

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.

Philip L. Ellison (P74117)
Outside Legal Counsel PLC
Attorney for Plaintiff
P.O. Box 107
Hemlock, MI 48626
P: (989) 642-0055
F: (888) 398-7003
pellison@olcplc.com

Adam R. de Bear (P80242)
Assistant Attorney General
Attorney for Defendant
Michigan Department of Attorney General
P.O. Box 30754
Lansing, MI 48909
(517) 373-1162
deBearA@michigan.gov

DEFENDANT'S 06/01/2018 MOTION FOR SUMMARY DISPOSITION

Defendant, the Michigan Department of State Police (MSP), through counsel, moves the Court, under MCR 2.116(C)(10), for an order dismissing Plaintiff Michigan Open Carry, Inc.'s amended complaint in its entirety. In support of its Motion, MSP states as follows:

1. On September 28, 2017, Plaintiff submitted by email a FOIA request to MSP for what Plaintiff described as "information . . . required by law to be posted to the [MSP's] website per Section 5e of 1927 PA 372, MCL 28.425e(5)(m)." (Emphasis as in original).

2. As an initial response, under MCL 15.235(2)(d), MSP timely issued a written notice extending its deadline to respond by 10 business days. A copy of this written notice was placed in the mail on October 5, 2017.

3. On October 10, 2017, Plaintiff submitted an appeal of what Plaintiff erroneously considered an “automatic denial” of its FOIA request.

4. Also on October 10, 2017, MSP issued a written notice granting Plaintiff’s request. Because Plaintiff requested the “information . . . required by law to be posted to the [MSP’s] website per” MCL 28.425e(5)(m), MSP provided a link to its website, which contains the reports referenced by Plaintiff in its request.

5. After receiving MSP’s written notice granting the request, Plaintiff emailed MSP and stated that it was maintaining its appeal as it believed that it had not received the information it requested.

6. MSP “denied” Plaintiff’s appeal because the FOIA request was not, as Plaintiff asserted, automatically denied.

7. On May 7, 2018, MSP moved for summary disposition of Plaintiff’s complaint in part because Count I was based on an erroneous allegation that MSP’s initial response to the FOIA request was untimely and constituted an automatic denial of Plaintiff’s request. Plaintiff subsequently filed an amended complaint with “a more streamlined pleading . . . to remove details which are districting from the two counts . . . actually plead.” (Am Compl, p 1.)


8. Because Plaintiff's amended complaint removed the original allegations regarding MSP's alleged untimely response to the FOIA request, MSP withdrew its May 7, 2018 motion.

9. The instant motion demonstrates that Plaintiff's request was granted and that it received the exact information that it described in its FOIA request. Additionally, to the extent that Plaintiff argues that it did not receive the information it requested, Plaintiff failed to satisfy its burden of sufficiently describing the information that it allegedly desired. MCL 15.233(1).

For these reasons and the reasons stated in the attached brief in support, MSP respectfully requests that this Court enter an order under MCR 2.116(C)(10) dismissing Plaintiff's complaint in its entirety.

Respectfully submitted,

Bill Schuette
Attorney General




Adam R. de Bear (P80242)
Assistant Attorney General
Attorneys for Defendant
Michigan Dept. of Attorney General
State Operations Division
P.O. Box 30754
Lansing, MI 48909
(517) 373-1162

Dated: June 1, 2018

PROOF OF SERVICE

I hereby certify that on June 1, 2018, I served a copy of the foregoing *Defendant's 06/01/2018 Motion for Summary Disposition* 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