

**STATE OF MICHIGAN**  
**COURT OF CLAIMS**

MICHIGAN OPEN CARRY, INC.,

Plaintiff,

v

MICHIGAN DEPARTMENT OF STATE  
POLICE,

Defendant.

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**OPINION AND ORDER**

Case No. 18-000058-MZ

Hon. Colleen A. O'Brien

**OPINION**

Pending before the Court in this action filed under the Freedom of Information Act (FOIA), MCL 15.231 *et seq.*, is defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). For the reasons discussed *infra*, the motion is GRANTED.

**I. PLAINTIFF'S FOIA REQUEST**

On September 28, 2017, plaintiff, through its president, Tom Lambert, submitted a FOIA request to defendant seeking:

A list of expenditures made by the Department of State Police from money received under the Firearms Act (1972 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).* [Emphasis added.]

Lambert's e-mail then quoted the statute referenced in the request, MCL 28.425e(5)(m), which requires defendant to publish to its website "A list of expenditures made by the department of state police from money received under this act, regardless of purpose."

Defendant responded by stating that it was granting plaintiff's FOIA request. The letter informing plaintiff of the decision indicated that the records were available on defendant's website. The response, consistent with MCL 15.234(5), directed plaintiff to a report published on defendant's website. Page 3 of the report contains two lists. The first list specifies revenue from concealed pistol license (CPL) applications. The second list contains five categories of expenditures made from money received from CPL application fees. A paragraph at the bottom of the page contains additional explanations pertinent to the largest category of expenditures, which is labeled "Support Systems utilized by the CPL unit."

On October 11, 2017, Lambert sent an e-mail to defendant stating that Lambert did not believe he had been provided with the information he requested. In pertinent part, Lambert stated:

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.**

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). [Emphasis in original.]

Defendant denied Lambert's appeal, and this litigation ensued.<sup>1</sup> Count I of plaintiff's 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."<sup>2</sup>

## II. ANALYSIS

Defendant moves this Court for summary disposition in its favor pursuant to MCR 2.116(C)(10). A motion under subrule (C)(10) tests the factual support of the plaintiff's claim, and summary disposition should be granted under this rule when "there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Southfield Ed Ass'n v Southfield Pub Schs Bd of Ed*, 320 Mich App 353, 361; 909 NW2d 1 (2017) (citation and quotation marks omitted).

### A. THE FIREARMS ACT

In order to provide context for plaintiff's FOIA request, the Court will first discuss the Firearms Act, MCL 28.421 *et seq.*, because the mandatory public disclosure requirements imposed on defendant under the act played a significant role in plaintiff's FOIA request. The

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<sup>1</sup> Lambert's e-mails contained assertions about the timeliness of defendant's responses. Plaintiff's original complaint contained several corresponding allegations. Plaintiff's amended complaint removed allegations about the lack of timely responses, and plaintiff's responsive brief states that plaintiff is not pursuing any such claims.

<sup>2</sup> This is in reference to the Court of Appeals' decision in *Hartzell v Mayville Comm Sch Dist*, 183 Mich App 782; 455 NW2d 411 (1990).

Firearms Act contains licensing requirements for those who wish to obtain a CPL permit. See MLC 28.425b. Among the requirements a CPL applicant must satisfy is the payment of a licensing fee. MCL 28.425b(1), (5). Defendant, the Department of State Police, is required to maintain databases with respect to certain CPL-related information. MCL 28.425e. Pertinent to this case, MCL 28.425e(5) provides that defendant shall make available and publish on its website specified information for the previous fiscal year. The information to be posted on defendant's website includes "[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). This "list of expenditures" is at the heart of this FOIA case.

#### B. FOIA

Returning to FOIA, caselaw has long adhered to the notion that FOIA is a pro-disclosure statute and that the act is to be liberally construed in light of its pro-disclosure purpose. *MLive Media Group v Grand Rapids*, 321 Mich App 263, 270; 909 NW2d 282 (2017). In keeping with the pro-disclosure nature of the statute, "FOIA provides persons a right to inspect, copy, or receive copies of a requested public record of a public body upon providing a public body's FOIA coordinator with a written request that describes a public record sufficiently to enable the public body to find the public record, except as expressly provided in MCL 15.243." *Id.*, citing MCL 15.233(1). The Legislature did not impose an "exacting standard" on the precision a requestor must achieve in his or her request. *Coblentz v Novi*, 475 Mich 558, 572; 719 NW2d 73 (2006). To that end, FOIA does not "impose detailed or technical requirements as a precondition for granting the public access to information." *Herald Co v Bay City*, 463 Mich 111, 121; 614 NW2d 873 (2000), modified in part on other grounds *Mich Federation of Teachers & Sch Related Personnel, AFT, AFL-CIO v Univ of Mich*, 481 Mich 657; 753 NW2d

28 (2008). Moreover, “[t]he request need not specifically describe the records containing the sought information; rather, a request for information contained in the records will suffice.” *Detroit Free Press, Inc v Southfield*, 269 Mich App 275, 281; 713 NW2d 28 (2005).

In this case, defendant’s response to plaintiff’s FOIA request “granted” the request by directing plaintiff’s attention to a website that contained the information defendant posted pursuant to MCL 28.425e(5)’s directive. That defendant purportedly “granted” the request does not foreclose review, however, because the manner in which a public body labels its FOIA response is not binding on the Court. *King v Mich State Police Dep’t*, 303 Mich App 162, 189; 841 NW2d 914 (2013). Instead, this Court must look to the effect of the response in order to determine whether the action taken by the public body in fact “granted” the FOIA request. *Id.* at 189-190. Here, plaintiff contends that defendant did not grant its request because the information to which defendant directed plaintiff’s attention, i.e., the information on the website, was not the information plaintiff sought in its request. Hence, the pertinent issue in this case is, at least with respect to Count I of the amended complaint, whether plaintiff’s FOIA request was sufficient to encompass records beyond those to which plaintiff was given access.

### C. DEFENDANT’S RESPONSE DID NOT VIOLATE FOIA

A review of plaintiff’s FOIA request reveals that defendant’s response provided plaintiff with the information plaintiff requested. Notably, the September 28, 2017 request sought “A list of expenditures” from money received under the Firearms Act. The request went on to state, for defendant’s “convenience, please note *that this information is required by law to be posted to the Department’s website*” by MCL 28.425e(5)(m). The request then quoted, in full, MCL 28.425e(5)(m). Plaintiff’s October 11, 2017 e-mail, in which Lambert argued that the information he was given was insufficient, expressed Lambert’s dissatisfaction with what he had

been given, but it did not make a request that would have allowed defendant to find any additional information. Rather than requesting any identifiable information beyond that which Lambert was given, Lambert's e-mail immediately returned again to MCL 28.425e(5)(m), and again stated that plaintiff was "specifically looking for list of expenditures as provided for in MCL 28.425e(5)(m)." Once again, the e-mail quoted MCL 28.425e(5)(m) in full.

In response to plaintiff's request, defendant directed plaintiff to the information it posts on its website in its efforts to comply with MCL 28.425e(5)(m). This information is, simply, a "list of expenditures" by defendant from money received under the Firearms Act. Indeed, the report contains five categories of expenditures, with statutory references and brief explanations about the expenditure categories. Where defendant provided a "list of expenditures" as provided in MCL 28.425e(5)(m) in response to plaintiff's request for the same, the Court is hard-pressed to conclude that defendant violated its obligations under FOIA.

Plaintiff's argument in this case is not that defendant did not provide, minimally, a "list of expenditures"; rather, plaintiff argues that defendant did not provide it with a sufficient "list of expenditures." Plaintiff's 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. Indeed, plaintiff's briefing states that plaintiff believes defendant "has seemingly long refused to actually comply" with the disclosure mandates of MCL 28.425e(5)(m) and that plaintiff's view of defendant's disclosure obligations under the statute is different from the view defendant takes on this issue. Yet, in spite of this purported knowledge that defendant adhered to a different view of the statute and that defendant had already posted information on its website

consistent with its view of the statute, plaintiff asked defendant to provide it (plaintiff) with the “list of expenditures” defendant was required to post to its website under MCL 28.425e(5)(m). Plaintiff did not identify information, see *Detroit Free Press*, 269 Mich App at 281, that it wanted. Rather, it essentially told defendant that it disagreed with defendant’s interpretation of MCL 28.425e(5)(m). Defendant responded in a manner that was consistent with its interpretation of the statutory disclosure requirements, i.e., by responding with the information it had already posted to its website, purportedly in compliance with MCL 28.425e(5)(m)’s mandates. Hence, plaintiff received exactly what it requested: the list of expenditures defendant published in conjunction with its obligations under MCL 28.425e(5)(m). In responding to plaintiff’s FOIA request, defendant should not be required to speculate about what plaintiff believed to be defendant’s reporting requirements under FOIA. See *Domingues v Federal Bureau of Investigation*, 229 F3d 1151, 1151 (CA 6, 2000) (Table).<sup>3</sup>

In arguing to the contrary, plaintiff glosses over its original FOIA request and relies on selective portions of Lambert’s October 11, 2017 e-mail. Lambert stated that he was “not requesting a list of reports,” or a “summary of expenditures” or “a list of expenditure categories.” Instead, he stated that he wanted a “list of expenditures as provided for in MCL 28.425e(5)(m)” (second emphasis added). Lambert then quoted MCL 28.425e(5)(m) in full. 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. Indeed, rather than clarifying his request or stating that he wanted detailed accounting records,

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<sup>3</sup> The Court may look to federal caselaw interpreting the federal freedom of information act, 5 USC 552, in construing and applying Michigan’s FOIA statute. *Hopkins v Duncan Twp*, 294 Mich App 401, 414; 812 NW2d 27 (2011).

Lambert again expressly requested a “list of expenditures” required to be disclosed by MCL 28.425e(5)(m). A FOIA request must be honored when it sufficiently describes a record to enable a public body to find the same. See *Coblentz*, 475 Mich at 572. However, plaintiff has not cited any caselaw declaring that a FOIA request, or lawsuit concerning the same, is the proper avenue for contesting an agency’s interpretation of a statute. Nor has plaintiff cited any caselaw for the proposition that, in responding to a FOIA request, an agency must adopt the requestor’s interpretation of a separate disclosure statute. And in light of the way plaintiff repeatedly phrased its FOIA request in terms of defendant’s statutory reporting requirements under the Firearms Act, adopting plaintiff’s position would essentially allow plaintiff to use FOIA to force defendant to acquiesce to plaintiff’s interpretation of that which was required of defendant under MCL 28.425e(5)(m). This Court will not sanction that approach. In sum, because plaintiff framed its FOIA requests in reference to MCL 28.425e(5)(m)’s requirements, defendant did not violate FOIA when, consistent with its interpretation of MCL 28.425e(5)(m)’s requirements, defendant responded by providing the information it had already deemed to be in compliance with MCL 28.425e(5)(m).

To that end, it is not apparent, nor is it pertinent, whether either party’s interpretation of the meaning of a “list of expenditures” in MCL 28.425e(5)(m) is in accordance with the statute’s plain language.<sup>4</sup> That issue would seem better left to an action for declaratory or injunctive relief.

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<sup>4</sup> Nor has plaintiff attempted to examine the statutory language in any meaningful way. Nor will this Court make any arguments on plaintiff’s behalf. See *VanderWerp v Plainfield Charter Twp*, 278 Mich App 624, 633; 752 NW2d 479 (2008).



#### D. COUNT II OF THE AMENDED COMPLAINT

Count II of plaintiff's complaint, which is pled in the alternative, alleges that if documents responsive to plaintiff's request do not exist, defendant violated FOIA by failing to disclose that the records do not exist. Plaintiff asserts that this claim is a "*Hartzell*" claim, i.e., one predicated on *Hartzell v Mayville Comm Sch Dist*, 183 Mich App 782; 455 NW2d 411 (1990). By plaintiff's own admission, Count II "only becomes operative in the unlikely event responsive records do not actually exist." Here, defendant has never alleged that responsive records do not exist, but instead has taken the position that it granted and fulfilled plaintiff's FOIA request. And the Court agrees that defendant granted the request as it was framed. Accordingly, Count II must be dismissed.

#### E. DISCOVERY

As a final issue, plaintiff contends that summary disposition is premature because discovery has not yet been completed. Plaintiff has also submitted an affidavit from Lambert<sup>5</sup> in which he avers that deposing defendant's employees, particularly Baker, will reveal that responsive accounting records exist to support its FOIA claim. The problem with plaintiff's position is that it assumes plaintiff is correct about the scope of its FOIA request. Because plaintiff's FOIA request did not contain the level of detail plaintiff now contends that it contained, any discovery regarding whether documents exist to support a hypothetical and broader FOIA request would be irrelevant to the instant dispute. And because the discovery sought by plaintiff "does not stand a reasonable chance of uncovering factual support for"

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<sup>5</sup> Plaintiff submitted Lambert's affidavit pursuant to MCR 2.116(H)(1), which permits a party 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."

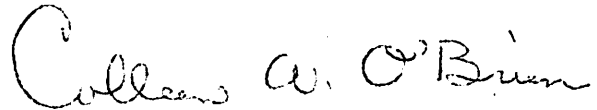
plaintiff's position, summary disposition is appropriate, notwithstanding plaintiff's contentions about discovery. See *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 25; 672 NW2d 351 (2003).

### III. CONCLUSION

IT IS HEREBY ORDERED that defendant's motion for summary disposition is GRANTED pursuant to MCR 2.116(C)(10).

This order resolves the last pending claim and closes the case.

Dated: August 3, 2018



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Colleen A. O'Brien, Judge  
Court of Claims