waiver of all fees as the disclosure of the requested information is in the public interest, as well as required by law, and will contribute to the public's understanding and knowledge of the Department of State Police's operations.

10/10/2017

Michigan Open Carry, Inc. Mail - MSP FOIA Request

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.

Thank you,

Tom Lambert

President

Michigan Open Carry, Inc.

 **20048219 - Firearms Act Expenditures.pdf**
293K



STATE OF MICHIGAN
DEPARTMENT OF STATE POLICE
LANSING

RICK SNYDER
GOVERNOR



COL. KRISTE KIBBEY ETUE
DIRECTOR

October 11, 2017

Mr. Tom Lambert
Michigan Open Carry, Inc.
P.O. Box 16184
Lansing, Michigan 48901

Subject: CR-20048219; Firearms Act Expenditures

Dear Mr. Lambert:

The Department of Michigan State Police (MSP) has received your request for records and processed it under the provisions of the Michigan Freedom of Information Act (FOIA), MCL 15.231 *et seq.*

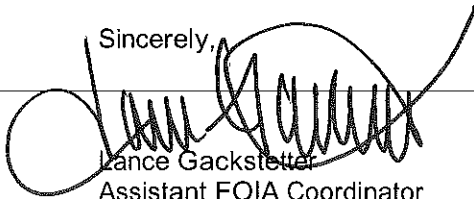
Your request is granted. The records you have requested are available on the department's website at http://www.michigan.gov/msp/0,4643,7-123-1878_1591_3503_4654-77621--,00.html. If you would like a paper copy, the cost to produce these records would be \$1.79.

You can submit a check or money order made payable to the STATE OF MICHIGAN and mail to P.O. Box 30266, Lansing, MI 48909. To ensure proper credit, please enclose a copy of this letter with your payment.

Under the FOIA, Section 10 (a copy of which is enclosed) you have the right to appeal to the head of this public body or to a judicial review of the denial. Under the FOIA, Section 10a (a copy of which is enclosed), you have the right to appeal the fee to the head of this public body.

To review a copy of the department's written public summary, procedures, and guidelines, go to www.michigan.gov/msp.

Sincerely,



Lance Gackstetter
Assistant FOIA Coordinator

Enclosures (2)

DENIAL OF RECORDS:

Denial is based on the following provision(s) of the Freedom of Information Act. MCL 15.243, Sec. 13(1). (All that apply are checked)

- (a) Information of a personal nature where the public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy.
 - Name(s) telephone number(s) address (es)
 - physical characteristics driver license number(s) date(s) of birth
 - Other _____

- (b) Investigating records compiled for law enforcement purposes, but only to the extent that disclosure would do any of the following:
 - (i) Interfere with law enforcement proceedings.
 - (ii) Deprive a person of the right to a fair trial or impartial administrative adjudication.
 - (iii) Constitute an unwarranted invasion of personal privacy.
 - (iv) Disclose the identity of a confidential source, or if the record is compiled by a law enforcement agency in the course of a criminal investigation, disclose confidential information furnished only by a confidential source.
 - (v) Disclose law enforcement investigative techniques or procedures.
 - (vi) Endanger the life or physical safety of law enforcement personnel.

- (d) Records or information specifically described and exempted from disclosure by statute:
 - MCL 780.758 William Van Regenmorter Crime Victim's Rights Act
 - MCL 28.421b Firearms
 - MCL 28.214 C.J.I.S. Policy Council Act (LEIN information)
 - Statute: _____

- (l) Medical: _____

- (m) Communications and notes within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action.

- (n) Records of law enforcement communication codes, or plans for deployment of law enforcement personnel, that if disclosed would prejudice a public body's ability to protect the public safety.

- (s) Unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance, public records of a law enforcement agency, the release of which would do any of the following:
 - (i) Identify or provide a means of identifying an informant.
 - (ii) Identify or provide a means of identifying a law enforcement undercover officer or agent or a plain clothes officer as a law enforcement officer or agent.
 - (v) Disclose operation instructions for law enforcement officers or agents.
 - (vii) Endanger the life or safety of law enforcement officers or agents or their families, relatives, children, parents or those who furnish information to law enforcement departments or agencies.
 - (viii) Identify or provide a means of identifying a person as a law enforcement officer, agent, or informant.
 - (ix) Disclose personnel records of law enforcement agencies.

- (w) Information or records that would disclose the social security number of any individual.

~~To the best of the department's knowledge, information, and belief, under the information provided by you or by any other description reasonably known to the department, the public records do not exist within the department.~~

- Based on the information you provided, we are unable to locate any records pertaining to the incident you described. Please resubmit a request with additional information. The following information, if available, is suggested.

- Specific location (i.e. city, county.)
- Michigan State Police incident number
- Names of those involved in the incident
- Specific dates (i.e., date of incident)
- Name of driver and their birth date or driver license number
- Date of birth

- The report you have requested has not yet been completed and filed. Please resubmit your request in 30 days.

Additional Comments:

STATE OF MICHIGAN FREEDOM OF INFORMATION ACT

FEE CALCULATION FORM

File Number: CR-20048219

Requestor Name: TOM LAMBERT

Actual Costs

	Hourly Rate	Hours	Total
Labor (Search, Locate, Examine)*			
Labor (Separate/Delete)*			
Labor (Contractor)**			
Nonpaper Physical Media	Unit Cost	Units	Total
Paper Copies	Unit Cost	Units	Total
DOUBLE SIDED PAPER COPIES	\$ 0.05 / un	10	\$ 0.50
Labor (Duplication)*	Hourly Rate	Hours	Total
GENERAL OFFICE ASSISTANT	\$ 0.38 / hr	0.25 hrs	\$ 0.10
Indigent Waiver***			Total
Other Fees	Unit Cost	Units	Total
Mailing	Cost		Total
MAILING	\$ 1.19	1	\$ 1.19
Total:			\$ 1.79
Applied Payments:			\$ 0.00
Total Balance Due:			\$ 1.79

Part or all of the documents requested are available online at:

Cost to provide the online documents in paper form is \$_____. If you prefer to have these documents mailed, please forward payment and a copy of this form to the Agency for processing. This will result in a new request.

Return a copy of this fee calculation with your payment to ensure proper credit. Make check or money order payable to STATE OF MICHIGAN.

*Cost includes hourly wage and an additional 50% to partially cover the cost of fringe benefits.

**Actual cost does not exceed 6x the state minimum hourly wage.

***Must provide proof of indigence.

Sec. 10.

(1) If a public body makes a final determination to deny all or a portion of a request, the requesting person may do 1 of the following at his or her option:

(a) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial.

(b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, the court of claims, to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request.

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

(a) Reverse the disclosure denial.

(b) Issue a written notice to the requesting person upholding the disclosure denial.

(c) Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.

(d) Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the head of the public body shall respond to the written appeal. The head of a public body shall not issue more than 1 notice of extension for a particular written appeal.

(3) A board or commission that is the head of a public body is not considered to have received a written appeal under subsection (2) until the first regularly scheduled meeting of that board or commission following submission of the written appeal under subsection (1)(a). If the head of the public body fails to respond to a written appeal pursuant to subsection (2), or if the head of the public body upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requesting person may seek judicial review of the nondisclosure by commencing a civil action under subsection (1)(b).

(4) In an action commenced under subsection (1)(b), a court that determines a public record is not exempt from disclosure 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 of the public record. Venue for an action against a local public body is proper in the circuit court for the county in which the public record or an office of the public body is located has venue over the action. The court shall determine the matter de novo and the burden is on the public body to sustain its denial. The court, on its own motion, may view the public record in controversy in private before reaching a decision. Failure to comply with an order of the court may be punished as contempt of court.

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

(6) If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in an action commenced under this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or public body prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages under subsection (7).

(7) If the court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by 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. 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. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

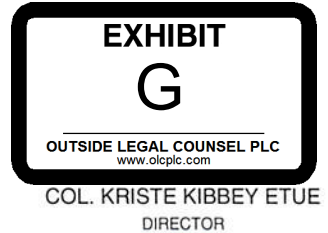
Sec. 10a.

- (1) If a public body requires a fee that exceeds the amount permitted under its publicly available procedures and guidelines or section 4, the requesting person may do any of the following:
- (a) If the public body provides for fee appeals to the head of the public body in its publicly available procedures and guidelines, submit to the head of the public body a written appeal for a fee reduction that specifically states the word "appeal" and identifies how the required fee exceeds the amount permitted under the public body's available procedures and guidelines or section 4.
 - (b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, in the court of claims, for a fee reduction. The action must be filed within 45 days after receiving the notice of the required fee or a determination of an appeal to the head of a public body. If a civil action is commenced against the public body under this subdivision, the public body is not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute. An action shall not be filed under this subdivision unless 1 of the following applies:
 - (i) The public body does not provide for appeals under subdivision (a).
 - (ii) The head of the public body failed to respond to a written appeal as required under subsection (2).
 - (iii) The head of the public body issued a determination to a written appeal as required under subsection (2).
- (2) Within 10 business days after receiving a written appeal under subsection (1)(a), the head of a public body shall do 1 of the following:
- (a) Waive the fee.
 - (b) Reduce the fee and issue a written determination to the requesting person indicating the specific basis under section 4 that supports the remaining fee. The determination shall include a certification from the head of the public body that the statements in the determination are accurate and that the reduced fee amount complies with its publicly available procedures and guidelines and section 4.
 - (c) Uphold the fee and issue a written determination to the requesting person indicating the specific basis under section 4 that supports the required fee. The determination shall include a certification from the head of the public body that the statements in the determination are accurate and that the fee amount complies with the public body's publicly available procedures and guidelines and section 4.
 - (d) Issue a notice extending for not more than 10 business days the period during which the head of the public body must respond to the written appeal. The notice of extension shall include a detailed reason or reasons why the extension is necessary. The head of a public body shall not issue more than 1 notice of extension for a particular written appeal.
- (3) A board or commission that is the head of a public body is not considered to have received a written appeal under subsection (2) until the first regularly scheduled meeting of that board or commission following submission of the written appeal under subsection (1)(a).
- (4) In an action commenced under subsection (1)(b), a court that determines the public body required a fee that exceeds the amount permitted under its publicly available procedures and guidelines or section 4 shall reduce the fee to a permissible amount. Venue for an action against a local public body is proper in the circuit court for the county in which the public record or an office of the public body is located. The court shall determine the matter de novo, and the burden is on the public body to establish that the required fee complies with its publicly available procedures and guidelines and section 4. Failure to comply with an order of the court may be punished as contempt of court.
- (5) An action commenced under this section and an appeal from an action commenced under this section shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.
- (6) If the requesting person prevails in an action commenced under this section by receiving a reduction of 50% or more of the total fee, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages under subsection (7).
- (7) If the court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by charging an excessive fee, the court shall order the public body to pay a civil fine of \$500.00, which shall be deposited in the general fund of the state treasury. The court may also award, in addition to any actual or compensatory damages, punitive damages in the amount of \$500.00 to the person seeking the fee reduction. The fine and any damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.
- (8) As used in this section, "fee" means the total fee or any component of the total fee calculated under section 4, including any deposit.



STATE OF MICHIGAN
DEPARTMENT OF STATE POLICE
LANSING

RICK SNYDER
GOVERNOR



October 11, 2017

Mr. Tom Lambert
Michigan Open Carry, Inc.
P.O. Box 16184
Lansing, Michigan 48901

Subject: CR-20048219; Firearms Act Expenditures

Dear Mr. Lambert:

The Department of Michigan State Police (MSP) has received your request for records and processed it under the provisions of the Michigan Freedom of Information Act (FOIA), MCL 15.231 *et seq.*

Your request is granted. The records you have requested are available on the department's website at http://www.michigan.gov/msp/0,4643,7-123-1878_1591_3503_4654-77621--,00.html. If you would like a paper copy, the cost to produce these records would be \$1.79.

You can submit a check or money order made payable to the STATE OF MICHIGAN and mail to P.O. Box 30266, Lansing, MI 48909. To ensure proper credit, please enclose a copy of this letter with your payment.

Under the FOIA, Section 10 (a copy of which is enclosed) you have the right to appeal to the head of this public body or to a judicial review of the denial. Under the FOIA, Section 10a (a copy of which is enclosed), you have the right to appeal the fee to the head of this public body.

To review a copy of the department's written public summary, procedures, and guidelines, go to www.michigan.gov/msp.

Sincerely,

Lance Gackstetter
Assistant FOIA Coordinator

Enclosures (2)

DENIAL OF RECORDS:

Denial is based on the following provision(s) of the Freedom of Information Act. MCL 15.243, Sec. 13(1). (All that apply are checked)

- (a) Information of a personal nature where the public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy.
 - Name(s)
 - telephone number(s)
 - address (es)
 - physical characteristics
 - driver license number(s)
 - date(s) of birth
 - Other _____

- (b) Investigating records compiled for law enforcement purposes, but only to the extent that disclosure would do any of the following:
 - (i) Interfere with law enforcement proceedings.
 - (ii) Deprive a person of the right to a fair trial or impartial administrative adjudication.
 - (iii) Constitute an unwarranted invasion of personal privacy.
 - (iv) Disclose the identity of a confidential source, or if the record is compiled by a law enforcement agency in the course of a criminal investigation, disclose confidential information furnished only by a confidential source.
 - (v) Disclose law enforcement investigative techniques or procedures.
 - (vi) Endanger the life or physical safety of law enforcement personnel.

- (d) Records or information specifically described and exempted from disclosure by statute:
 - _____
 - MCL 780.758 William Van Regenmorter Crime Victim's Rights Act
 - MCL 28.421b Firearms
 - MCL 28.214 C.J.I.S. Policy Council Act (LEIN information)
 - Statute: _____

- (l) Medical: _____

- (m) Communications and notes within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action.

- (n) Records of law enforcement communication codes, or plans for deployment of law enforcement personnel, that if disclosed would prejudice a public body's ability to protect the public safety.

- (s) Unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance, public records of a law enforcement agency, the release of which would do any of the following:
 - (i) Identify or provide a means of identifying an informant.
 - (ii) Identify or provide a means of identifying a law enforcement undercover officer or agent or a plain clothes officer as a law enforcement officer or agent.
 - (v) Disclose operation instructions for law enforcement officers or agents.
 - (vii) Endanger the life or safety of law enforcement officers or agents or their families, relatives, children, parents or those who furnish information to law enforcement departments or agencies.
 - (viii) Identify or provide a means of identifying a person as a law enforcement officer, agent, or informant.
 - (ix) Disclose personnel records of law enforcement agencies.

- (w) Information or records that would disclose the social security number of any individual. _____

- To the best of the department's knowledge, information, and belief, under the information provided by you or by any other description reasonably known to the department, the public records do not exist within the department.

- Based on the information you provided, we are unable to locate any records pertaining to the incident you described. Please resubmit a request with additional information. The following information, if available, is suggested.
 - Specific location (i.e. city, county.)
 - Michigan State Police incident number
 - Names of those involved in the incident
 - Specific dates (i.e., date of incident)
 - Name of driver and their birth date or driver license number
 - Date of birth

- The report you have requested has not yet been completed and filed. Please resubmit your request in 30 days.

Additional Comments:

STATE OF MICHIGAN FREEDOM OF INFORMATION ACT

FEE CALCULATION FORM

File Number: CR-20048219

Requestor Name: TOM LAMBERT

Actual Costs

	Hourly Rate	Hours	Total
Labor (Search, Locate, Examine)*			
Labor (Separate/Delete)*			
Labor (Contractor)**			
Nonpaper Physical Media	Unit Cost	Units	Total
Paper Copies	Unit Cost	Units	Total
DOUBLE SIDED PAPER COPIES	\$ 0.05 / un	10	\$ 0.50
Labor (Duplication)*	Hourly Rate	Hours	Total
GENERAL OFFICE ASSISTANT	\$ 0.38 / hr	0.25 hrs	\$ 0.10
Indigent Waiver***			Total
Other Fees	Unit Cost	Units	Total
Mailing	Cost		Total
MAILING	\$ 1.19	1	\$ 1.19
Total:			\$ 1.79
Applied Payments:			\$ 0.00
Total Balance Due:			\$ 1.79

Part or all of the documents requested are available online at:

Cost to provide the online documents in paper form is \$_____. If you prefer to have these documents mailed, please forward payment and a copy of this form to the Agency for processing. This will result in a new request.

Return a copy of this fee calculation with your payment to ensure proper credit. Make check or money order payable to STATE OF MICHIGAN.

*Cost includes hourly wage and an additional 50% to partially cover the cost of fringe benefits.

**Actual cost does not exceed 6x the state minimum hourly wage.

***Must provide proof of indigence.

Sec. 10a.

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

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

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

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

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

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

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

(a) Waive the fee.

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

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

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

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

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

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

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

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

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

Sec. 10.

- (1) If a public body makes a final determination to deny all or a portion of a request, the requesting person may do 1 of the following at his or her option:
- (a) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial.
 - (b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, the court of claims, to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request.
- (2) Within 10 business days after receiving a written appeal pursuant to subsection (1)(a), the head of a public body shall do 1 of the following:
- (a) Reverse the disclosure denial.
 - (b) Issue a written notice to the requesting person upholding the disclosure denial.
 - (c) Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.
 - (d) Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the head of the public body shall respond to the written appeal. The head of a public body shall not issue more than 1 notice of extension for a particular written appeal.
- (3) A board or commission that is the head of a public body is not considered to have received a written appeal under subsection (2) until the first regularly scheduled meeting of that board or commission following submission of the written appeal under subsection (1)(a). If the head of the public body fails to respond to a written appeal pursuant to subsection (2), or if the head of the public body upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requesting person may seek judicial review of the nondisclosure by commencing a civil action under subsection (1)(b).
- (4) In an action commenced under subsection (1)(b), a court that determines a public record is not exempt from disclosure 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 of the public record. Venue for an action against a local public body is proper in the circuit court for the county in which the public record or an office of the public body is located has venue over the action. The court shall determine the matter de novo and the burden is on the public body to sustain its denial. The court, on its own motion, may view the public record in controversy in private before reaching a decision. Failure to comply with an order of the court may be punished as contempt of court.
- (5) An action commenced under this section and an appeal from an action commenced under this section shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.
- (6) If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in an action commenced under this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or public body prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages under subsection (7).
- (7) If the court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by 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. 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. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

EXHIBIT
H
OUTSIDE LEGAL COUNSEL PLC
www.olcplc.com



STATE OF MICHIGAN
DEPARTMENT OF STATE POLICE
RECORDS RESOURCE UNIT
P.O. BOX 30634
LANSING, MICHIGAN 48909

Celebrating 100 Years of Service



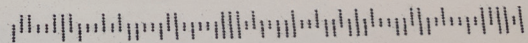
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Tom Lambert <



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MSP FOIA Request

Tom Lambert <tlambert@miopencarry.org>
 To: MSP-FOI@michigan.gov
 Cc: EtueK@michigan.gov, MiOC Board <board@miopencarry.org>

Wed, Oct 11, 2017 at 1:30 PM

Mr. Gackstetter,

Thank you for your response; however I have already appealed to the Director under MCL 15.240(1)(a), see "MOC Denial Appeal" attached, which requires the head of the public body to respond as specified in the section. At this time I wish to maintain this appeal as I do not believe I have been provided with the documentation I have requested.

In my request I explicitly requested, along with a full statutory reference to and quote of the related reporting requirement in Section 5e of the Firearms act:

- A list of expenditures made by the Department of State Police from money received under the Firearms Act (1927 PA 372, MCL 28.421 et. seq.), regardless of purpose, between October 1, 2015 to September 30, 2016.

The link you provided in your response (http://www.michigan.gov/msp/0,4643,7-123-1878_1591_3503_4654-77621-.00.html) does not direct one to a list of expenditures in a particular date range, but rather to a list of annual reports on Concealed Pistol Licenses dating back to 2003.

With respect to the link you provided, I will say that I have already looked through these reports many times and that it was the lack of the inclusion of information I seek that triggered this FOIA request.

In order to avoid any possible confusion going forward, please note that I am **not** requesting a list of reports, I am not requesting a summary of expenditures, nor am I requesting a list of expenditure categories. I am specifically looking for a **list of expenditures** as provided for in MCL 28.425e(5)(m).

Further, please note that Section 4 of the FOIA provides as follows in Subsection 5 (MCL 15.234 (5)) (emphasis added):

(5) If the public body directly or indirectly administers or maintains an official internet presence, any public records available to the general public on that internet site at the time the request is made are exempt from any charges under subsection (1)(b). If the FOIA coordinator knows or has reason to know that all or a portion of the requested information is available on its website, the public body shall notify the requestor in its written response that all or a portion of the requested information is available on its website. **The written response, to the degree practicable in the specific instance, shall include a specific webpage address where the requested information is available. [...]**

If you feel that I have missed something in your response that you feel complies with my request, then by all means please point specifically to what you think that is.

Lastly, as noted in my appeal, if the MSP does not have the documents that I have requested, the FOIA still requires the disclosure of the fact that the requested documents do not exist (Hartzell v Mayvill Community Sch Dist, 183 Mich App 782; 455 NW2d 411 (1990)).

Thank you for your time and consideration of my request for information, I look forward to a response to my appeal that complies with the FOIA.

Tom Lambert
 President
 Michigan Open Carry, Inc.

On Tue, Oct 10, 2017 at 3:19 PM, MSP-FOI <MSP-FOI@michigan.gov> wrote:

Good afternoon, Mr. Lambert:

Attached is the response to your Freedom of Information Act request below.

Thank you,

MSP-FOI

From: Tom Lambert [mailto:tlambert@miopencarry.org]
Sent: Thursday, September 28, 2017 12:01 PM
To: MSP-FOI
Cc: MiOC Board
Subject: MSP FOIA Request

To whom it may concern,

On behalf of Michigan Open Carry, Inc., and 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 Michigan Department of State Police:

- A list of expenditures made by the Department of State Police from money received under the Firearms Act (1927 PA 372, MCL 28.421 et. seq.), regardless of purpose, between October 1, 2015 to September 30, 2016.

For your convenience, please note that this information is required by law to be posted to the Department's website per Section 5e of 1927 PA 372, [MCL 28.425e](#) (5)(m).

(5) The department of state police shall by January 1 of each year file with the secretary of the senate and the clerk of the house of representatives, and post on the department of state police's internet website, an annual report setting forth all of the following information for the state for the previous fiscal year:

(m) A list of expenditures made by the department of state police from money received under this act, regardless of purpose.

I am also hereby requesting a waiver of all fees as the disclosure of the requested information is in the public interest, as well as required by law, and will contribute to the public's understanding and knowledge of the Department of State Police's operations.

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.

Thank you,

Tom Lambert

President

Michigan Open Carry, Inc.

10/11/2017

Michigan Open Carry, Inc. Mail - MSP FOIA Request

 **MOC Denial Appeal.pdf**
119K



MOC
mail

Tom Lambert



miopencarry.org>

Re: FOIA Denial APPEAL Inquiry

Tom Lambert <tlambert@miopencarry.org>
 To: EtueK@michigan.gov
 Cc: MSP-FOI@michigan.gov, MiOC Board <board@miopencarry.org>

Wed, Oct 25, 2017 at 1:32 PM

Col. Etue,

This email is to inquire as to whether or not you will be responding to my FOIA denial appeal submitted pursuant to Section 10 of the FOIA (MCL 15.240) to yourself and the FOIA unit (MSP-FOI@michigan.gov) on Oct. 10th, 2017 at 1:30pm. The appeal can be found at the end of this email, as well as attached as "MOC FOIA Denial Appeal".

Under Subsection 2 (MCL 15.240 (2)), a head of a public body that receives a written appeal pursuant to the section **shall respond within 10 business days** after receiving the appeal in one of the four prescribed manners.

Under Subsection 3 (MCL 15.240 (3)), a "board or commission that is the head of a public body is not considered to have received a written appeal [...] until the first regularly scheduled meeting of that board or commission following the submission". As the MSP is not directed by a board or commission, and there are no further modifications in the Section augmenting when an appeal is considered received, the appeal can only be considered received immediately. Please note, I have attached the automatic reply that I received in response from the FOIA Unit as "MOC FOIA Denial Appeal Automatic Reply".

10 business days from Oct. 10th, 2017 at 1:30pm is Oct. 24th, 2017 at 1:30pm, which was yesterday, putting the MSP in violation of the FOIA for the **second time** for this request.

Lastly, as noted in the appeal, if the requested documents do not exist, the FOIA requires a disclosure of this fact. "*We would concede that the nonexistence of a record is a defense for the failure to produce or allow access to the record. However, it is not a defense to the failure to respond to a request for a document with the information that it does not exist.*" (Hartzell v Mayville Community Sch Dist, 183 Mich App 782; 455 NW2d 411 (1990)).

I respectfully once again, and for the final time, request that the Department comply with the FOIA and properly respond to my appeal. I ask that you please respond no later than end of business on Friday, October 27th. Failure to respond by this time will mark the one month point in which the MSP has failed to provide information it is required by law to provide publicly on a yearly basis.

Thank you,

Tom Lambert
 President
 Michigan Open Carry, Inc.

On Tue, Oct 10, 2017 at 1:30 PM, Tom Lambert <tlambert@miopencarry.org> wrote:

Col. Etue,

Pursuant to Section 10 of the Michigan Freedom of Information Act (FOIA), MCL 15.240(1)(a), I am hereby appealing the DENIAL of my FOIA request submitted to the Michigan Department of State Police (MSP) on September 28th, 2017, which I have attached as "MOC FOIA Request".

My request is for a list of expenditures made by the Department of State Police from money received under the Firearms Act (1927 PA 372, MCL 28.421 et. seq.), regardless of purpose, between October 1, 2015 to September 30, 2016.

As noted in my request, this information is statutorily required to be posted to the MSP's publicly available website on a yearly basis pursuant to MCL 28.425e(5)(m).

Background

On September 28th, 2017 at 12:00pm, I submitted on behalf of Michigan Open Carry, Inc. a FOIA request to the Michigan Department of State Police, pursuant to the FOIA, attached as "MOC FOIA Request". The request contained "FOIA" in both the subject line and within the first 250 words of the letter.

Per the MSP's publicly available FOIA Procedures and Guidelines, attached as "MSP Procedures and Guidelines", available at http://www.michigan.gov/msp/0,4643,7-123-1878_63999---,00.html, the request was submitted via email to MSP-FOI@michigan.gov.

Approximately 1 minute after sending the request, I received an email from MSP-FOI@michigan.gov with the subject line "**AUTOMATIC REPLY**", attached as "MSP Automatic Reply". The reply acknowledged the receipt of my request and indicated a response would be sent pursuant to the FOIA.

Under MCL 15.235 (1), because the request was sent via electronic mail, the request was considered received by the MSP one business day after it was sent, that date being September 29th, 2017.

Per MCL 15.235 (2), a public body who receives a request under the FOIA shall respond to a request for public information within 5 business days after the public body receives the request, doing one of four things. (a) granting the request, (b) denying the request, (c) granting in part and denying in part, or (d) extending the deadline to respond for not more than 10 business days.

As of October 10th, 2017, other than the initial automated reply, the MSP has not responded to the request.

Per MCL 15.235 (3), a failure of a body to respond to a qualifying request pursuant to Subsection 2, MCL 15.235 (2), "*constitutes a public body's final determination to deny the request*".

Per MCL 15.240 (1), "*If a public body makes a final determination to deny all or a portion of a request, the requesting person may do 1 of the following at his or her option: (a) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial. (b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, the court of claims, to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request.*"

This appeal follows

Reasons for Appeal

By not responding to my request pursuant to the FOIA, as the automated reply indicated would happen, the MSP has improperly denied my request. To date, no exemptions have been declared and no justifications to deny my request have been provided.

The Firearms Act mandates that the MSP report the information I have requested to legislative leadership, as well as post it publicly online by January 1st of each year.

MCL 28.425e(5)(m)

(5) The department of state police shall by January 1 of each year file with the secretary of the senate and the clerk of the house of representatives, **and post on the department of state police's internet website**, an annual report setting forth all of the following information for the state for the previous fiscal year:

(m) A list of expenditures made by the department of state police from money received under this act, regardless of purpose.

The FOIA requires a public body to notify a requestor if the information requested is available on the public body's public website, and direct the requestor to where the information can be obtained.

MCL 15.234 (5)

(5) If the public body directly or indirectly administers or maintains an official internet presence, **any public records available to the general public on that internet site at the time the request is made are exempt from any charges under subsection (1)(b). If the FOIA coordinator knows or has reason to know that all or a portion of the requested information is available on its website, the public body shall notify the requestor in its written response that all or a portion of the requested information is available on its website. The written response, to the degree practicable in the specific instance, shall include a specific webpage address where the requested information is available.** On the detailed itemization described in subsection (4), the public body shall separate the requested public records that are available on its website from those that are not available on the website and shall inform the requestor of the additional charge to receive copies of the public records that are available on its website. If the public body has included the website address for a record in its written response to the requestor and the requestor thereafter stipulates that the public record be provided to him or her in a paper format or other form as described under subsection (1)(c), the public body shall provide the public records in the specified

format but may use a fringe benefit multiplier greater than the 50% limitation in subsection (2), not to exceed the actual costs of providing the information in the specified format.

Further, if the MSP does not have the documents that I have requested, the FOIA still requires the disclosure of the fact that the requested documents do not exist (Hartzell v Mayvill Community Sch Dist, 183 Mich App 782; 455 NW2d 411 (1990)).

Action Requested

I ask that you please reverse the arbitrary denial of my request and comply with the FOIA fully at your soonest opportunity.

Lastly, please know that I'm happy to work with the MSP in good faith to obtain this information, if the MSP is willing to do the same.

Tom Lambert
President
Michigan Open Carry, Inc.

2 attachments



MOC FOIA Denial Appeal.pdf

119K



MOC FOIA Denial Appeal Automatic Reply.pdf

79K



MICHIGAN STATE POLICE



[MSP](#) / [SERVICES](#) / [FIREARMS](#)

Concealed Pistol License (CPL) Reports

Annual Reports

- [2016-2017 CPL Annual Report](#)
- [2015-2016 CPL Annual Report](#)
- [2014-2015 CPL Annual Report](#)
- [2013-2014 CPL Annual Report](#)
- [2012-2013 CCW Annual Report](#)
- [2011-2012 CCW Annual Report](#)
- [2010-2011 CCW Annual Report](#)
- [2009-2010 CCW Annual Report](#)
- [2008-2009 CCW Annual Report](#)
- [2007-2008 CCW Annual Report](#)
- [2006-2007 CCW Annual Report](#)
- [2005-2006 CCW Annual Report](#)
- [2004-2005 CCW Annual Report](#)
- [2003-2004 CCW Annual Report](#)

Latest Monthly Report

- [County Report as of March 1, 2018](#)

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[FOIA](#)

[Open Michigan](#)

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[Michigan News](#)

[ADA](#)

EXHIBIT

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OUTSIDE LEGAL COUNSEL PLC
www.olicplc.com

**CONCEALED PISTOL LICENSE
ANNUAL REPORT**

OCTOBER 1, 2015 TO SEPTEMBER 30, 2016



**MICHIGAN STATE POLICE
CRIMINAL JUSTICE INFORMATION CENTER**

CONCEALED PISTOL LICENSING ANNUAL REPORT
STATEWIDE TOTALS
REVENUE AND EXPENDITURES
OCTOBER 1, 2015 - SEPTEMBER 30, 2016

Revenue

Actual revenue from fees paid for CPL applications ⁵ :	\$ 8,020,921
Five year CPL revenue average:	\$ 5,012,806

Expenditures⁶

MCL 28.424, 28.425a, 28.425d, 28.428 ⁷ :	\$ 57,902
MCL 28.425, 28.425c, 28.425m ⁸ :	\$ 38,285
MCL 28.425b, 28.425e, 28.426 ⁹ :	\$ 1,799,429
Support systems utilized by the CPL unit:	\$ 5,425,305
Carryforward set aside for AFIS upgrade:	\$ 700,000

Concealed pistol license revenue is used to support the business operation of maintaining the concealed pistol license database, as well as the program used by the county clerks and the MSP CPL Unit to enter applicant information and conduct background checks. It is used for compiling the concealed pistol license annual report to the Legislature; developing, printing, and distributing required forms; providing training and support; legislative and legal resources, and attending gun board meetings (prior to December 1, 2015). In addition, concealed pistol license revenue, along with fingerprinting and Internet Criminal History Access Tool (ICHAT) fees, is used to support several criminal justice information systems used by law enforcement and criminal justice agencies, including the MSP CPL Unit.

⁵CPL revenue, less fingerprint processing fee. CPL revenue is cyclical; it fluctuates due to socioeconomic factors, elections and renewal cycles.

⁶The concealed pistol license expenses reported to the Legislature on December 1, 2016, pursuant to Public Act 84 of 2016, were based on different statutory reporting requirements.

⁷Employee and other costs for functions mandated under sections 4, 5a, 5d, and 8 of 1927 PA 372; MCL 28.424, 28.425a, 28.425d and 28.428 (unable to separate costs by section).

⁸Employee and other costs for functions mandated under sections 5, 5c, and 5m of 1927 PA 372; MCL 28.425, 28.425c, and 28.425m (unable to separate costs by section).

⁹Employee and other costs for functions mandated under sections 5b, 5e, and 6 of 1927 PA 372; MCL 28.425b, 28.425e, and 28.426 (unable to separate costs by section).



From: [Morris, David \(MSP\)](#)
To: [Gackstetter, Lance \(MSP\)](#)
Subject: FW: FOIA CR-20048219
Date: Wednesday, October 4, 2017 9:12:53 AM
Attachments: [image001.png](#)
[Concealed Pistol License Annual Report 2016 final.pdf](#)
[CPL Firearms Expenses - 2016 - legislative report.xlsx](#)

FYI

David M. Morris
State Administrative Manager 15
Budget & Financial Services Division
Michigan State Police
7150 Harris Drive
Lansing, MI 48913
Cell (517) 512-5362

From: Molzan, Lucinda (MSP)
Sent: Wednesday, October 4, 2017 9:08 AM
To: Morris, David (MSP)
Cc: Baker, Amanda J. (MSP)
Subject: RE: FOIA CR-20048219

Dave,

The expenses they are looking for is provided from the annual CPL report. I have attached the FY17 report that covers the dates in question. In addition, if you need it I also attached my working document to provide the expense totals listed in the report.

Cindy

From: Morris, David (MSP)
Sent: Tuesday, October 3, 2017 4:26 PM
To: Molzan, Lucinda (MSP) <MolzanL@michigan.gov>
Cc: Baker, Amanda J. (MSP) <BakerA3@michigan.gov>
Subject: Fwd: FOIA CR-20048219

I assume this is CJIC revenue. Please check and estimate time for FOI.

----- Original Message -----

From: "Gackstetter, Lance (MSP)" <GackstetterL1@michigan.gov>
Date: Tue, October 03, 2017 4:21 PM -0400
To: "Baker, Amanda J. (MSP)" <BakerA3@michigan.gov>
CC: "Morris, David (MSP)" <MorrisD1@michigan.gov>
Subject: FOIA CR-20048219

Good afternoon!

The department has received a Freedom of Information Act (FOIA) request for the below information. Please provide the following records:

-Please provide "A list of expenditures made by the Department of State Police from money received under the Firearms Act (1927 PA 372, MCL 28.421 et. Seq.), regardless of purpose, between October 1, 2015 to September 30, 2016.

RECORDS OR AN ESTIMATE* MUST BE RECEIVED BY THE RECORDS RESOURCE UNIT NO LATER THAN COB ON 10/06/17.

*If the number of records exceeds 100 pages and/or the labor time will exceed 30 minutes, do not gather/send the records at this time. Please only provide an estimate of time and records below.

Please complete:

Estimated number of pages:

Estimate of processing time (in minutes):

Name & classification of lowest paid person capable of processing:

Thanks,

Lance E. Gackstetter

Assistant FOIA Coordinator

Records Resource Unit

Office of the Director

Michigan State Police

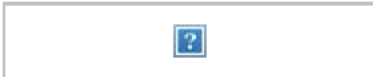
P.O. Box 30634

Lansing, MI 48909

TX: 517-284-3290

Fax: 517-241-1935

“A PROUD tradition of SERVICE through EXCELLENCE, INTEGRITY, and COURTESY”



	FY 2016	FY 2015	FY 2014	FY 2013	FY 2012	FY 2011
CCW Revenue	\$ 8,020,921.00	\$ 5,362,460	\$ 4,990,028	\$ 4,291,591	\$ 2,399,029	\$ 2,097,631
CCW - livescan amount	\$ 2,875,980.00	\$ 1,707,346	\$ 1,653,855	\$ 2,807,051	\$ 2,058,793	\$ 1,820,550
Total CCW revenue	\$ 10,896,901	\$ 7,069,806	\$ 6,643,883	\$ 7,098,643	\$ 4,457,822	\$ 3,918,181

5 year average 2011-2015
\$ 5,012,806

Expenses	FY 2016	FY 2015	FY 2014
Payroll	\$ 1,583,179.36	\$ 1,555,862	\$ 1,314,659
Non-Payroll	\$ 222,769.39	512,868	375,673
Total Expenses	\$ 1,805,949	\$ 2,068,730	\$ 1,690,332
Balance	\$ 6,214,972	\$ 3,293,730	\$ 3,299,696

CPL	Original Law
County Clerk	\$ 26.00
County Sheriff	15.00
MSP	64.00
	<u>\$ 105.00</u>

MSP CPL Split	New license	Renewal
FBI fingerprint check	14.50	
MSP fingerprint check	30.00	
CCW	19.50	64.00
	<u>64.00</u>	<u>64.00</u>

MSP CPL Split	New license	Renewal
FBI fingerprint check	12.75	
MSP fingerprint check	30.00	
CCW	21.25	64.00
	<u>64.00</u>	<u>64.00</u>

2/1/2015 - FBI rate adjusted

12/1/2015 - Law Change Public Act 3 of 2015

CPL	New License	Renewal
County Clerk	\$ 26.00	\$ 36.00
County Sheriff	-	
MSP	74.00	79.00
	<u>\$ 100.00</u>	<u>\$ 115.00</u>

MSP CPL Split	New license	Renewal
FBI fingerprint check	12.75	
MSP fingerprint check	30.00	
CCW	31.25	79.00
	<u>74.00</u>	<u>79.00</u>

12/1/2015 - Law Change

Employee Name	Position Code Description	Pay	Yearly Pay	%	FY 2016				Database/report NICS devices	gas ejecting 6 Ga
					Firearms Total	Gun Boards 4, 5a, 5d, 8	Forms 5, 5c, 5m	5b, 5e		
BRINNINGSTAULL, DAWN T	STATE BUREAU ADMINISTRATOR	18	215,448.52	16%	34,471.76				17,235.88	
BOWER, KATIE A	STATE ADMINISTRATIVE MANAGER-2	16	177,894.67	16%	28,463.15				14,231.57	
SWANK, DENISE N	EXECUTIVE SECRETARY-E	E10	30,822.67	16%	4,931.68				2,465.84	
DELACRUZ-SMITH, JULIE A	EXECUTIVE SECRETARY-E	E10	30,152.03	16%	4,824.32				2,412.16	
COLLINS, KEVIN J	DEPARTMENTAL MANAGER-4	15	180,047.37	33%	52,815.83				52,815.83	
DOUBRAVA, DIANE M	SECRETARY-A	9	34,372.88	33%	11,343.05				11,343.05	
JEWELL, SAMANTHA	SECRETARY-A	9	70,058.54	33%	23,119.32				23,119.32	
SMITH, DEBRA L	DEPARTMENTAL MANAGER-2	14	156,190.36	100%	156,190.36		3,123.81		153,066.55	
Payne, Donna K	DEPARTMENT ANALYST	P11	122,412.16	100%	122,412.16				122,412.16	
Hunt, Skylar C	DEPARTMENT ANALYST	9	20,812.31	100%	20,812.31				20,812.31	
Kehoe, Kurt M	DEPARTMENT ANALYST	P11	21,141.05	100%	21,141.05				21,141.05	
Higbee, Kriston	DEPARTMENT TECHNICIAN	8	29,794.77	100%	29,794.77				29,794.77	
Konwinski, Valerie A	DEPARTMENT TECHNICIAN	E9	93,356.06	100%	93,356.06				93,356.06	
Swank, Denise N	DEPARTMENT TECHNICIAN	E9	56,480.60	100%	56,480.60				56,480.60	
Terpstra, Frederick	DEPARTMENT TECHNICIAN	E9	65,383.21	100%	65,383.21				65,383.21	
Gude, Raymone E	DEPARTMENT TECHNICIAN	8	83,953.86	100%	83,953.86				83,953.86	
Hanses, Kyle W	DEPARTMENT TECHNICIAN	8	71,048.83	100%	71,048.83				71,048.83	
Clark, Alyssa N	DEPARTMENT TECHNICIAN	8	72,572.96	100%	72,572.96				72,572.96	
Davidson, Wendy	DEPARTMENT TECHNICIAN	7	91,215.72	100%	91,215.72				91,215.72	
Malorni, Samantha A	DEPARTMENT TECHNICIAN	E9	34,758.96	100%	34,758.96				34,758.96	
Grant, Jacob S	DEPARTMENT TECHNICIAN	7	29,602.01	100%	29,602.01				29,602.01	
Zavala, Sara R	DEPARTMENT TECHNICIAN	8	25,867.97	100%	25,867.97				25,867.97	
Kehoe, Kurt M	DEPARTMENT TECHNICIAN	E9	15,804.95	100%	15,804.95				15,804.95	
Martin, CodyR	DEPARTMENT TECHNICIAN	9	9,690.70	100%	9,690.70				9,690.70	
Muckenthaler, Rosemary L	DEPARTMENT TECHNICIAN	E9	31,915.72	100%	31,915.72				31,915.72	
Nix, Gary K	DEPARTMENT TECHNICIAN	E9	23,303.44	100%	23,303.44				23,303.44	
OVERTIME			98,290.74	100%	98,290.74				98,290.74	
HAWKINS, CHRISTOPHER	STATE POLICE FIRST LIEUTENANT	15	229,262.93	1%	2,292.63				2,292.63	
MAIKE, AIMEE L	STATE POLICE LIEUTENANT	14	192,136.01	5%	9,606.80				9,606.80	
BEATTY, STEVEN	DEPARTMENTAL SPECIALIST	13	129,988.58	5%	6,499.43				6,499.43	
FITZGERALD, TIM	STATE POLICE SERGEANT	12	179,071.00	4%	7,162.84				7,162.84	
WILLIAMS, MATTHEW	STATE POLICE SERGEANT	12	38,478.79	4%	1,539.15				1,539.15	
LIEUTENANT (90 meetings each month, 8 hour day)			28,951.20	2	57,902.40	57,902.40				
Indirect Cost					184,611.02				183,425.59	
TOTAL Payroll					1,583,179.36					
Travel					1,962.26				1,500.00	
Operating Supplies, (printing, postage, data storage, communications)					3,118.90		35,162.00		960.00	
Temps										
IT Programmers					140,073.42				140,073.42	
Servers										
Rent/Offices					55,105.00				6,784.00	
Personal Computers & Maintenance					22,509.81				5,266.43	
Total CSS&M					222,769.39					
Total Expenses					1,805,948.75	57,902.40	38,285.81	1,639,286.12		
RMS Section - 20%										
RENZ, ALAN J	STATE POLICE FIRST LIEUTENANT	15								
MARTIN, RICHARD C	STATE POLICE LIEUTENANT	14	95,458.09						19,091.22	
STOKES, DAVID	STATE POLICE LIEUTENANT	14	82,388.90						16,477.78	
STOKES, DAVID	STATE POLICE SERGEANT	12	106,423.28							
MOORE, CHRIS M	DEPARTMENTAL ANALYST-A	12	65,511.96						13,102.39	
KLINE, PHYLENA A	DEPARTMENTAL ANALYST-A	12	122,573.40						24,514.68	
MURRAY, DOUGLAS M	DEPARTMENTAL ANALYST-A	11	84,568.00						16,913.60	
STARKS, AMANDA	DEPARTMENTAL ANALYST TRAINEE-E	9	71,301.74						14,260.35	
JONES, CARLA D	DEPARTMENTAL TECHNICIAN-E	E9	44,301.43						8,860.29	
MCQUEEN, JULIE A	DEPARTMENTAL TECHNICIAN-E	E9	91,660.94						18,332.19	
SNEIDER, MARILYN	DEPARTMENTAL TECHNICIAN-E	E9	69,851.05						13,970.21	
IT programmers			13,115.91						2,623.18	
Server Hosting			76,096.45						15,219.29	
									90,176.10	
LEIN Auditors - 8%										
CARLSEN, TREVOR A	DEPARTMENTAL ANALYST TRAINEE-E	9	117,762.43						9,420.99	
OSHESKEY, KATHERINE T	DEPARTMENTAL ANALYST-E	P11	43,673.33						3,403.87	
HARDESTY, JOLENE C	DEPARTMENTAL ANALYST-E	9	93,686.10						7,494.89	
VOGEL, ANN M	DEPARTMENTAL ANALYST-E	P11	107,438.35						8,594.91	
									29,004.66	
LEIN Field Services - 5%										
Canfield, Elizabeth A	DEPARTMENTAL ANALYST-A	12	67,162.60						3,358.13	
Vandouser, Cari A	DEPARTMENTAL TECHNICIAN-E	E9	39,032.12						1,951.61	
Powell, Douglas M	DEPARTMENTAL TECHNICIAN-E	E9	60,805.05						3,040.25	
Scott, Jerry L	DEPARTMENTAL ANALYST TRAINEE-E	9	65,718.00						3,285.90	
									11,635.89	
MICJIN - 4%										
BENNETT, DAVID A	DEPARTMENTAL ANALYST-E	P11	115,191.12						4,607.64	
VACANT	DEPARTMENTAL TECHNICIAN-E	E9	82,018.59						3,280.74	
HUDAK, THERESE M	DEPARTMENTAL TECHNICIAN-E	E9	106,024.95						4,241.00	
ALDRICH, WAYNE	DEPARTMENTAL ANALYST-E	P11	119,372.67						4,774.91	
Bur, Thomas	Departmental Analyst Trainee	9	3,502.70						140.11	
Bur, Thomas	DEPARTMENTAL TECHNICIAN-E	E9	59,041.45						2,361.66	
Contract Programming			94,675.00						3,787.00	
Lifera programming/server hosting			56,686.86						2,267.47	
Admin Tool updates									-	
									25,460.53	
Mail room - 5%										
PIEGOLS, MARK A	GENERAL OFFICE ASSISTANT-E	E7	77,655.87						3,882.79	
									1,799,429.10	

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w/livescan

Month	FY 2016 CCW	FY 2015 CCW	FY 2014 CCW	FY 2013 CCW	FY 2012 CCW	FY 2011 CCW	FY 2010 CCW
October	299,043.75	236,263.50	241,411.50	305,219.00	196,537.00	270,916.25	322,201.00
November	296,532.50	175,725.00	208,646.50	277,843.50	179,940.75	237,770.50	269,420.25
December	-	196,491.00	186,961.50	319,673.00	188,309.00	190,973.75	278,630.00
January	-	213,345.00	210,622.50	596,475.00	264,231.00	238,845.75	383,864.25
February	-	270,036.25	256,263.00	606,721.50	328,278.50	230,056.75	428,744.25
March	-	344,400.00	319,522.50	639,342.00	392,322.50	361,330.75	566,984.00
April	-	291,100.00	301,306.50	556,875.00	347,450.00	294,899.00	407,566.50
May	-	237,633.50	244,431.00	377,338.50	311,454.00	240,248.25	387,038.75
June	-	229,091.75	200,376.00	249,628.50	250,875.50	200,325.75	314,814.50
July	-	233,248.75	192,029.50	245,728.50	232,204.50	171,851.00	260,117.00
August	-	225,500.00	177,754.50	231,511.50	274,131.00	201,258.75	285,642.50
September	0	234,827.50	189,486.00	225,278.50	242,552.00	198,547.25	290,037.00
Total	595,576.25	2,887,662.25	2,728,811.00	4,631,634.50	3,208,285.75	2,837,023.75	4,195,060.00

Month	FY 2016 CPLR	FY 2015 CPLR	FY 2014 CPLR	FY 2013 CPLR	FY 2012 CPLR	FY 2011 CPLR	FY 2010 CPLR
October	343,872.00	391,552.00	310,144.00	155,904.00	89,856.00	512.00	0.00
November	407,936.00	301,248.00	237,824.00	-	77,952.00	24,320.00	0.00
December	448.00	318,656.00	231,488.00	276,224.00	76,864.00	38,080.00	0.00
January	2,197,705.75	372,736.00	333,376.00	237,760.00	-	59,264.00	0.00
February	1,172,650.75	320,960.00	301,248.00	225,472.00	202,752.00	117,824.00	0.00
March	1,221,079.75	381,632.00	367,104.00	232,960.00	111,680.00	131,456.00	0.00
April	974,829.50	366,464.00	372,736.00	258,560.00	100,992.00	6,592.00	0.00
May	807,402.00	315,968.00	332,928.00	251,904.00	100,416.00	278,336.00	0.00
June	787,536.00	379,648.00	350,912.00	241,856.00	97,344.00	105,472.00	1,024.00
July	791,748.75	332,032.00	356,480.00	299,136.00	122,496.00	112,320.00	4,224.00
August	829,650.75	701,248.00	345,984.00	287,296.00	138,496.00	110,213.00	5,568.00
September	766,465.50	-	374,818.00	(64.00)	130,688.00	96,768.00	16,448.00
Total	10,301,324.75	4,182,144.00	3,915,042.00	2,467,008.00	1,249,536.00	1,081,157.00	27,264.00

CCW only, without livescan

10,896,901.00 7,069,806.25 6,643,853.00

348,630.00 1,707,346.33 1,653,824.85 2,807,051.21 2,058,792.99 1,820,550.00 2,692,017.11

law change - Dec 1, 2015
w/o livescan

Month	FY 2016 CCW	FY 2015 CCW	FY 2014 CCW	FY 2013 CCW	FY 2012 CCW	FY 2011 CCW	FY 2010 CCW	
October	467,865.75	484,625.50	405,245.50	276,141.79	160,273.00	97,578.25	115,441.00	210,935.91
November	530,888.50	370,473.00	320,018.08	109,453.50	142,422.75	109,510.50	96,530.25	155,587.02
December	448.00	396,061.55	305,139.50	402,155.79	144,333.00	106,503.75	99,830.00	211,592.41
January	2,197,705.75	456,781.00	416,348.50	472,735.00	94,671.00	144,839.75	137,534.25	253,225.70
February	1,172,650.75	432,926.25	402,200.09	464,483.50	320,370.50	200,250.75	153,614.25	308,183.82
March	1,221,079.75	524,432.00	492,976.50	484,822.00	252,244.75	260,916.75	203,144.00	300,281.87
April	974,829.50	487,164.00	491,432.50	477,935.00	225,479.43	112,251.00	146,026.50	240,422.98
May	807,402.00	414,498.96	429,219.00	400,552.50	212,006.47	364,414.25	138,671.64	278,911.21
June	787,536.00	474,637.26	429,848.00	340,194.50	187,229.87	177,246.47	113,818.50	204,622.34
July	791,748.75	428,744.90	432,127.98	395,938.14	205,692.26	173,892.28	97,421.00	218,235.92
August	829,650.75	794,748.00	416,008.50	378,497.50	236,714.06	182,321.75	107,910.50	226,360.95
September	766,465.50	97,367.50	449,464.00	88,682.08	217,591.66	167,905.25	120,365.00	148,636.00
Total	10,548,271.00	5,362,459.92	4,990,028.15	4,291,591.29	2,399,028.76	2,097,630.75	1,530,306.89	

74.00
(12.75)
61.25

79

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Month	FY 2016 CCW	FY 2015 CCW	FY 2014 CCW	FY 2013 CCW	FY 2012 CCW	FY 2011 CCW	FY 2010 CCW
October	299,043.75	236,263.50	241,411.50	305,219.00	196,537.00	270,916.25	322,201.00
November	296,532.50	175,725.00	208,646.50	277,843.50	179,940.75	237,770.50	269,420.25
December	-	196,491.00	186,961.50	319,673.00	188,309.00	190,973.75	278,630.00
January	-	213,345.00	210,622.50	596,475.00	264,231.00	238,845.75	383,864.25
February	-	270,036.25	256,263.00	606,721.50	328,278.50	230,056.75	428,744.25
March	-	344,400.00	319,522.50	639,342.00	392,322.50	361,330.75	566,984.00
April	-	291,100.00	301,306.50	556,875.00	347,450.00	294,899.00	407,566.50
May	-	237,633.50	244,431.00	377,338.50	311,454.00	240,248.25	387,038.75
June	-	229,091.75	200,376.00	249,628.50	250,875.50	200,325.75	314,814.50
July	-	233,248.75	192,029.50	245,728.50	232,204.50	171,851.00	260,117.00
August	0	225,500.00	177,754.50	231,511.50	274,131.00	201,258.75	285,642.50
September	0	234,827.50	189,486.00	225,278.50	242,552.00	198,547.25	290,037.00
Total	595,576.25	2,887,662.25	2,728,811.00	4,631,634.50	3,208,285.75	2,837,023.75	4,195,060.00

Month	FY 2016 CCW	FY 2015 CCW	FY 2014 CCW	FY 2013 CCW	FY 2012 CCW	FY 2011 CCW	FY 2010 CCW	average
October	642,915.75	627,815.50	551,555.50	461,123.00	286,393.00	271,428.25	322,201.00	378,540.15
November	704,468.50	476,973.00	446,470.50	277,843.50	257,892.75	262,090.50	269,420.25	302,743.50
December	448.00	515,147.00	418,449.50	595,897.00	265,173.00	229,053.75	278,630.00	357,440.65
January	2,197,705.75	586,081.00	543,998.50	834,235.00	264,231.00	298,109.75	383,864.25	464,887.70
February	1,172,650.75	590,996.25	557,511.00	832,193.50	531,030.50	347,880.75	428,744.25	539,472.00
March	1,221,079.75	726,032.00	686,626.50	872,302.00	504,002.50	492,786.75	566,984.00	609,018.81
April	974,829.50	657,564.00	674,042.50	815,435.00	448,442.00	301,491.00	407,566.50	493,233.63
May	807,402.00	553,601.50	577,359.00	629,242.50	411,870.00	518,584.25	387,038.75	486,683.88
June	787,536.00	608,739.75	551,288.00	491,484.50	348,219.50	305,797.75	315,838.50	365,335.06
July	791,748.75	565,280.75	548,509.50	544,864.50	354,700.50	284,171.00	264,341.00	362,019.25
August	829,650.75	926,748.00	523,738.50	518,807.50	412,627.00	311,471.75	291,210.50	383,529.19
September	766,465.50	234,627.50	564,334.00	225,214.50	373,240.00	295,315.25	306,485.00	300,063.69
Total	10,896,901.00	7,069,806.25	6,643,883.00	7,098,642.50	4,457,821.75	3,918,180.75	4,222,324.00	

Month	FY 2016 CPLR	FY 2015 CPLR	FY 2014 CPLR	FY 2013 CPLR	FY 2012 CPLR	FY 2011 CPLR	FY 2010 CPLR
October	343,872.00	391,552.00	310,144.00	155,904.00	89,856.00	512.00	0.00
November	407,936.00	301,248.00	237,824.00	-	77,952.00	24,320.00	0.00
December	448.00	318,656.00	231,488.00	276,224.00	76,864.00	38,080.00	0.00
January	2,197,705.75	372,736.00	333,376.00	237,760.00	-	59,264.00	0.00
February	1,172,650.75	320,960.00	301,248.00	225,472.00	202,752.00	117,824.00	0.00
March	1,221,079.75	381,632.00	367,104.00	232,960.00	111,680.00	131,456.00	0.00
April	974,829.50	366,464.00	372,736.00	258,560.00	100,992.00	6,592.00	0.00
May	807,402.00	315,968.00	332,928.00	251,904.00	100,416.00	278,336.00	0.00
June	787,536.00	379,648.00	350,912.00	241,856.00	97,344.00	105,472.00	1,024.00
July	791,748.75	332,032.00	356,480.00	299,136.00	122,496.00	112,320.00	4,224.00
August	829,650.75	701,248.00	345,984.00	287,296.00	138,496.00	110,213.00	5,568.00
September	766,465.50	-	374,848.00	(64.00)	130,688.00	96,768.00	16,448.00
Total	10,301,324.75	4,182,144.00	3,915,072.00	2,467,008.00	1,249,536.00	1,081,157.00	27,264.00

Month	New	Renew		
October	5,835	5,373		
November	5,786	6,374		
December		7		
January	21,283	11,318	Two months	3,827,094.75
February	12,499	5,153	Average high	
March	12,579	5,704	Average high	
April	9,677	4,839	Decrease	10641.5
May	7,510	4,399	Lower	5659
June	6,694	4,799		
July	6,690	4,856		
August	7,241	4,908		
September	6,172	4,937		
Total	101,966	62,667		
Average	25,491.5	15,666.8		

DRAFT

CPL New Revenue / Expense Projection
New Law December 1, 2015

		12/1/2015								
		Old Law	CJIC	FBI		New Law	CJIC	FBI	Increase	
New		64.00		51.25	12.75	74.00		61.25	12.75	10.00
Renewal		64.00		64.00		79.00		79.00		15.00

						beginning 12/1/15	
FY 2015 data	Count	Oct/Nov	Adjusted Count		Revenue Increase	Additional revenue	
New	56,912	8,323	48,589		\$ 10.00	\$ 485,890	
Renewal	65,346	10,825	54,521		\$ 15.00	\$ 817,815	
							\$ 1,303,705

FY 16 Projection	Count	Oct-Nov	Count Dec-Sept	Total Revenue	FY 16 Revenue	Additional revenue
New	11,621		63,383	4,477,785	\$ 2,887,662	\$ 1,590,123
Renewal	11,754		55,930	5,170,726	4,182,144	988,582
Total	23,375		119,313	9,648,511	\$ 7,069,806	\$ 2,578,705

Additional Employees for CPL unit	One PP	26.2 PP	Total for year
Dept Mgr 14	1	5,658	148,240
Dept Analyst	2	3,550	93,010
Dept Tech	9	2,890	75,718
Dept Tech (half year)	2	2,890	36,125
Dept Spl	1	5,205	136,371
OT (half year)	1	6,752	84,400
			1,308,743

	FY 15 Data	FY 16 Data
Additional Revenue	1,303,705	2,578,705
Additional Expenses	1,308,743	1,308,743
Additional Fees	(5,038)	1,269,962

Note:
FY 2011 Average year for CPL applications
FY 2013 High year for CPL applications

FIREARMS

JOHNSON DEPARTM	14	29,002.45	100%	29,002.45		28,422.40
PIERCE, J DEPARTM P11		21,034.57	100%	21,034.57	210.35	5,048.30
CRAMER, DATA COL E7		16,252.85	100%	16,252.85		4,063.21
FINK, KAR DATA COL E7		12,172.49	100%	12,172.49		3,043.12
DANIEL, N GENERAL E7		14,822.84	100%	14,822.84		4,446.85
MARTIN, C GENERAL E7		10,685.54	100%	10,685.54		10,685.54
MITCHELL GENERAL E7			100%	-		-
JOHNSON DEPARTM	14	120,415.32	50%	60,207.66		59,003.51
PIERCE, J DEPARTM P11		90,326.36	50%	45,163.18	451.63	10,839.16
CRAMER, DATA COL E7		67,780.01	50%	33,890.01		8,472.50
FINK, KAR DATA COL E7		54,194.79	50%	27,097.40		6,774.35
DANIEL, N GENERAL E7		24,344.33	50%	12,172.17		3,651.65
MARTIN, C GENERAL E7		25,128.80	50%	12,564.40		12,564.40
MITCHELL GENERAL E7		18,986.58	50%	9,493.29		2,847.99
CURTIS, C GENERAL	6	4,631.15	50%	2,315.58		694.67
LUKCO, AI STUDENT A		12,150.59	50%	6,075.30		1,822.59

10/1/15-12/5/15
10/1/15-12/5/15
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12/6/15-9/30/16
12/6/15-9/30/16
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12/6/15-9/30/16
12/6/15-9/30/16
12/6/15-9/30/16
12/6/15-9/30/16
12/6/15-9/30/16
12/6/15-9/30/16

FY16 S&W SUMMARY- CJIC													type actual back into spreadsheet		
		actual	Variables												
Remaining Pay Periods	26.1	Hrs/PP	4	54 33%	BCR										
Insurance PP's Left	25.1	BLT	40	57 90%											
Fill Vacancies	26.1		2	99 05%	Insurance										
Fill Vacancies	26.1	0.0%	17	100.50%	3.2%										
			36	101.80%											
			4N	60.5500%											
			4M	60.5500%											
	CLASSIFICATION	PAY RATE #1	SALARY / WAGES	LONGEVITY	ERC PAY	CLEANING / CLOTHING ALLOW.	TOTAL COMPENSATION	RETIREMENT	EST. NSURANCE	PROJECTED PAYROLL	FUND ASSIGNED	Section			
ADMINISTRATION															
Brinningstaull, Dawn T	STATE BUREAU ADMINISTRATOR STATE BUREAU	61.41	128,224.08	790.10	0.00	0.00	129,014.18	69,953.59	15,245.92	214,213.69	4199	ADMN			
Bower, Katie A	STATE ADMINISTRATIVE MANAGER-2 16	53.80	112,334.40	790.10	0.00	0.00	113,124.50	61,326.85	1,951.62	176,402.97	4199	ADMN			
Vacant (New)	STATE ADMINISTRATIVE MANAGER-2 16	46.16	0.00	#N/A	0.00	0.00	#N/A	#N/A	#N/A	#N/A		Vacant	ADMN		
Delacruz-smith, Julie A	EXECUTIVE SECRETARY-E E10	22.88	47,773.44	0.00	0.00	0.00	47,773.44	28,327.11	15,342.79	91,443.34	4199	ADMN			
OTAL REPORTING AND ANALYSIS			288,331.92	#N/A	0.00	0.00	#N/A	#N/A	#N/A	#N/A					
SOR Unit															
SOR Unit															
Kelley, Marci S	DEPARTMENTAL MANAGER-2 13	33.53	70,010.64	0.00	0.00	0.00	70,010.64	40,135.80	21,113.21	131,259.65	4290	SOR			
Goucher, Lisa K	DEPARTMENTAL TECHNICIAN-E E9	23.98	50,070.24	300.11	0.00	0.00	50,370.35	29,313.47	3,364.50	83,048.32	4199	SOR-Fees			
Vacant (Hornby, Sabrina)	DEPARTMENTAL TECHNICIAN-E E9	21.17	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	4199	SOR-Fees			
Kalisz, Greg A	DEPARTMENTAL ANALYST-A 12	32.88	68,653.44	0.00	0.00	0.00	68,653.44	37,089.01	15,445.62	121,188.07	4199	SOR-Fees			
Marinoff, Melissa A	DEPARTMENTAL ANALYST-E P11	30.45	63,579.60	300.01	0.00	0.00	63,879.61	36,796.55	14,590.38	115,266.54	4290	SOR			
Wrinkle, Talmadge A	DEPARTMENTAL ANALYST-E P11	30.45	63,579.60	300.01	0.00	0.00	63,879.61	36,862.20	7,995.80	108,737.61	4199	SOR-Fees			
Jegla, Sharon M	DEPARTMENTAL ANALYST-E P11	30.45	63,579.60	370.05	0.00	0.00	63,949.65	36,811.77	16,144.68	116,906.10	4290	SOR			
Beckner, Jessina M	DEPARTMENTAL ANALYST TRAINEE	30.45	63,579.60	370.05	0.00	0.00	63,949.65	36,811.90	19,942.75	120,704.30	4199	SOR-Fees			
Cabrera, Stella J	GENERAL OFFICE ASSISTANT-E E7	21.65	45,205.20	341.54	0.00	0.00	45,546.74	24,599.16	14,215.85	84,361.75	4199	SOR-Fees			
Harris, Christopher M	STATE POLICE SERGEANT 12	36.19	75,564.72	0.00	1,405.60	552.20	77,522.52	78,865.75	20,966.61	177,354.88	4290	SOR			
Bell, Richard V	STATE POLICE TROOPER-E E11	32.75	68,382.00	790.00	1,405.60	552.20	71,129.80	72,316.30	20,873.37	164,319.47	4199	SOR-Fees			
Smith, Kenneth R	STATE POLICE TROOPER-E E11	32.44	67,734.72	610.00	1,405.60	552.20	70,302.52	71,785.68	4,311.69	146,399.89	4199	SOR-Fees			
Hoffmann, Brenda M	STATE POLICE TROOPER-E E11	32.44	67,734.72	370.00	1,405.60	552.20	70,062.52	71,185.57	1,270.43	142,518.52	4199	SOR-Fees			
Subtotal			767,674.08	3,751.77	5,622.40	2,208.80	779,257.05	572,573.17	160,234.89	1,512,065.11					
TOTAL SOR			767,674.08	3,751.77	5,622.40	2,208.80	779,257.05	572,573.17	160,234.89	1,512,065.11		* 1/2 Ashley God			
INCIDENT SECTION															
Administrative Unit															
Renz, Alan J	STATE POLICE FIRST LIEUTENANT 15	49.96	104,316.48	610.10	1,405.60	507.02	106,839.20	110,253.31	20,104.12	237,196.63	4199	ERS			
Brunger, Amanda	SECRETARY-A 9	23.00	48,024.00	0.00	0.00	0.00	48,024.00	27,542.29	19,133.36	94,699.65	4290	SOR			
Subtotal			152,340.48	610.10	1,405.60	507.02	154,863.20	137,795.59	39,237.48	331,896.27					
Enforcement Records Section															
Stokes, David E	STATE POLICE LIETNANT 14	40.21	83,958.48	610.00	1,405.60	507.02	86,481.10	88,368.91	21,390.86	196,240.87	4199	ERS			
Vacant (Stokes, David E)	STATE POLICE SERGEANT	37.82	78,968.16	0.00	1,405.60	507.02	80,918.60	81,323.19	20,330.80	182,572.59		Vacant	ERS		
Vacant	STATE POLICE TROOPER-E E11	31.48	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		Vacant	ERS		
Kline, Phylena A	DEPARTMENTAL ANALYST-A 12	32.88	68,653.44	480.10	0.00	0.00	69,133.54	39,735.49	15,445.62	124,314.65	4199	ERS			
Vacant (Moore, Chris M)	DEPARTMENTAL ANALYST 12	24.38	50,905.44	0.00	0.00	0.00	50,905.44	30,823.24	12,726.36	94,455.04		Vacant	ERS		
Starks, Amanda D	DEPARTMENTAL ANALYST TRAINEE-E 9	26.52	55,373.76	0.00	0.00	0.00	55,373.76	29,939.05	13,179.31	98,492.12	4199	ERS			
Murray, Douglas M	DEPARTMENTAL ANALYST-E P11	26.66	55,666.08	260.00	0.00	0.00	55,926.08	32,255.30	7,833.92	96,015.30	4199	ERS			
McQueen, Julie A	DEPARTMENTAL TECHNICIAN-E E9	23.98	50,070.24	370.00	0.00	0.00	50,440.24	27,996.12	13,958.14	92,394.50	4199	ERS			
Jones, Carla D	DEPARTMENTAL TECHNICIAN 10	23.98	50,070.24	0.00	0.00	0.00	50,070.24	26,579.20	13,737.98	90,387.42		Vacant	ERS		
Schneider, Marilyn	DEPARTMENTAL TECHNICIAN-E E9	23.98	50,070.24	0.00	0.00	0.00	50,070.24	28,987.18	4,063.04	83,120.46	4199	ERS			
Subtotal			543,736.08	1,720.10	2,811.20	1,014.04	549,319.24	386,007.69	122,666.03	1,057,992.96					
TOTAL INCIDENT SECTION			696,076.56	2,330.20	4,216.80	1,521.06	704,182.44	523,803.28	161,903.51	1,389,889.23					
Traffic Crash Reporting Section															
Traffic Crash Reporting Section															
Smith, Sydney B	DEPARTMENTAL MANAGER-3 14	39.54	82,559.52	790.10	0.00	0.00	83,349.62	45,155.88	13,735.14	142,240.64		Split	TCR		
Heinze, Amanda J	DEPARTMENTAL ANALYST-A 12	32.88	68,653.44	300.01	0.00	0.00	68,953.45	39,474.96	19,771.29	128,199.70		MSPO0059	TCR		
Russo, Jeremy S	DEPARTMENTAL TECHNICIAN-E E9	21.78	45,476.64	0.00	0.00	0.00	45,476.64	27,207.16	923.62	73,607.42		Split	TCR		

	CLASSIFICATION	PAY RATE #1	SALARY / WAGES	LONGEVITY	ERC PAY	CLEANING / CLOTHING ALLOW.	TOTAL COMPENSATION	RETIREMENT	EST. NSURANCE	PROJECTED PAYROLL	FUND ASSIGNED	Section
Beck, Teresa K	DEPARTMENTAL ANALYST-E P11	30.45	63,579.60	610.10	0.00	0.00	64,189.70	34,750.19	14,590.38	113,530.27	Split	TCR
Pohl, Dorothy	DEPARTMENTAL TECHNICIAN-A 10	26.71	55,770.48	790.00	0.00	0.00	56,560.48	30,569.87	14,429.53	101,559.88	Split	TCR
Barrett, Marie L	DEPARTMENTAL TECHNICIAN-E E9	23.98	50,070.24	300.11	0.00	0.00	50,370.35	30,029.75	7,939.08	88,339.18	Split	TCR
Fattal, Marilynne J	DEPARTMENTAL TECHNICIAN-E 8	21.47	44,829.36	0.00	0.00	0.00	44,829.36	26,836.91	3,953.48	75,619.75	Split	TCR
Carlson, Scott L	STATE POLICE SERGEANT 12	37.82	78,968.16	480.00	1,405.60	552.20	81,405.96	83,277.25	21,003.91	185,687.12	Split	TCR
Pioszak, Christine L	DEPARTMENTAL TECHNICIAN-E E9	23.98	50,070.24	480.00	0.00	0.00	50,550.24	29,073.54	16,145.97	95,769.75	Split	TCR
Vacant (Muckle)	DEPARTMENTAL TECHNICIAN-E 7	21.17	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	Vacant - 41140	TCR
Subtotal			539,977.68	3,750.32	1,405.60	552.20	545,685.80	346,375.51	112,492.40	1,004,553.71		
FARS Unit												
Stanton, Angela R	DEPARTMENTAL ANALYST-E 10	25.77	53,807.76	300.11	0.00	0.00	54,107.87	30,992.72	19,741.51	104,842.10	FARS	FARS
Sierra, Irma L	DEPARTMENTAL ANALYST-A 12	32.88	68,653.44	790.10	0.00	0.00	69,443.54	37,603.11	7,918.62	114,965.27	FARS	FARS
Subtotal			122,461.20	1,090.21	0.00	0.00	123,551.41	68,595.83	27,660.13	219,807.37		
TOTAL TRAFFIC CRASH REPORTING SECTION			662,438.88	4,840.53	1,405.60	552.20	669,237.21	414,971.34	140,152.53	1,224,361.08		
State Records Management System (SRMS) Section												
Admin												
Phelps, Robert B	DEPARTMENTAL MANAGER-4 15	43.97	91,809.36	260.00	0.00	0.00	92,069.36	55,371.70	2,547.33	149,988.39	0001	SRMS
Staercke, Alison M	SECRETARY-A 9	24.21	50,550.48	0.00	0.00	0.00	50,550.48	30,446.17	3,439.09	84,435.74	0001	SRMS
Subtotal			142,359.84	260.00	0.00	0.00	142,619.84	85,817.87	5,986.42	234,424.13		
Quality Assurance Unit												
Moore, Chris M	DEPARTMENTAL SPECIALIST-2 13	35.87	74,896.56	300.01	0.00	0.00	75,196.57	43,422.51	7,098.60	125,717.68	0001	SRMS
Warner, Susan B	DEPARTMENTAL SPECIALIST-2 13	33.53	70,010.64	0.00	0.00	0.00	70,010.64	41,899.90	1,427.39	113,337.93	0001	SRMS-fee
Subtotal			144,907.20	300.01	0.00	0.00	145,207.21	85,322.40	8,525.99	239,055.60		
SRMS Unit												
Newcomb, Katie J	DEPARTMENTAL MANAGER-3 14	37.23	77,736.24	0.00	0.00	0.00	77,736.24	46,471.05	1,581.50	125,788.79	0001	SRMS
Shelden, Joel L	DEPARTMENTAL SPECIALIST-2 13	35.87	74,896.56	0.00	0.00	0.00	74,896.56	45,038.16	2,227.46	122,162.18	0001	SRMS
Dowell, Mary K	DEPARTMENTAL ANALYST-E 10	25.77	53,807.76	0.00	0.00	0.00	53,807.76	31,941.70	15,142.32	100,891.78	0001	SRMS
Alimo, Amy C	DEPARTMENTAL TECHNICIAN-E E9	21.78	45,476.64	0.00	0.00	0.00	45,476.64	27,079.79	7,999.43	80,555.86	0001	SRMS
Vacant	DEPARTMENTAL ANALYST 9-11	24.38	0.00	#N/A	0.00	0.00	#N/A	#N/A	#N/A	#N/A	Vacant	SRMS
Bielak, Lauren W	DEPARTMENTAL TECHNICIAN-E E9	20.85	43,534.80	0.00	0.00	0.00	43,534.80	25,917.30	7,622.83	77,074.93	0001	SRMS
Subtotal			295,452.00	#N/A	0.00	0.00	#N/A	#N/A	#N/A	#N/A		
MICR Section												
Jenkins, Monica S	DEPARTMENTAL MANAGER-3 14	39.54	82,559.52	790.10	0.00	0.00	83,349.62	45,222.54	8,381.46	136,953.62	4199	MICR
Vacant (Rahn, Bradley B)	DEPARTMENTAL ANALYST 9-11	24.38	0.00	#N/A	0.00	0.00	#N/A	#N/A	#N/A	#N/A	Vacant	MICR
Arriitt, Elizabeth J	DEPARTMENTAL ANALYST-A 12	32.88	68,653.44	370.05	0.00	0.00	69,023.49	39,679.32	20,026.15	128,728.96	4199	MICR
Kines, Jessica L	DEPARTMENTAL ANALYST-E 10	24.39	50,926.32	300.11	0.00	0.00	51,226.43	29,386.00	19,681.42	100,293.85	4199	MICR
Hehrer, Laura M	DEPARTMENTAL TECHNICIAN-E 7	19.96	41,676.48	0.00	0.00	0.00	41,676.48	24,085.60	11,898.52	77,660.60	4199	MICR
Olney, Karis L	DEPARTMENTAL TECHNICIAN-E 8	18.86	39,379.68	0.00	0.00	0.00	39,379.68	23,505.66	6,377.79	69,263.13	4199	MICR
Vacant	STUDENT ASSISTANT	15.19	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	Vacant	MICR
Subtotal			283,195.44	#N/A	0.00	0.00	#N/A	#N/A	#N/A	#N/A		
TOTAL SRMS Section			865,914.48	#N/A	0.00	0.00	#N/A	#N/A	#N/A	#N/A		
CRIMINAL HISTORY												
Administrative Unit												
Rivet, Gregory	DEPARTMENTAL MANAGER-4 15	43.97	91,809.36	370.05	0.00	0.00	92,179.41	53,121.87	16,690.92	161,992.20	4199	CHR
Kilvington, Ted J	DEPARTMENTAL ANALYST-E P11	30.45	63,579.60	480.10	0.00	0.00	64,059.70	36,801.46	13,034.26	113,895.42	3470	Grant
Williams, Sherri L	DEPARTMENTAL SPECIALIST-2 13	35.87	74,896.56	790.10	0.00	0.00	75,686.66	40,989.38	13,575.33	130,251.37	4199	CHR
Foster, Toni L	DEPARTMENTAL TECHNICIAN-A 10	26.71	55,770.48	260.00	0.00	0.00	56,030.48	31,558.58	19,781.91	107,370.97	4199	CHR
Andersen, Ashley A	SECRETARY-A 9	20.10	41,968.80	0.00	0.00	0.00	41,968.80	24,853.99	14,899.89	81,722.68	4199	CHR
Subtotal			328,024.80	1,900.25	0.00	0.00	329,925.05	187,325.27	77,982.31	595,232.63		
Criminal History												
Rosin, Sherry L	DEPARTMENTAL MANAGER-3 14	37.23	77,736.24	300.01	0.00	0.00	78,036.25	44,977.96	17,128.64	140,142.85	4199	CHR
Campbell, Paulette J	DEPARTMENTAL ANALYST-E P11	30.45	63,579.60	480.10	0.00	0.00	64,059.70	36,801.08	11,249.19	112,109.97	4199	CHR
Self, Todd D	DEPARTMENTAL ANALYST TRAINEE-E 9	23.01	48,044.88	260.00	0.00	0.00	48,304.88	26,156.48	19,590.25	94,051.61	4199	CHR
ICHAT												
Arnold, Amanda S	DEPARTMENTAL TECHNICIAN-E E9	23.98	50,070.24	260.00	0.00	0.00	50,330.24	27,241.40	20,707.60	98,279.24	4199	CHR
Beck, Linda A	DEPARTMENTAL TECHNICIAN-A 10	26.71	55,770.48	1,040.00	0.00	0.00	56,810.48	30,729.96	14,429.53	101,969.97	MSPO#1960	CHR
Betts, Jennifer L	DEPARTMENTAL TECHNICIAN-A 10	26.71	55,770.48	790.00	0.00	0.00	56,560.48	30,658.66	7,655.73	94,874.87	4199	CHR

	CLASSIFICATION	PAY RATE #1	SALARY / WAGES	LONGEVITY	ERC PAY	CLEANING / CLOTHING ALLOW.	TOTAL COMPENSATION	RETIREMENT	EST. NSURANCE	PROJECTED PAYROLL	FUND ASSIGNED	Section
Sapkota, Tika - AICS	Info Programmer/Analyst		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	IT4199	ITADMN
			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	IT4199	ITADMN
			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	IT4199
Subtotal			0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
Executive												
vacant	#N/A	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	To MSD	
vacant	#N/A	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	To MSD	
vacant		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	To MSD	
Beatty, Steven G	Dept Specialist 13 - lawyer	35.87	74,896.56	0.00	0.00	0.00	74,896.56	44,550.24	17,069.07	136,515.87	4199	EXEC
Subtotal			74,896.56	0.00	0.00	0.00	74,896.56	44,550.24	17,069.07	136,515.87		
Freedom of Information Unit												
Hinkley, Lori M	DEPARTMENTAL MANAGER-4 15	43.97	91,809.36	370.05	0.00	0.00	92,179.41	52,903.58	15,899.66	160,982.65	4199	FOIA
Clark, Tiffany A	SECRETARY-A 9	21.02	43,889.76	0.00	0.00	0.00	43,889.76	24,870.69	6,469.22	75,229.67	4199	FOIA
Vacant (Beckner, Jessina M)	DEPARTMENT SUPERVISOR 12	27.69	0.00	#N/A	0.00	0.00	#N/A	#N/A	#N/A	#N/A	4199	FOIA
McDaniel, Nathan J	DEPARTMENTAL TECHNICIAN-A 10	21.78	45,476.64	0.00	0.00	0.00	45,476.64	25,035.47	923.62	71,435.73	4199	FOIA
Fox, Judith A	DEPARTMENTAL TECHNICIAN-A 10	26.71	55,770.48	480.00	0.00	0.00	56,250.48	30,218.84	20,382.03	106,851.35	4199	FOIA
Goodwin, Bethany K	DEPARTMENTAL TECHNICIAN-A 10	26.71	55,770.48	300.11	0.00	0.00	56,070.59	32,291.72	13,188.63	101,550.94	4199	FOIA
Pitonyak, Eric J	DEPARTMENTAL TECHNICIAN-E E9	23.01	48,044.88	0.00	0.00	0.00	48,044.88	27,712.98	6,179.65	81,937.51	4199	FOIA
Schneider, Gladys A	DEPARTMENTAL TECHNICIAN-E E9	23.98	50,070.24	1,040.00	0.00	0.00	51,110.24	27,693.42	14,316.09	93,119.75	4199	FOIA
Gackstetter, Lance E	DEPARTMENTAL TECHNICIAN-E E9	23.98	50,070.24	0.00	0.00	0.00	50,070.24	27,299.82	7,721.51	85,091.57	4199	FOIA
Hultberg, Renee K	DEPARTMENTAL TECHNICIAN-A 10	25.45	53,139.60	259.00	0.00	0.00	53,398.60	30,725.88	13,606.67	97,731.15	4199	FOIA
Dietrich, Tina k	GENERAL OFFICE ASSISTANT-E E7	19.96	41,676.48	0.00	0.00	0.00	41,676.48	25,115.01	3,891.32	70,682.81	4199	FOIA
Jegla, Laura R	GENERAL OFFICE ASSISTANT-E 5	15.31	31,967.28	0.00	0.00	0.00	31,967.28	19,001.93	11,697.79	62,667.00	4199	FOIA
Subtotal			567,685.44	#N/A	0.00	0.00	#N/A	#N/A	#N/A	#N/A		
TOTAL OTHER POSITIONS			861,822.00	#N/A	0.00	0.00	#N/A	#N/A	#N/A	#N/A		
Mail Room												
Piegols, Mark A	GENERAL OFFICE ASSISTANT-E E7	21.65	45,205.20	0.00	0.00	0.00	45,205.20	24,500.07	7,331.19	77,036.46	To MSD	
Confiscated Weapons												
Weinrick, Platt R	DEPARTMENTAL ANALYST-A 12	32.88	68,653.44	0.00	0.00	0.00	68,653.44	41,076.44	1,398.12	111,128.00	To MSD	
ASB - 50% CJIC fees												
Sible, Shawn W	SENIOR DEPUTY DIRECTOR 20	68.15	142,297.20	0.00	0.00	0.00	142,297.20	77,176.74	11,166.05	230,639.99	To MSD	
Dale, Angela D	SENIOR EXEC MGT ASST-3 13	30.45	63,579.60	0.00	0.00	0.00	63,579.60	36,553.57	10,509.20	110,642.37	To MSD	
Wichman, Mary F	SENIOR EXECUTIVE ASST DPTY DIR 15	53.65	112,021.20	0.00	0.00	0.00	112,021.20	60,865.48	4,561.11	177,447.79	To MSD	
Project Management Office												
Shaw, Daniel M	DEPARTMENTAL ANALYST-A 12	32.88	68,653.44	0.00	0.00	0.00	68,653.44	38,894.48	13,718.30	121,266.22	To MSD	
Departmental Services Division												
Molzan, Lucinda L	FINANCIAL ANALYST-A 12	32.88	68,653.44	0.00	0.00	0.00	68,653.44	40,844.41	15,033.80	124,531.65	To MSD	
Semenchuk, Tara L	ACCOUNTING SPECIALIST-2 FZN 13	35.87	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	To MSD	
MIOC												
Goodwillie, Ashley L	DEPARTMENTAL ANALYST-E 9	19.96	20,838.24	0.00	0.00	0.00	20,838.24	12,566.82	454.04	33,859.10	4199	SOR-Fees
TOTAL OTHER CJIC FEES			569,063.52	0.00	0.00	0.00	569,063.52	319,911.20	63,717.77	952,692.49		



STATE OF MICHIGAN
COURT OF CLAIMS

MICHIGAN OPEN CARRY, INC.,

Plaintiff,

No. 18-0000058-CZ

v

HON. COLLEEN A. O'BRIEN

MICHIGAN DEPARTMENT OF STATE
POLICE A/K/A MICHIGAN STATE POLICE,

Defendant.

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Outside Legal Counsel PLC
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**DEFENDANT MICHIGAN STATE POLICE'S ANSWERS TO PLAINTIFF'S
FIRST DISCOVERY REQUESTS**

Defendant Michigan State Police ("MSP"), through counsel, responds to
Plaintiffs' First Discovery requests as follows:

INTERROGATORIES

1. INTERROGATORY: In response to Plaintiff Michigan Open Carry, Inc's
FOIA request for the "*list of expenditures made by the Department of State Police
from money received under the Firearms Act (1927 PA 372, MCL 28.421 et. seq.),
regardless of purpose, between October 1, 2015 to September 30, 2016*), you

responded via your FOIA Coordinator that “the records you have requested are available at the department's website at http://www.michigan.gov/msp/0,4643,7-123-1878_1591_3503_4654-77621--,00.html.” Compare **Exhibit A with Exhibit G** attached. On this webpage (a printout of which is attached hereto as **Exhibit K**), there are additional links to documents entitled *[Year- Year] CPL Annual Report* for the periods referenced by the FOIA request.

Please state the *exact* page number(s) within the applicable *CPL Annual Report* which contains the information sought by Plaintiff Michigan Open Carry, Inc's FOIA Request dated Sept 28, 2017 for expenditures between October 1, 2015 to September 30, 2016.

OBJECTION: MSP objects to this Interrogatory as Plaintiff has not completely described its September 28, 2017 FOIA request. In addition to the language quoted in this Interrogatory, Plaintiff also explained that the information it was seeking in its FOIA request “is required by law to be posted to the Department's website per Section 5e of 1927 PA 372, MCL 28.425e(5)(m).”

ANSWER: Subject to and without waving the above objection, MSP states that the information sought by Plaintiff in its September 28, 2017 FOIA request is located on page 3 of the October 1, 2015 – September 30, 2016 Concealed Pistol Licensing Annual Report.

3. INTERROGATORY: If the answer to [2. Request to Admit] is anything other than a complete affirmation, identify *with particularity* the factual and/or legal basis (including full citations to all laws) for your denial, including the name,

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

OBJECTION: No answer is required because MSP admitted the request.

4. INTERROGATORY: Identify (name, address, telephone number, email address) the name(s) of each and every employee/agent/contractor/official within or on behalf of the Michigan Department of State Police who is the custodian of records and/or is responsible for compiling the expenditures made by the Department of State Police from money received under the Firearms Act between October 1, 2015 to September 30, 2016.

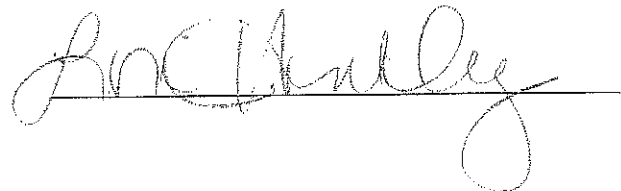
OBJECTION: MSP objects to this Interrogatory as it is unclear what Plaintiff means by terms “custodian of records” and “responsible.”

ANSWER: Subject to and without waiving the above objections, MSP states that Amanda Baker is the director of MSP’s Budget and Financial Services Division which ultimately produces the annual Concealed Pistol License Reports.

6. INTERROGATORY: Identify all persons with whom you consulted and/or checked with to investigate actual or possible answers to these discovery requests; for each person, itemize each discovery request the person contributed information which became your answer in response thereto.

ANSWER: MSP states that the following individuals were collectively involved with the response to Plaintiff's discovery requests: Lori Hinkley, Lance Gackstetter, David Morris, Kevin Collins, Amanda Baker, Shawn Sible, Dawn Brinningstaull.

I DECLARE THAT THE FOREGOING ANSWERS TO PLAINTIFF'S FIRST INTERROGATORIES ARE TRUE TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF AND BASED UPON INFORMATION THAT I OBTAINED OR THAT WAS OBTAINED OR GATHERED BY PERSONS WHO REPORT TO ME.



Subscribed and sworn to before me
this 29 day of May, 2018

Staci Bee Yenc
Notary Public
Eaton County, MI

My Commission Expires: 1.13.24
Acting in Ingham County, MI

AS TO ANY OBJECTIONS

Adam R. de Bear (P80242)
Attorney for Defendant
State Operations Division
P.O. Box 30754
Lansing, Michigan 48909

Dated: May 29, 2018

REQUEST TO ADMIT AND REQUEST TO PRODUCE

2. REQUEST TO ADMIT: Please admit that attached as Exhibit L is a full and complete and authenticated copy of the Department's "*Concealed Pistol License Annual Report October 1, 2015 to September 30, 2016*" as existing on your website (http://www.michigan.gov/msp/0,4643,7-123-1878_1591_3503_4654-77621--_00.html) on October 11, 2017.

ANSWER: Admit

5. REQUEST FOR PRODUCTION: All email and/or written communications involving Plaintiff Michigan Open Carry, Inc's Sept 28, 2017 FOIA request, including (but not limited to) all communications to/from/between the Department of State Police's FOIA Coordinator and any other employee/agent/contractor/official within the Michigan Department of State Police.

OBJECTION: MSP objects to this Request for Production to the extent that it seeks communications created after the lawsuit was filed. Such communications are not discoverable under the attorney-client and work product privileges.

ANSWER: See MSP000001 – 000063 which are being transmitted to Plaintiff's counsel via email and not US mail.

Respectfully submitted,

Bill Schuette
Attorney General



Adam R. De Bear (P80242)
Assistant Attorneys General
Attorneys for Defendant
State Operations Division

Dated: May 29, 2018



STATE OF MICHIGAN
IN THE COURT OF CLAIMS

MICHIGAN OPEN CARRY, INC,
Plaintiff/Petitioner,

Case No.: 18-000058-MZ
Honorable Colleen O'Brien

v.

AFFIDAVIT

MICHIGAN DEPARTMENT OF STATE
POLICE also commonly known as the
MICHIGAN STATE POLICE,
Defendant

_____ /

DECLARATION OF THOMAS LAMBERT

State of Michigan)
County of Kent) ss.

Thomas Lambert declares as follows:

1. I am Thomas Lambert and I served as the president of Michigan Open Carry, Inc.
2. On behalf of Michigan Open Carry, Inc., I filed a Freedom of Information Act request with the Michigan Department of State Police seeking "a list of expenditures made by the Department of State Police from money received under the *Firearms Act* (1927 PA 372, MCL 28.421 et. seq), regardless of purpose, between October 1, 2015 to September 30, 2016."
3. Michigan Open Carry, Inc is concerned about the fee amount being charged under Michigan law for firearm permits.
4. Michigan Open Carry, Inc has been actively involved with legislators and policymakers to reduce the practical and legal barriers for the lawful carry of firearms in this state.
5. As part of that process, Michigan Open Carry, Inc would advocate and has advocated for reducing, to the lowest level possible, the fees being charged to citizens to obtain necessary licenses and permits for lawful carry.
6. As part of the legislative process, the Michigan Department of State Police advocated to legislators for higher fees to cover costs; it is believed that far more fees are being collected than needed to support the licensing system.
7. The Michigan Legislature, likely as an ongoing review mechanism, requires the Michigan Department of State Police to file with the secretary of the Michigan

Senate and the clerk of the Michigan House of Representatives, and post on the Department's internet website an annual report setting forth certain information, including "[a] list of expenditures made by the department of state police from money received under this act, regardless of purpose," see MCL 28.425e(5)(m).

8. As part of our advocacy work, Michigan Open Carry, Inc noticed that the Michigan Department of State Police were not reporting the "list of expenditures" as MCL 28.425e(5)(m) dictates, but rather only a small list of general categories with vague descriptions like "support systems."
9. As such, Michigan Open Carry, Inc then filed a Freedom of Information Act request with the Michigan Department of State Police seeking the actual list of expenditures.
10. The response to this Freedom of Information Act request was expected to include accounting and/or budgetary-like records showing how each and every dollar of the ≈\$8 million fees collected by the Michigan Department of State Police is spent.
11. If the Michigan Department of State Police is using collected fees for things beyond the licensing process, Michigan Open Carry, Inc would hold the Michigan Department of State Police political accountable by advocating for a change in Michigan law to reduce those fees more in line with actual costs, and thereby increase lawful carry rights.
12. Instead of providing the accounting and/or budgetary-like records, the Michigan Department of State Police provided a website link to the same small list of general category totals (having vague descriptions) instead of the list of expenditures requested.
13. Put bluntly, the Michigan Department of State Police did not fulfill Michigan Open Carry, Inc's September 28, 2017 FOIA request.
14. I am making this declaration as part of Michigan Open Carry, Inc's opposition to the premature motion for summary disposition filed by the Michigan Department of State Police.
15. This affidavit is made pursuant to MCR 2.116(H).
16. As I understand it, MCR 2.116(H)(1) allows a party like Michigan Open Carry, Inc to show by affidavit that the facts necessary to support the party's position cannot be presented because the facts are known only to persons whose affidavits the party cannot procure.
17. I, as president of Michigan Open Carry, Inc, believe that several employees of the Michigan Department of State Police have facts and evidence proving that a

list of expenditures exist within the Michigan Department of State Police, including Amanda Baker, David Morris and/or Lucinda Molzan, see the attached email.

18. From initial discovery responses from the Michigan Department of State Police, I, as president of Michigan Open Carry, Inc, believe that Amanda Baker, the director of the Michigan Department of State Police's Budget and Financial Services Division, is the person who has the necessary facts which our lawyer cannot obtain because of the prohibitions provided by the Michigan Rules of Professional Conduct's prohibition of speaking with representatives of an opposing party who has counsel; if she does not, then David Morris and/or Lucinda Molzan likely do, , see the attached email.
19. One or more depositions would provide access to these facts.
20. The probable testimony of Amanda Baker, David Morris and/or Lucinda Molzan is that actual responsive records of a list of expenditures are available, existing, and disclosable from the Michigan Department of State Police, and that none were asked to see or to retrieve these records containing the demanded information.
21. I believe Amanda Baker specifically has these facts because Amanda Baker, as the director of the Michigan Department of State Police's Budget and Financial Services Division, has been identified, by discovery from the Michigan Department of State Police, as being an "employee / agent / contractor / official within or on behalf of the Michigan Department of State Police who is responsible for compiling the list of expenditures made by the Department of State Police from money received under the Firearms Act as required by MCL 28.425e(5)(m)."
22. If sworn, I could testify competently to the facts contained within this affidavit based upon my personal knowledge.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Thomas Lambert, Declarant
President, Michigan Open Carry, Inc

6-5-2018
Date



STATE OF MICHIGAN
COURT OF APPEALS

PHAEDRA PETERSEN,

Plaintiff-Appellant,

v

CHARTER TOWNSHIP OF SHELBY,

Defendant-Appellee.

UNPUBLISHED

May 1, 2018

No. 336301

Macomb Circuit Court

LC No. 2014-001422-CZ

Before: RIORDAN, P.J., and BOONSTRA and GADOLA, JJ.

PER CURIAM.

After remand, plaintiff, Phaedra Petersen, appeals as of right the trial court's order granting defendant, the Charter Township of Shelby, summary disposition of her claim for attorney fees and costs under Michigan's Freedom of Information Act (FOIA), MCL 15.231 *et seq.* We reverse the order of the trial court, and remand for entry of an order granting plaintiff attorney fees and costs.

I. FACTS

This matter is returning to this Court after remand to the trial court. In *Petersen v Charter Twp of Shelby*, unpublished per curiam opinion of the Court of Appeals, issued April 28, 2016 (Docket No. 323868), this Court affirmed in part and reversed in part the trial court's order granting defendant summary disposition pursuant to MCR 2.116(C)(7), (C)(8), and (C)(10). In our opinion in that appeal, we summarized the pertinent facts as follows:

This case arose from plaintiff's attempts to obtain police records from the Shelby Township Police Department. On February 18, 2014, plaintiff presented a written request (dated February 17, 2014) seeking documents and police reports related to a retail fraud investigation involving allegations that a certain individual shoplifted from a Kohl's department store. While defendant disclosed documents in response to plaintiff's request at a cost of \$62.00, plaintiff claims that the disclosed documents were not the documents she was seeking.

On March 10, 2014, plaintiff submitted another record request (dated March 7, 2014), in which she specifically requested "pursuant to the state open records act," "access to and copies of case 11-41282 for retail fraud." Plaintiff alleges that, four days later, a Shelby Township employee told her that documents

related to Case No. 11-41282 would not be disclosed because the case—entailing an incident that occurred in 2011—was still under investigation and plaintiff had not made an “official” FOIA request for the documents. No additional documents were provided to plaintiff in response to her second request.

On April 8, 2014, plaintiff’s counsel submitted an online FOIA request on plaintiff’s behalf requesting “all documents related to Shelby Police Department (SPD) incident report #11-41282,” as well as “all SPD dispatch and run reports for the day in which report #11-41282 was created,” and “all records, audio recordings of telephone calls between Phaedra Petersen and ‘Grace,’ at Shelby Twp.”

On April 11, 2014, plaintiff filed a complaint alleging (1) a FOIA violation with respect to the February 18, 2014 record request, (2) a FOIA violation with respect to the March 10, 2014 record request, and (3) a claim for declaratory judgment that the Shelby Township Police Department is not subject to any FOIA exemptions with respect to Case No. 11-41282 and that defendant has failed to meet its burden of demonstrating a valid exemption to disclosure.

On April 15, 2014, defendant produced the incident report in its Case No. 11-41282.

Plaintiff moved for summary disposition under MCR 2.116(C)(9) and (10), and for attorney fees and costs under MCL 15.240, MCR 2.114(E), and MCL 600.2591. Defendant moved for summary disposition under MCR 2.116(C)(7), (8), and (10). Although the parties noticed their motions for a hearing, no such hearing took place. Instead, the trial court issued a written opinion and order granting summary disposition to defendant and denying plaintiff’s motion. [*Petersen*, unpub op at 1-2 (footnotes omitted).]

Plaintiff appealed the trial court’s order to this Court. In that appeal, this Court held that the trial court correctly determined that plaintiff was not entitled to statutory damages under MCL 15.240(7). This Court further held that because defendant had ultimately disclosed the requested records, the trial court correctly determined that plaintiff was not entitled to an order compelling production of the records, nor to other declaratory relief. *Id.* at 3-5. This Court reversed the trial court’s order granting defendant summary disposition of plaintiff’s request for attorney fees and costs, however, and remanded that issue to the trial court. This Court explained:

[T]o be entitled to attorney fees and costs, a plaintiff must prevail “in its assertion of the right to inspect, copy, or receive a copy of all or a portion of a public record.” *Local Area Watch [v City of Grand Rapids]*, 262 Mich App [136,] 149 [;683 NW2d 745 (2004)]. The test is whether (1) the action was reasonably necessary to compel the disclosure, and (2) the action had the substantial causative effect on the delivery of the information to the plaintiff. *Id.*

In this case, the trial court denied plaintiff's request for attorney fees and costs on the ground that the court never made a finding that the requested documents were subject to disclosure under FOIA, "nor was it requested to do so." The trial court never determined whether the requested documents were subject to disclosure under FOIA because defendant released the documents four days after the complaint was filed. This Court has held, however, that "the disclosure of the records after plaintiff commenced the circuit court action rendering the FOIA claim moot as to the late-disclosed items does not void plaintiff's entitlement to fees and costs under [MCL 15.240(6)]." *Local Area Watch*, 262 Mich App at 150. Therefore, even though the requested documents had been disclosed to plaintiff, the trial court should have determined whether the documents were subject to FOIA disclosure for the purpose of determining plaintiff's right to attorney fees and costs.

Furthermore, the trial court erred in finding that plaintiff did not request a determination that the documents were subject to disclosure under FOIA. In her motion for summary disposition, plaintiff argued that she was entitled to attorney fees and costs because no exemption justified the failure to disclose the requested documents. Therefore, contrary to the trial court's finding, plaintiff requested a determination whether the requested documents were subject to disclosure under FOIA. Without making this determination, the trial court could not properly determine whether plaintiff was entitled to attorney fees and costs. Accordingly, we remand this case to the trial court for a determination of (1) whether the requested documents were subject to disclosure under FOIA, (2) whether the action was reasonably necessary to compel the disclosure, and (3) whether the action had the substantial causative effect on the delivery of the information to plaintiff. [*Petersen*, unpub op at 4-5.]

On remand to the trial court, the parties submitted briefs addressing the questions articulated by this Court regarding attorney fees and costs. Plaintiff, however, also filed a motion to compel responses to previous discovery requests. Defendant responded by filing a motion to strike plaintiff's motion to compel, and also to strike portions of plaintiff's brief before the trial court.

After a hearing, the trial court granted defendant summary disposition on the question of attorney fees and costs. The trial court found that the records requested by plaintiff were exempt from disclosure. The trial court reasoned that at the time of the February 2014 request, the investigation by the police department was ongoing and that under MCL 15.243(1)(b)(i), the requested records therefore were exempt as investigating records compiled for law enforcement purposes, the disclosure of which would interfere with law enforcement proceedings. The trial court also held that the records were exempt at the time of all requests under MCL 15.243(1)(b)(iii), because they were investigating records compiled for law enforcement purposes, the disclosure of which would constitute an unwarranted invasion of personal privacy.

The trial court further held that plaintiff was not entitled to attorney fees and costs because the legal action was neither reasonably necessary to compel disclosure of the records, nor did it have a substantial causative effect on the disclosure of the records. The trial court

reasoned that because the records were exempt from disclosure, plaintiff could not “prevail” in the action within the meaning of the statute. The trial court further reasoned that because the records had been disclosed after plaintiff’s April 2014 request, the lawsuit was not reasonably necessary to compel the disclosure nor a substantial causative effect on the delivery of the information to plaintiff. The trial court therefore concluded that plaintiff was not entitled to mandatory attorney fees and costs under MCL 15.240(6), and that it would not exercise its discretion to award any attorney fees under that same provision. The trial court also denied plaintiff’s motion to compel and defendant’s motion to strike. Plaintiff now appeals to this Court from the trial court’s order.

II. DISCUSSION

A. ATTORNEY FEES AND COSTS

On appeal, plaintiff contends that the trial court erred in granting defendant summary disposition of her claim for attorney fees and costs.¹ Plaintiff argues that the trial court erred in determining that the records in question were exempt from disclosure. She also contends that the lawsuit was reasonably necessary to compel disclosure of the records, as well as a substantial causative factor in the ultimate disclosure of the records, and that she therefore is entitled to attorney fees and costs under MCL 15.240(6). We conclude that the requested records were exempt from disclosure, but also conclude that plaintiff nonetheless was entitled to attorney fees and costs under the FOIA.

1. STANDARD OF REVIEW

We review de novo the trial court’s interpretation and application of the FOIA. *ESPN, Inc v Mich State Univ*, 311 Mich App 662, 664; 876 NW2d 593 (2015). Generally, whether a record is exempt from disclosure is a mixed question of fact and law, but if the facts are undisputed and reasonable minds could not differ, the question whether a public record is exempt under FOIA is a question of law for the court. *Rataj v City of Romulus*, 306 Mich App 735, 747-748; 858 NW2d 116 (2014). The trial court’s factual determinations in a FOIA action, if any, are reviewed for clear error. *King v Mich State Police Dep’t*, 303 Mich App 162, 174; 841 NW2d 914 (2013).

We also review de novo a trial court’s grant or denial of summary disposition. *Arabo v Mich Gaming Control Bd*, 310 Mich App 370, 382; 872 NW2d 223 (2015). Here, plaintiff moved for summary disposition pursuant to MCR 2.116 (C)(9) and (10), and we conclude that she was entitled to summary disposition under both subsections. A motion for summary disposition brought pursuant to MCR 2.116(C)(9) tests the sufficiency of the defendant’s pleadings, and is properly granted when the defendant has failed to state a valid defense to the

¹ Plaintiff also contends that the trial court erred in denying her motion to compel discovery. The trial court properly denied this motion as outside the scope of this Court’s remand order. *International Business Machines Corp v Dep’t of Treasury*, 316 Mich App 346, 350; 891 NW2d 880 (2016). For the same reason, we decline to reach that issue in this appeal.

claim. *Payne v Farm Bureau Ins*, 263 Mich App 521, 525; 688 NW2d 327 (2004). A motion for summary disposition under MCR 2.116(C)(10) is properly granted 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. *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 206; 815 NW2d 412 (2012).

2. DISCLOSURE UNDER FOIA

Under Michigan's FOIA, "all persons . . . 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." MCL 15.231(2); see also *Amberg v Dearborn*, 497 Mich 28, 30; 850 NW2d 674 (2014). Michigan's FOIA therefore generally mandates the full disclosure of public records in the possession of a public body. *Ellison v Dep't of State*, 320 Mich App 169, 176; 906 NW2d 221 (2017) Michigan's FOIA is thus described as a pro-disclosure statute. *Thomas v New Baltimore*, 254 Mich App 196, 201; 657 NW2d 530 (2003).

The FOIA sets forth specific requirements for a public body responding to a request for information. *Id.* When a request for records is made under FOIA, a public body has a duty to provide access to or copies of the requested records, unless those records are exempt from disclosure. *Pennington v Washtenaw Co Sheriff*, 125 Mich App 556, 564; 336 NW2d 828 (1983). MCL 15.235 provides, in relevant part:

(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.

(3) Failure to respond to a request pursuant to subsection (2) constitutes a public body's final determination to deny the request if either of the following applies:

(a) The failure was willful and intentional.

(b) 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 to this act,

on the front of an envelope or in the subject line of an electronic mail, letter, or facsimile cover page.

When a public body denies a request under FOIA, the burden is upon that public body to justify the denial. *Thomas*, 254 Mich App at 203. MCL 15.235(5) requires a public body denying a request “in whole or in part” to send a written notice to the person making the request, including:

(a) An explanation of the basis under this act or other statute for the determination that the public record, or a portion of that public record, is exempt from disclosure, if that is the reason for denying all or a portion of the request.

(b) A certificate that the public record does not exist under the name given by the requester or by another name reasonably known to the public body, if that is the reason for denying the request or a portion of the request.

Thus, when a public body denies a request, the public body is required to explain in writing the basis for denying disclosure of the record. MCL 15.235(5). If the reason for denial is that the record is exempt from disclosure, the public body must explain the basis for the exemption. MCL 15.235(5)(a). Similarly, if the reason for the denial of the request is that the record does not exist, the public body must certify that the record does not exist. MCL 15.235(5)(b). A public body’s failure to timely respond to a request for records constitutes a denial of the request. *Local Area Watch v Grand Rapids*, 262 Mich App 136, 150; 683 NW2d 745 (2004). The purpose of this requirement is to prevent a public body from using silence effectively to deny a FOIA request, necessitating a lawsuit by the requester to force production of the record or to discover the reason for the denial. See *Key v Twp of Paw Paw*, 254 Mich App 508, 511; 657 NW2d 546 (2003).

In this case, plaintiff requested records from defendant in March 2014. Defendant was required by FOIA either to produce the records or to deny the request in writing, stating the basis for the denial. MCL 15.235(5). Defendant, apparently concluding that the requested records were exempt from disclosure, failed to either produce the records or to deny the request in writing within the time period established by the statute. Because defendant was required by the FOIA to respond to plaintiff’s request regardless of the exemption status of the documents requested, defendant’s failure to respond to the March 2014 request violated the FOIA.

3. EXEMPTION FROM DISCLOSURE

A request for public records made pursuant to FOIA must be fulfilled unless MCL 15.243 lists an applicable exemption. *Coblentz v Novi*, 475 Mich 558, 573; 719 NW2d 73 (2006). In that regard, MCL 15.243 provides, in relevant part:

(1) A public body may exempt from disclosure as a public record under this act any of the following:

(a) Information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual’s privacy.

(b) Investigating records compiled for law enforcement purposes, but only to the extent that disclosure as a public record would do any of the following:

(i) Interfere with law enforcement proceedings.

(ii) Deprive a person of the right to a fair trial or impartial administrative adjudication.

(iii) Constitute an unwarranted invasion of personal privacy.

In this case, we remanded to the trial court to decide whether plaintiff was entitled to attorney fees and costs under FOIA, including a decision whether the requested records were exempt from disclosure under FOIA. On remand, the trial court determined that the requested records were exempt from disclosure. The trial court first found that at the time of the February 2014 request, the requested records related to an investigation that was still classified as “open” by law enforcement and therefore the records were exempt from disclosure under MCL 15.243(1)(b)(i) as investigating records compiled for law enforcement purposes, the disclosure of which would interfere with law enforcement proceedings. The record, however, does not support this conclusion in light of the test set forth in *Evening News Ass’n v City of Troy*, 417 Mich 481, 503; 339 NW2d 421 (1983).

In *Evening News*, our Supreme Court held that it was not sufficient to demonstrate an exemption under MCL 15.243(1)(b)(i) to simply determine that disclosure of the requested records would interfere with law enforcement proceedings. See also *King v Oakland Co Prosecutor*, 303 Mich App 222, 227; 842 NW2d 403 (2013). Rather, the Court identified six factors for consideration by a court analyzing a claimed exemption under MCL 15.243(1)(b)(i):

1. The burden of proof is on the party claiming exemption from disclosure.

2. Exemptions must be interpreted narrowly.

3. [T]he public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying.

4. [D]etailed affidavits describing the matters withheld must be supplied by the agency.

5. Justification of exemption must be more than conclusory, i.e., simple repetition of statutory language. A bill of particulars is in order. Justification must indicate factually how a particular document, or category of documents, interferes with law enforcement proceedings.

6. The mere showing of a direct relationship between records sought and an investigation is inadequate. [*Evening News*, 417 Mich at 503 (quotation marks and citations omitted; alterations in original).]

Here, the parties do not dispute that at the time of the February 2014 request, the records in question were part of a 2011 police investigation that was still clerically marked as “open” by defendant. A review of the record, however, indicates that defendant did not demonstrate specifically how the requested records or portions of the requested records would interfere with law enforcement proceedings, and no delineation was made between exempt and nonexempt portions of the records requested. Because mere conclusory language that the case was marked “open” by defendant is not sufficient to demonstrate that disclosure would interfere with law enforcement proceedings, defendant did not meet its burden of proving that the requested records were exempt under MCL 15.243(1)(b)(i).

The trial court, however, also found that the requested records were exempt at the time of both the February and the March 2014 requests under MCL 15.243(1)(b)(iii) because the records were investigating records compiled for law enforcement purposes, and disclosure of the requested records would constitute an unwarranted invasion of personal privacy. In this case, it is undisputed that the records, which all stem from an arrest and the subsequent investigation, are “investigating records compiled for law enforcement purposes” MCL 15.243(1)(b)(iii). Thus, the only question is whether the disclosure of such records would “[c]onstitute an unwarranted invasion of personal privacy.” MCL 15.243(1)(b)(iii).

Our goal in interpreting a statute is to discern and give effect to the intent of the Legislature, first focusing upon the plain language of that statute. *Madugula v Taub*, 496 Mich 685, 696; 853 NW2d 75 (2014). “Unless otherwise defined in the statute, or understood to have a technical or peculiar meaning in the law, every word or phrase of a statute will be given its plain and ordinary meaning.” *Landry v Dearborn*, 259 Mich App 416, 421; 674 NW2d 697 (2004). In light of the dearth of authority specifically on point, the parties and the trial court in this case understandably rely on cases interpreting MCL 15.243(1)(a), which exempts from disclosure “[i]nformation of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual’s privacy.” Generally, it is proper to interpret statutes with identical language in an identical manner when those statutes are part of the same act. *People v Wiggins*, 289 Mich App 126, 128-129; 795 NW2d 232 (2010).

The relevant language of MCL 15.243(1)(a) (the privacy exemption) and MCL 15.243(1)(b)(iii) (the law enforcement purposes privacy exemption), though not identical, is similar. The exemption provided in MCL 15.243(1)(b)(iii), does not contain the specific language of subsection (1)(a), which requires that the information be “of a personal nature.” *Herald Co, Inc v Kalamazoo*, 229 Mich App 376, 388; 581 NW2d 295 (1998). Further, MCL 15.243(1)(a) states that the disclosure must “clearly” amount to an “unwarranted invasion of an individual’s privacy,” while MCL 15.243(1)(b)(iii) omits the modifier “clearly,” and refers to an “unwarranted invasion of personal privacy.” See *Pennington*, 125 Mich App at 566. Omissions in statutory language are “deemed to be intentional.” *Johnson v Marks*, 224 Mich App 356, 358; 568 NW2d 689 (1997). Omitting the word “clearly” from the exemption at issue in this case, MCL 15.243(1)(b)(iii), would seem to indicate our Legislature’s intention that when investigative records are at issue, a lesser showing that disclosure would be an unwarranted invasion of privacy is required for the exemption to apply. See *Herald Co v Bay City*, 463 Mich 111, 126; 614 NW2d 873 (2000) (explaining that, with regard to MCL 15.243(1)(a), “[b]y providing that the invasion of privacy must be *clearly unwarranted*, the Legislature has

unmistakably indicated that the intrusion must be more than slight, but a very significant one indeed”).

Under MCL 15.243(1)(a), the public body first must establish that the information is of a “personal nature,” meaning that the information is “intimate, embarrassing, private, or confidential.” *Bitterman v Oakley*, 309 Mich App 53, 62; 868 NW2d 642 (2015) (quotation marks and citation omitted). The second inquiry is whether public disclosure of this information “would constitute a clearly unwarranted invasion of an individual’s privacy.” MCL 15.243(1)(a); *ESPN, Inc*, 311 Mich App at 664. To answer this question, a court must “balance the public interest in disclosure against the interest [the Legislature] intended the exemption to protect. . . [T]he only relevant public interest in disclosure to be weighed in this balance is the extent to which disclosure would serve the core purpose of the FOIA, which is contributing significantly to public understanding of the operations or activities of the government.” *Rataj*, 306 Mich App at 751 (citation omitted). Most often, the public’s interest in disclosure outweighs the individual’s expectation of privacy. *Bitterman*, 309 Mich App at 64. But “[r]equests for information on private citizens accumulated in government files that reveal little to nothing about the inner working of government will fail this balancing test.” *ESPN*, 311 Mich App at 669 (citations omitted).

Even applying what would seem to be the more disclosure-friendly language of MCL 15.243(1)(a) and the cases analyzing that provision, however, indicates that the records sought by plaintiff in this case were exempt from disclosure. Here, the records sought relate to the arrest of an individual who was never prosecuted for that offense, which doubtless is a matter of personal privacy. This Court has held that “people linked with a crime, whether as a perpetrator, witness, or victim, have an interest in not sharing this information with the public.” *State News v Mich State Univ*, 274 Mich App 558, 578; 735 NW2d 649 (2007), rev’d in part on other grounds 481 Mich 692 (2008).

Moreover, the records requested in this case would not contribute significantly to the public’s understanding of the operations of the Shelby Township Police Department. Plaintiff argues that the records show that defendant provides certain individuals preferential treatment, and that the refusal to pursue charges against the suspect was the result of favoritism or partiality not shown to other similarly situated arrestees. The records, however, show no such conduct. Rather, the records requested only demonstrate that one individual was arrested for a misdemeanor offense, and after the victim declined to move forward with the case, the charges were dropped. The very nature of plaintiff’s requests, which sought arrest records for only one person and not those of similarly situated individuals, demonstrates that the records could not show the comparison of the suspect’s treatment to that of others similarly situated.

Plaintiff also argues that because the suspect is an attorney, the public has an interest in her misdeeds that is sufficient to warrant disclosure. Plaintiff cites no authority for such a proposition, thereby abandoning the issue. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999). In any event, the argument lacks merit. “The only relevant public interest in disclosure to be weighed in this balance is the extent to which disclosure would serve the core purpose of the FOIA, which is contributing significantly to public understanding of *the operations or activities of government*.” *ESPN, Inc*, 311 Mich App at 669 (quotation marks, brackets, and citations omitted). Here, the suspect was not operating in any governmental

capacity when she was apprehended. The fact that she is an attorney in no way renders disclosure of her arrest and criminal investigation records a disclosure that would further the public's understanding of government operations.

Moreover, the interests supporting disclosure must also be balanced against the privacy interests of those mentioned in the requested documents. There is doubtless a privacy interest in having arrest records remain private. Indeed, as was explained in OAG, 1979-1980, No. 5500, p 282 (July 23, 1979):

The fact that a person has been arrested is neither a determination of guilt nor a decision that a prosecuting attorney will decide to charge him with committing a crime. Therefore, unless the person requesting the information can demonstrate a public benefit in the disclosure of the fact that a person has been arrested without a warrant, the damage to the individual's privacy overcomes the need for the public to have this information. I am, therefore, of the opinion that a law enforcement agency may refuse to release the name of a person who has been arrested, but not charged, in a complaint or information, with the commission of a crime.

Though not binding upon this Court, *Danse Corp v Madison Hts*, 466 Mich 175, 182 n 6; 644 NW2d 721 (2002), we consider that an opinion of this state's Attorney General can serve as persuasive authority. *Williams v Rochester Hills*, 243 Mich App 539, 557; 625 NW2d 64 (2000). We agree with the opinion of the attorney general in this instance to the extent that it opines that there exists a privacy interest in keeping the fact of an arrest private when charges are not pursued.

As plaintiff has not identified any relevant interests in public disclosure, the trial court correctly found that the records at issue in this case were exempt from disclosure under MCL 15.243(1)(b)(iii). See *Herald Co*, 463 Mich at 126-127 (“[F]ulfilling a request for personal information concerning private citizens, where the request was entirely unrelated to any inquiry regarding the inner working of government, would constitute a clearly unwarranted invasion of privacy. . . . [W]hen the information sought is embarrassing or intimate, and the relationship between the personal information to be disclosed and the operations of our government is slight, the weaker is the case that disclosure should be made under the FOIA.”) (quotation marks and citation omitted).

3. PREVAILING PARTY

As discussed, we remanded this case to the trial court to determine whether plaintiff was entitled to costs and attorney fees under FOIA. If a public body denies all or part of a request for records, the requesting person may commence a civil action in circuit court. MCL 15.240(1)(b). If the requesting person thereafter “prevails” in that action, MCL 15.240(6) provides for the award of attorney fees, costs, and disbursements as follows:

If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in an action commenced under this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the

person or public body prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages under subsection (7).

If a plaintiff prevails completely in his or her FOIA action, the award of attorney fees by the trial court is mandatory. *Estate of Nash v Grand Haven*, 321 Mich App 587, ___; ___ NW2d ___ (2017), slip op at 7. If a party prevails partially in the FOIA action, the decision to award attorney fees is discretionary with the trial court. *Local Area Watch*, 262 Mich App at 151.

The test of whether one has "prevailed" under MCL 15.240(6) is whether "the action was reasonably necessary to compel the disclosure [of public records], and [that] the action had a substantial causative effect on the delivery of the information to the plaintiff." *Amberg*, 497 Mich at 34. Even if a requested record is not subject to disclosure, however, the person requesting the record may nonetheless "prevail" in a FOIA action if the action was necessary to compel the public body to properly respond to the request. If a public body fails to adequately respond to a plaintiff's request for records, and that failure necessitates the plaintiff bringing a circuit court action under the FOIA to compel an adequate response from the public body, that plaintiff may "prevail" within the meaning of MCL 15.240(6) even if the FOIA action did not result in the plaintiff receiving additional records. *Hartzell v Mayville Comm School Dist*, 183 Mich App 782, 789; 455 NW2d 411 (1990) (even though the action did not have a "causative effect on the delivery of or access to the document, it had a causative effect on the disclosure of the nonexistence of the requested document"); see also *Key*, 254 Mich App at 511. Further, even when the records requested are exempt from disclosure, the plaintiff may be determined to have "prevailed" within the meaning of MCL 15.240(6) if the public body violates FOIA by failing to properly respond to the request as mandated by the statute. *Local 312 of American Federation of State, County, & Municipal Employees, AFL-CIO v Detroit*, 207 Mich App 472, 474; 525 NW2d 487 (1995).

In this case, defendant argues, and the trial court determined on remand, that the requested records were exempt from disclosure. We agree that the records were exempt from disclosure under MCL 15.243(1)(b)(iii). Defendant further argues, and the trial court found on remand, that because the records were exempt from disclosure, plaintiff was not entitled to attorney fees and costs. We disagree.

As discussed, a valid exemption from disclosure is not a defense to a failure to properly and timely respond to a request for records in compliance with FOIA. Rather, defendant was obligated to respond timely to the request, explaining the basis for the denial. MCL 15.235(5)(a). Even though the records were exempt from disclosure, if defendant's failure to respond adequately to plaintiff's request for records necessitated plaintiff bringing the circuit court action under the FOIA to compel defendant's obligatory response, plaintiff may "prevail" within the meaning of MCL 15.240(6). *Hartzell*, 183 Mich App at 789; *Local 312*, 207 Mich App at 474.

To determine whether plaintiff "prevailed" within the meaning of the act, we ask whether "the action was reasonably necessary to compel the disclosure [of public records]," and whether "the action had a substantial causative effect on the delivery of the information to the plaintiff."

Amberg, 497 Mich at 34. We conclude that the answer to both inquiries is affirmative. In this case, it is undisputed that plaintiff requested the records in question in February 2014, and defendant responded but did not include the relevant records. Plaintiff requested the records more specifically in March 2014, and defendant failed to respond, either by granting or denying the request, within the time provided by statute. Plaintiff again requested the records in April 2014. Before the time for responding to the April request had elapsed, plaintiff filed an action in the trial court seeking disclosure of the records and also seeking attorney fees and costs for the denial of the February and March 2014 requests. Defendant thereafter disclosed the requested records.

Defendant argues, and the trial court found on remand, that defendant disclosed the records to plaintiff in response to the April request and not in response to the lawsuit. We find this argument unpersuasive. When a public body fails to respond timely to a FOIA request, the public body violates FOIA. When that public body fails to respond to the request until after the plaintiff brings a circuit court action to compel a response, the plaintiff has a strong argument that the circuit court action was reasonably necessary to compel the defendant's response, and was a substantial causative effect in the disclosure. We further note that when a public body fails to respond to a request for records, thereby denying the request, the plaintiff's resubmission of the request does not divest the plaintiff of the ability to pursue his or her remedies under MCL 15.240(1) regarding the earlier denied request, such as commencing a civil action in the circuit court. *Scharret v Berkley*, 249 Mich App 405, 413; 642 NW2d 685 (2002); in accord, *Krug v Ingham Co Sheriff's Office*, 264 Mich App 475, 482; 691 NW2d 50 (2005). Plaintiff's April 2014 request for the records therefore did not impede her ability to pursue a circuit court action regarding defendant's failure to respond to her earlier requests.

In summary, defendant violated the FOIA when it failed to respond to plaintiff's March 2014 records request by either disclosing the records or issuing a written denial explaining the reason for the denial. MCL 15.235(5). Defendant's failure to respond to the request necessitated plaintiff bringing an action before the trial court to obtain a response from defendant. Although we conclude that the requested records were exempt from disclosure, plaintiff nonetheless prevailed in her action before the trial court within the meaning of the statute because the action had a "causative effect" on compelling a response from defendant to plaintiff's March 2014 request.

Reversed and remanded for entry of an order awarding plaintiff attorney fees and costs. We do not retain jurisdiction.

/s/ Michael J. Riordan
/s/ Mark T. Boonstra
/s/ Michael F. Gadola