

**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
REPLY BRIEF**

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REPLY

The Michigan State Police must annually post on its website “[a] *list of expenditures* made by the department of state police from money received under this act, regardless of purpose.”¹ MCL 28.425e(5)(m). It has failed to do so. So, Plaintiff Michigan Open Carry, Inc separately made a FOIA request demanding a “*list of expenditures* made by the Department of State Police from money received under the Firearms Act.” The Department claims the following one-page summary is that full *list of expenditures*:

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

¹ The Department incorrectly asserts that interpreting and applying the definition of a ‘list of expenditures’ is a question of fact with a clear error standard of review. When interpreting a law, i.e. MCL 28.425e(5)(m), issues concerning the proper interpretation of statutes are questions of law that are reviewed de novo. *Hoste v Shanty Creek Mgt, Inc*, 459 Mich 561, 569; 592 NW2d 360 (1999).

Exhibit L, p. 3. This is not a *list* of expenditures²; it is (at best) an overly vague *summary* of expenditures consisting of five ill-defined categories designed to hide the disbursements of millions of dollars for all sorts of non-related activities.³ Yet the Department still asserts, even on appeal, its one-page summary is “the *list* of expenditures.” A summary is not a list; a list means a “series of names, items, or figures arranged in a row or rows, [i.e.] a list of groceries.” RANDOM HOUSE WEBSTER’S UNABRIDGED DICTIONARY (2001). The term “list” is the Legislature’s statutory command to the Department to provide a series of names and figures of its expenditures; not mere computational totals. By the Department’s doubling-down on its injudicious legal position, the Court is now going to have to choose: either the

² Plaintiff demanded particular *information*, not a particular report. This was fully explained to the Department—

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). Both the lower court and the Department ignored this clear explanation and demand for governmental information.

³ The little amount of discovery that was squeaked in shows the Department has already failed to report nearly *two million dollars* in collected user fees. Compare **Exhibit L, p. 3** with **Exhibit M, Batestamp MSP000052**. Buckets of money is being spent on salaries for employees unrelated to the firearm licensing and/or enforcement. **Exhibit M, Batestamp MSP000052, MSP000057.**

Department violated *both* the *Firearms Act* and the *Freedom of Information of Act* by only providing a summary calculation; or it violated neither statute. From this side of the courtroom, two statutes have now been unequivocally violated by the Department. Plaintiff Michigan Open Carry, Inc further asserts it can marshal clear evidence of those statutory violations, as Department employee Amanda Baker of the Budget and Financial Services Division has relevant facts to prove such a list—rather than a summary—exists in the files of the Department and is being intentionally withheld. **Exhibit O, ¶¶18, 20-21.** Reversal is required.

CONCLUSION

Plaintiff wants the information it demanded—a list, not a summary, of expenditures made by the Department of collected governmental user fees. Instead, it was provided merely a vague cumulative summary rather than the specific information itself. The Department is essentially asking the Court to allow them to provide only information it wishes to provide, instead of information it has been asked to and are legally required to provide. This obstinance violates FOIA and its pro-disclosure requirements. “The people *shall be* informed so that they may fully participate in the democratic process.” MCL 15.231(2). We “cannot hold our officials accountable” in how the Department is expending collected user fees (i.e. tax dollars)

“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).

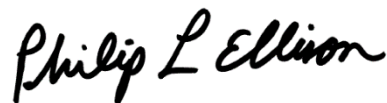
As such, summary disposition in favor of Department before discovery was complete was in error. Reversal is requested.

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*⁴, MCL 15.240(6), MCL 15.240(7), and MCL 15.240b.

Date: September 4, 2018

RESPECTFULLY SUBMITTED:



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⁴ *Lash v Traverse City*, 479 Mich 180; 735 NW2d 628 (2007)