

**STATE OF MICHIGAN  
IN THE COURT OF CLAIMS**

MICHIGAN OPEN CARRY, INC,  
Plaintiff/Petitioner,

Case No.: 18-000058-MZ  
Honorable Colleen O'Brien

v.

MICHIGAN DEPARTMENT OF STATE  
POLICE also commonly known as the  
MICHIGAN STATE POLICE,  
Defendant

**MOTION**

**ORAL ARGUMENT REQUESTED**

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**06/05/2018 MOTION TO REQUEST SCHEDULING CONFERENCE  
AND FOR ENTRY OF SCHEDULING & CASE MANAGEMENT ORDER**

NOW COMES Plaintiff MICHIGAN OPEN CARRY, INC, by counsel, and requests the Court to set an early scheduling conference pursuant to MCR 2.401(B)(1) to establish appropriate procedures and deadlines.

***Evening News Sets the Process***

The Supreme Court in *Evening News Ass'n v City of Troy*, 417 Mich 481 (1983) established a multi-step procedure to deal with disputed FOIA records because the courts were initially hamstrung to find some way to counterweigh the inherent problems of (1) only the government knowing what is in the requested documents, (2) the natural reluctance of the government to reveal anything it does not have to, and (3) the fact that

courts normally look to two equally situated adversarial parties to focus and illuminate the facts and the law. *Evening News, supra*, at 515. The Supreme Court explained that—

Where one party is cognizant of the subject matter of litigation and the other is not, the normal common-law tradition of adversarial resolution of matters is decidedly hampered, if not brought to a complete impasse. If one adds to this the natural tendency of bureaucracies to protect themselves by revealing no more information than they absolutely have to, it is clear that disclosure becomes neither automatic nor functionally obtainable through traditional methods.

*Id.*, at 514. Thus, the three-part process was identified as controlling:

1. The court should receive a complete particularized justification as set forth in the six rules; or
2. the court should conduct a hearing *in camera* based on *de novo* review to determine whether complete particularized justification pursuant to the six rules exists; or
3. the court can consider “allowing plaintiff’s counsel to have access to the contested documents *in camera* under special agreement ‘whenever possible.’”

*Id.*, at 516 (emphasis added). The ‘Six Rules’ are :

1. The burden of proof is on the party claiming exemption from disclosure.
2. Exemptions must be interpreted narrowly.
3. The public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying.
4. Detailed affidavits describing the matters withheld must be supplied by the agency.
5. Justification of exemption must be more than “conclusory”, i.e., simple repetition of statutory language. A bill of particulars is in order.
6. The mere showing of a direct relationship between records... is inadequate.

*Evening News, supra*, at 503. However, even if the responsive records contain exempt information, the FOIA statute provides that “the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination and

copying.” *Bitterman v Village of Oakley*, 309 Mich App 53, 68 (2015)(citing MCL 15.244(1)). The City was not required to invoke any exemption because “nothing in the FOIA prevents an agency from providing information it is willing to disclose.” *Mager v Dep’t of State Police*, 460 Mich 134, 138 fn8 (1999). But if it is going to withhold public documents, it has to meet its burden when challenged and it is a “heavy” one. *Penokie v Michigan Technological Univ*, 93 Mich App 650, 663 (1979); *Kincaid v Dep’t of Corrections*, 180 Mich App 176, 182 (1989)(“The burden is a heavy one, and it is the duty of this Court to determine whether it has been met.”). This is because FOIA requesters are entitled to “full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees.” MCL 15.231(2).

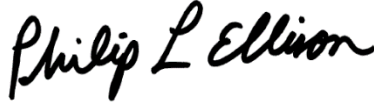
To effectuate the prevention of long delays in this process, the Legislature has required that this type of action “shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.” MCL 15.240(5). The Court of Appeals has held that the Legislature has “specifically provided that FOIA cases should be dealt with expeditiously by the courts.” *Cashel v Smith*, 117 Mich App 405, 410 (1982). One such way to fulfill this statutory command is to have issued an expedited scheduling order from this Court, which this Court has the authority to provide. See *Banta v Serban*, 370 Mich 367, 368 (1963)(courts have inherent power to control the movement of cases on its docket).

**RELIEF REQUESTED**

WHEREFORE, Plaintiff, through counsel, requests this Court to set a scheduling conference pursuant to MCR 2.401(B)(1) to set the procedures of this case under *Evening News*.

Date: June 5, 2018

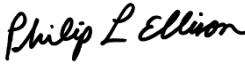
RESPECTFULLY SUBMITTED:



**PROOF OF SERVICE**

The undersigned certifies that a copy of the foregoing document(s) was served on parties or their attorney of record by mailing the same via US mail to their respective business address(es) as disclosed by the pleadings of record herein with postage fully prepaid, on the

5th day of June, 2018.



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\*\*Electronic signature authorized by MCR 2.114(C)(3) and MCR 1.109(D)(1)-(2)