

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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**DEFENDANT'S ANSWER TO PLAINTIFF'S FIRST AMENDED VERIFIED
COMPLAINT**

Defendant, Michigan Department of State Police (MSP), through counsel,
states for its Answer and Affirmative Defenses to Plaintiff's First Amended Verified
Complaint as follows:

I. Parties

1. MSP lacks knowledge or information sufficient to form a belief as to the truth of the allegation, and leaves Plaintiff to its proofs.
2. MSP admits the allegation.

3. MSP states that the allegation represents a legal conclusion which by law requires no answer. To the extent that an answer may be required, MSP admits the allegation.

Jurisdiction

4. MSP states that the allegation represents a legal conclusion which by law requires no answer. To the extent that an answer may be required, MSP admits the allegation.

5. MSP states that the allegation represents a legal conclusion which by law requires no answer. To the extent that an answer may be required, MSP admits the allegation.

6. MSP states that the allegation represents a legal conclusion which by law requires no answer. To the extent that an answer may be required, MSP states that the FOIA speaks for itself, and denies the allegation to the extent it is inconsistent with the FOIA.

General Allegations

7. MSP admits that Plaintiff submitted a request under the Freedom of Information Act (FOIA) on September 28, 2017. MSP further admits that a copy of Plaintiff's FOIA request is attached to Plaintiff's amended complaint as Exhibit A. MSP further states that Plaintiff's FOIA request speaks for itself and denies the remainder of the allegation to the extent that it is inconsistent with the FOIA request.

8. MSP admits that the quoted language in the allegation appears in October 10, 2017 written notice granting Plaintiff's request. MSP further admits that a copy of its October 10 written notice is attached to Plaintiff's amended complaint as Exhibit G. MSP denies the allegation to the extent that it is consistent with its October 10 written notice.

9. MSP denies the allegation as untrue.

10. MSP denies the allegation as untrue.

11. MSP admits that some of the quoted language appears in an October 11, 2017 email from Plaintiff to MSP's assistant FOIA coordinator. MSP admits that a copy of Plaintiff's October 11 email is attached to the amended complaint as Exhibit I. MSP denies the remainder of the allegation as untrue.

12. MSP denies the allegation as untrue.

Response to Count I – [Alleged] Wrongful Denial / Failure to Produce Requested Records via FOIA Sept 28, 2017 Request

13. MSP incorporates by reference its responses to the previous as if fully stated herein.

14. MSP states that the allegation represents a legal conclusion which by law requires no answer. To the extent that an answer may be required, MSP admits the allegation.

15. MSP states that the allegation represents a legal conclusion which by law requires no answer. To the extent that an answer may be required, MSP denies the allegation as untrue.

16. MSP states that the allegation represents a legal conclusion which by law requires no answer. To the extent that an answer may be required, MSP denies the allegation as untrue.

17. MSP states that the allegation represents a legal conclusion which by law requires no answer. To the extent that an answer may be required, MSP denies the allegation as untrue. In further support of its denial, MSP states that it responded to Plaintiff's appeal on October 16, 2017.

18. MSP states that the allegation represents a legal conclusion which by law requires no answer. To the extent that an answer may be required, MSP denies the allegation as untrue.

19. MSP states that the allegation represents a legal conclusion which by law requires no answer. To the extent that an answer may be required, MSP denies the allegation as untrue.

Response to Count II – Hartzell FOIA claim with sought Lash relief

20. MSP incorporates by reference its responses to the previous as if fully stated herein.

21. MSP states that the allegation represents a legal conclusion which by law requires no answer. To the extent that an answer may be required, MSP denies the allegation as untrue.

22. MSP states that the allegation represents a legal conclusion which by law requires no answer. To the extent that an answer may be required, MSP states

that the *Hartzell* opinion speaks for itself and denies the allegation to the extent that it is inconsistent with *Hartzell*.

23. MSP states that the allegation represents a legal conclusion which by law requires no answer. To the extent that an answer may be required, MSP denies the allegation as untrue.

24. MSP states that the allegation represents a legal conclusion which by law requires no answer. To the extent that an answer may be required, MSP admits that it never certified that the records Plaintiff requested did not exist; rather MSP granted the request by providing the information that Plaintiff requested. MSP denies the remainder of the allegation as untrue. In further support of its denial, MSP states that, to the extent the information Plaintiff received is different from what it hoped to receive, Plaintiff failed to sufficiently describe the requested information as is required under MCL 15.233.

25. MSP denies the allegation as untrue.

26. MSP states that the allegation represents a legal conclusion which by law requires no answer. To the extent that an answer may be required, MSP denies the allegation as untrue.

27. MSP states that the allegation represents a legal conclusion which by law requires no answer. To the extent that an answer may be required, MSP denies the allegation as untrue.

Response to Plaintiff's Requested Relief

28. MSP states that the allegations composing Plaintiff's prayer for relief represent legal conclusions, which by law require no answer. To the extent that an answer may be required, MSP denies that Plaintiff is entitled to any relief. In support of this denial, MSP states that it complied with the FOIA in responding to Plaintiff's FOIA request. MSP further incorporates by reference the above numbered paragraphs of its Answer and its Affirmative Defenses.

AFFIRMATIVE DEFENSES

1. Plaintiff has failed to state claims upon which relief can be granted.
2. Plaintiff has failed to present any genuine issues as to material facts, which should result in a judgment in favor of MSP as a matter of law.
3. Plaintiff's amended complaint is barred under the FOIA's statute of limitations.
4. Plaintiff is not entitled to any relief under the FOIA because MSP should prevail in this action.
5. MSP complied with the FOIA in responding to Plaintiff's FOIA request.
6. Plaintiff lacks standing under the FOIA. MCL 15.240(1)(a) provides that "*if a public body makes a final determination to deny all or a portion of a request, the requesting person may . . . [s]ubmit to the head of the public body a written appeal.*" (Emphasis added). And MCL 15.240(1)(b) allows a requesting party to "[c]ommence a civil action . . . 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." Here, there was no final determination denying the request that could either be appealed under MCL 15.240(1)(a) or provide Plaintiff with standing to commence the instant lawsuit under MCL 15.240(1)(b).

7. To the extent that Plaintiff's FOIA request is expanded in any way during litigation, MSP reserves the right to raise exemptions as it completes its review of the expanded scope of the request.

8. To the extent that Plaintiff's FOIA request is expanded in any way during litigation, MSP reserves the right to charge a fee as authorized under MCL 15.234.

9. Contrary to the requirement in MCL 15.233, Plaintiff failed to sufficiently describe the information it sought in its September 28, 2017 FOIA request.

10. MSP's processing of Plaintiff's FOIA request was not arbitrary or capricious.

MSP reserves the right to add additional affirmative defenses as they become known through discovery.

RELIEF REQUESTED

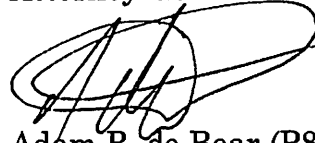
WHEREFORE, Defendant Michigan Department of State Police asks that this Court:

- A. Deny Plaintiff the relief it seeks in its amended complaint;
- B. Determine that Plaintiff is not entitled to attorneys' fees or costs;

- C. Dismiss Plaintiff's complaint with prejudice;
- D. Award costs to Defendant, including reasonable attorney fees; and
- E. Grant Defendant such other relief as provided by law.

Respectfully submitted,

Bill Schuette
Attorney General



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Dated: June 1, 2018

PROOF OF SERVICE

I hereby certify that on June 1, 2018, I served a copy of the foregoing *Defendant's Answer and Affirmative Defenses to Plaintiff's First Amended Verified Complaint* in this matter on all counsel of record at their last known addresses by U.S. mail, with first class postage fully prepaid.



Kristine Gaertner
Legal Secretary