

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 REPLY BRIEF IN SUPPORT OF ITS 06/01/2018 MOTION
FOR SUMMARY DISPOSITION**

- I. Plaintiff, in its response, recognizes that it failed to sufficiently describe the information it sought in its FOIA request.

MSP's motion for summary disposition appears to have convinced Plaintiff that it did not sufficiently describe the information that it was seeking in its FOIA request. For the first time, Plaintiff has, in its response to MSP's dispositive motion, expanded the scope of its request to include requesting general "accounting" records related to money received by MSP under the Firearms Act. For example,

Plaintiff indicated that it desires to learn whether “dollar-by-dollar” accountings actually exist and that it believes it is “unclear whether the Department actually has accounting records (i.e. a list) of expenditures made by [MSP] from money received under the Firearms Act.” (Pl’s Resp, p 6 and 11.)

Plaintiff, if it truly sought general accounting records, could have asked for MSP’s accounting records in its initial request, in its it is appeal¹, or in its first set of discovery requests. That Plaintiff has now expanded the scope of its request to include “dollar-by-dollar” accounting records—after it submitted its FOIA request, filed a complaint, and issued discovery requests—is proof of its realization that it had never before requested such accounting records.

Instead of requesting MSP’s accounting records, Plaintiff, quoting directly from MCL 28.425e(5)(m) requested the information that MSP is required to report to the Legislature under the Firearms Act, and MSP provided Plaintiff with exactly that information. If, however, Plaintiff would have sufficiently described its FOIA request and identified that it was generally seeking MSP’s accounting records related to moneys received under the Firearms Act, litigation would have been unnecessary.²

¹ Again, MSP recognizes that Plaintiff did express disappointment in the information it received in its letter maintaining its appeal. (Ex 5 to Def’s Motion.) However, it again stated that it was “specifically looking for a list of expenditures as provided for in MCL 28.425e(5)(m).” (Ex 5 to Def’s Motion.)

² Had Plaintiff sufficiently described the information it was requesting, it is unlikely that litigation would have resulted because of the general rule that “accountings . . . of public moneys shall be public records and open to inspection,” See Article IX, section 23 of the Michigan Constitution. In fact, Plaintiff may submit a FOIA request for such information after the disposition of this lawsuit.

Ultimately, Plaintiff's after-the-fact explanation of the records it requested is proof that it did not describe sufficiently describe its desired information in the first place when it submitted its FOIA request.

II. Further discovery is not necessary for disposition of Plaintiff's complaint.

Contrary to Plaintiff's assertions, summary disposition "may be proper before discovery is complete if further discovery does not stand a fair chance of uncovering factual support for the position of the party opposing the motion." *Bayn v Dept of Nat. Res*, 202 Mich App 66, 70 (1993). In fact, "[t]he purpose of summary disposition is to avoid extensive discovery and an evidentiary hearing when a case can be quickly resolved with a ruling on an issue of law." *Mackey v Dept of Corr*, 205 Mich App 330, 333–34 (1994).

Additionally, as it relates to the FOIA, it is neither incumbent upon MSP to ascertain all possible meanings of a request for records nor to "extend the meaning of the request to include things not asked for." *Wallick v Agric Mktg Serv*, 281 F Supp 3d 56 (DDC, 2017). Further, MSP is "bound to read [FOIA requests] as drafted, not as [MSP] officials or [the FOIA requester] might wish [the request] was drafted." *Miller v Casey*, 730 F2d 773, 777; 235 US App DC 11, 15 (1984)

Here, MSP has demonstrated that it provided Plaintiff with the information that it described in its request—i.e. the information required to be published under MCL 28.425e(5)(m)—and that to the extent that Plaintiff sought different records it failed to sufficiently describe the information sought. See MCL 15.233(1); *Coblentz v City of Novi*, 475 Mich 558, 572 (2006). Specifically, MSP's assistant FOIA

coordinator stated in his affidavit that, because of Plaintiff's citation and reference to MCL 28.425e(5)(m), he understood Plaintiff's request as seeking information contained in MSP's CPL report and provided Plaintiff with a link to this information. (Ex 7 to Def's Motion, ¶¶ 7-8.) As noted above, Plaintiff did not request dollar-by-dollar accounting records in its FOIA request, complaint, or even in its discovery requests. Rather, it repeated the fact that it was requesting "[a] list of expenditures made by the department of state police from money received under this act, regardless of purpose." See Ex 1 to Def's Motion; MCL 28.425e(5)(m). And MSP provided Plaintiff with this information.

Ultimately, the only issue that needs to be decided in order to dismiss Plaintiff's complaint is whether MSP provided Plaintiff with the information it described in its FOIA request. If the Court finds that MSP reasonably interpreted Plaintiff's request and provided Plaintiff with the information described in its request, then Plaintiff's lawsuit should be dismissed. See MCL 15.233(1); *Coblentz*, 475 Mich at 572; *Miller v Casey*, 730 F2d at 777. In other words, whatever accounting records MSP has in its possession—which again Plaintiff may obtain by requesting such accounting records under the FOIA—has no impact on whether MSP properly responded to Plaintiff's request.

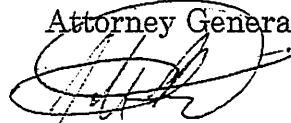
Conclusion and Relief Requested

In sum, MSP properly responded to Plaintiff's request for records under the FOIA by providing Plaintiff with the information it described in its FOIA request. Accordingly, for the reasons stated above and in its motion for summary disposition,

MSP requests that the Court grant its 06/01/2018 motion for summary disposition under MCR 2.116(C)(10).

Respectfully submitted,

Bill Schuette
Attorney General

A handwritten signature in black ink, appearing to read "A. de Bear", is written over the printed name "Adam R. de Bear". The signature is somewhat stylized and overlaps the text below it.

Adam R. de Bear (P80242)
Assistant Attorney General
Attorneys for Michigan State Police
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(517) 373-1162

Dated: June 11, 2018

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PROOF OF SERVICE

The undersigned certifies that on June 11, 2018, a copy of *Defendant's Reply Brief In Support Of Its 06/01/2018 Motion For Summary Disposition* was served upon the attorneys of record or parties appearing in pro per in the above cause by mailing the same to them at their respective addresses with postage fully prepaid thereon.



Monica Robinson
Legal Secretary

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



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BILL SCHUETTE
ATTORNEY GENERAL

June 11, 2018

Clerk of the Court
Michigan Court of Claims
2nd Floor, Hall of Justice
925 West Ottawa Street
Lansing, Michigan 48909-7522

Re: *Michigan Open Carry, Inc. v Michigan State Police*
File No. 18-000058-MZ

Dear Clerk,

Please accept for filing, in the above-referenced matter, *Defendant's Reply Brief In Support Of Its 06/01/2018 Motion for Summary Disposition*, along with a Proof of Service

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam R. de Bear".

Adam R. de Bear
Assistant Attorney General
State Operations Division
(517) 373-1162

AdB/mrr
Enclosures
cc: Philip L. Ellison