

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30754  
LANSING, MICHIGAN 48909

BILL SCHUETTE  
ATTORNEY GENERAL

July 9, 2018

Michigan Court of Claims  
Attn: Clerk of the Court  
925 W. Ottawa  
P.O. Box 30185  
Lansing, MI 48909

Re: *Michigan Open Carry, Inc. v Michigan Dept of State Police*  
File No. 18-0000087-CZ

Dear Clerk:

Enclosed for filing please find *Defendant's Answers to Plaintiff's Request for Admission*, along with a Proof of Service.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam de Bear", written over a horizontal line.

Adam de Bear  
Assistant Attorney General  
State Operations Division  
517-373-1162

AdB/mrr  
Enc.  
cc: Philip Ellison

AG# 2018-0217975-A

STATE OF MICHIGAN

COURT OF CLAIMS

MICHIGAN OPEN CARRY, INC,

Plaintiff/Petitioner,

No. 18-000087-MZ

v

HON. CYNTHIA D. STEPHENS

MICHIGAN DEPARTMENT OF STATE  
POLICE,  
Defendant.

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Philip L. Ellison (P74117)  
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Attorney for Plaintiff/Petitioner  
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**PROOF OF SERVICE**

The undersigned certifies that on July 9, 2018, a copy of *Defendant's Answers to Plaintiff's First Request for Discovery* was sent by first-class mail to counsel:

Philip L. Ellison  
Outside Legal Counsel PLC  
P.O. Box 107  
Hemlock, MI 48626



Monica Robinson  
Legal Secretary

STATE OF MICHIGAN

COURT OF CLAIMS

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**DEFENDANT MICHIGAN STATE POLICE'S ANSWERS TO PLAINTIFF'S  
FIRST DISCOVERY REQUESTS - INTERROGATORIES**

Defendant Michigan State Police ("MSP"), through counsel, responds to  
Plaintiffs' First Discovery (Interrogatories) requests as follows:

**General Objections**

Defendants object to each instruction, definition, and request to the extent that it purports to impose any requirement or discovery obligation greater than or different from those under the Michigan Court Rules and any applicable rules and orders of the Court. Defendants further object to each instruction, definition, and request to the extent that it seeks information or documents protected from

disclosure by the attorney-client privilege, deliberative process privilege, attorney work product doctrine or any other applicable privilege.

**2. INTERROGATORY:** If the answer to the previous request for admission is anything other than a complete affirmation, identify *with particularity* the factual and/or legal basis (including full citations to all laws) for your denial, including the name, home and business address, and telephone number of every person having first-hand knowledge of any portion of the facts or law; specify the substance of the facts or law that you or your attorney may seek to elicit from those persons and how those persons gained the information regarding those facts or law; and identify the contents of any written materials or computer data relied on in support of your denial (or attach copies to your answers to these discovery requests). If you are unable to admit or deny the request, identify all the information that you have available in your answer to this discovery request and specify why you cannot admit or deny the previous request for admission.

OBJECTION: MSP objects to this interrogatory because Plaintiff improperly seeks to elicit a waiver by MSP of any reasons not identified in its response. MSP further objects to this interrogatory to the extent that Plaintiff improperly seeks discovery of attorney work product or trial preparation materials which are not discoverable.

MSP further objects to this interrogatory because Plaintiff failed to sufficiently describe the information sought in its FOIA request in a manner that allowed MSP to locate the requested records. Because Plaintiff failed to sufficiently

describe the information it sought, MSP does not know exactly what information Plaintiff desired and cannot state “with particularity” why Plaintiff did not receive the information it desired.

MSP further objects to this interrogatory as premature given that discovery has not yet closed and a scheduling order has not yet issued. MSP will file a witness list in accordance with the Court’s scheduling order.

ANSWER: Subject to and without waving the above objection, MSP states that the following MSP employees are likely to have firsthand knowledge of MSP’s response to the instant FOIA request: Lance Gackstetter; Lori Hinkley; and Kevin Collins. Again, as noted in the above objection, MSP will file a witness list as ordered by the Court and reserves the right to call additional witnesses who may be identified after its response to this set of discovery requests.

**4. INTERROGATORY:** If the answer to the previous request for admission is anything other than a complete affirmation, identify *with particularity* the factual and/or legal basis (including full citations to all laws) for your denial, including the name, home and business address, and telephone number of every person having first-hand knowledge of any portion of the facts or law; specify the substance of the facts or law that you or your attorney may seek to elicit from those persons and how those persons gained the information regarding those facts or law; and identify the contents of any written materials or computer data relied on in support of your denial (or attach copies to your answers to these discovery requests). If you are unable to admit or deny the request, identify all the information that you

have available in your answer to this discovery request and specify why you cannot admit or deny the previous request for admission.

OBJECTION: MSP objects to this interrogatory because Plaintiff improperly seeks to elicit a waiver by MSP of any reasons not identified in its response. MSP further objects to this interrogatory to the extent that Plaintiff improperly seeks discovery of attorney work product or trial preparation materials which are not discoverable.

MSP further objects to this interrogatory as premature given that discovery has not yet closed and a scheduling order has not yet issued. MSP will file a witness list in accordance with the Court's scheduling order.

MSP further objects to this interrogatory because Plaintiff failed to sufficiently describe the information sought in its FOIA request in a manner that allowed MSP to locate the requested records. Because Plaintiff failed to sufficiently describe the information it sought, MSP does not know exactly what information Plaintiff desired and cannot state "with particularity" why Plaintiff did not receive the information it desired.

MSP further objects to this interrogatory, and the related request to admit, as vague and unclear because Plaintiff already has in its possession the specific reason for each instance the database identified in MCL 28.425e(1) was accessed. As such, MSP is unsure exactly what Plaintiff intended to express when using the term "specific reason." Additionally, as it appears for the first time that Plaintiff is asking for something different than it described in its FOIA request, MSP denied

the related request to admit because MCL 28.421b(1) provides that “[f]irearms records are confidential, are not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed to any person, except as otherwise provided by this section.”

What is publicly available information, and not exempt from disclosure, is what is required under MCL 28.425e(5)(o) to be reported to the legislature—i.e. the number of times the database has been accessed. And again, Plaintiff already has in its possession these records.

**5. INTERROGATORY:** If the answer to the previous request for admission in Discovery Request No. 3 is anything other than a complete affirmation, please list all applicable exemptions, including full citations to the applicable exemption.

**OBJECTION:** MSP objects to this interrogatory because Plaintiff improperly seeks to elicit a waiver by MSP of any potentially applicable exemption to disclosure not identified in its response. MSP further objects to this interrogatory to the extent that Plaintiff improperly seeks discovery of attorney work product or trial preparation materials which are not discoverable.

MSP further objects to this interrogatory because Plaintiff failed to sufficiently describe the information sought in its FOIA request in a manner that allowed MSP to locate the requested records. Because Plaintiff failed to sufficiently describe the information it sought, MSP does not know exactly what information Plaintiff desired and cannot list all applicable exemptions to disclosure.

MSP further objects to this interrogatory, and the related request to admit, as vague and unclear for the reasons stated in its objection to Interrogatory 4 above.

ANSWER: Subject to and without waiving the above objections, MSP states that, depending on exactly what information Plaintiff sought in its FOIA request, the records are exempt from disclosure under MCL 15.243(1)(d), MCL 28.421b(1), MCL 28.214(1), Rule 28.5208, and MCL 15.2431(s)(vii) – (ix). Again, this answer cannot be and is not intended to be a waiver of any exemption not identified.

**6. INTERROGATORY:** Identify (name, title, address, telephone number, email address) the person(s) most knowledgeable within Michigan Department of State Police regarding how information being collected from the peace officer or authorized system is enter, maintained, and/or recorded into “the system” as outlined by MCL 28.421b(2)(f).

ANSWER: MSP states that Kevin Collins is likely to have the most knowledge within MSP regarding how information is entered into the database identified in MCL 28.425e(1).

**8. INTERROGATORY:** Identify all documents, papers, and/or exhibits you have or claim to have which support your allegation(s) as set forth in the filed pleadings and all amendments thereto.

OBJECTION: MSP objects to this interrogatory as premature given that discovery has not yet closed and a scheduling order has not yet issued. Further, given the premature nature of this lawsuit, MSP has not yet identified *all* documents that support its position.



MSP further objects to this interrogatory to the extent that Plaintiff improperly seeks discovery of attorney work product or trial preparation materials which are not discoverable.

ANSWER: Subject to and without waiving the above objections, see the documents produced in response to Plaintiff's Requests for Production.

**9. INTERROGATORY:** Identify by name, home and business address, and telephone number, every person you or your attorney may call as a witness at any trial or hearing in this matter. You are directed that a response which defers or refers to a witness list (or like-kind document) is insufficient and shall be treated as an evasive answer pursuant to MCR 2.313(A)(4).

OBJECTION: MSP objects to this interrogatory as premature given that discovery has not yet closed and a scheduling order has not yet issued. MSP will file a witness list in accordance with the Court's scheduling order. MSP further objects to the improper direction regarding what constitutes an "evasive answer" as that statement is inconsistent with the Court Rules.

MSP further objects to this interrogatory because Plaintiff improperly seeks to elicit a waiver of potential witnesses by MSP not identified in its response.

ANSWER: Subject to and without waving the above objection, MSP states that the following MSP employees are likely to have firsthand knowledge of MSP's response to the instant FOIA request: Lance Gackstetter; Lori Hinkley; and Kevin Collins. Again, as noted in the above objection, MSP will file a witness list as

ordered by the Court and reserves the right to call additional witnesses who may be identified after its response to this set of discovery requests.

**9a. INTERROGATORY:** For each witness listed in the preceding interrogatory, please provide a specific and complete itemization of all factual or legal testimony you or your attorney may seek to elicit from those witnesses and how those persons gained the information regarding the facts or law; and list the contents of any evidence (including written materials or computer data) that you or your attorney may seek to introduce through those witnesses, or attach copies to your answers to these discovery requests.

OBJECTION: MSP objects to this interrogatory as premature given that discovery has not yet closed and a scheduling order has not yet issued. Further, given the premature nature of this interrogatory, MSP has not yet identified *all* documents and relevant testimony that supports its position. And even if it had, the Michigan Court Rules impose no obligation on litigants to disclose litigation and trial strategy.

MSP similarly objects to this interrogatory to the extent that Plaintiff improperly seeks discovery of attorney work product or trial preparation materials which are not discoverable.

**10. INTERROGATORY:** In regard to the two previous interrogatories, identify all witnesses you or your attorney may attempt to qualify as experts at any trial or hearing in this matter, as well as any experts you have consulted but do not intend to use, including a specification of their respective areas of expertise, the

number of years of experience in their areas of expertise, their educational backgrounds, copies of their résumés or curriculum vitae, and copies of all reports or summaries prepared by those witnesses (including written materials or computer data), as well as any evidence you or your attorney may seek to introduce through those witnesses not disclosed in your prior answers, or attach copies to your answers to these discovery requests.

OBJECTION: MSP objects to this interrogatory as premature given that discovery has not yet closed and a scheduling order has not yet issued. Given the premature nature of this interrogatory, MSP has not yet identified whether it will name an expert witness. And absent an order from the Court, MSP has no obligation to name an expert at this time. If, however, MSP decides to name an expert witness in the future, it will inform Plaintiff and do so in accordance with any future scheduling order.

ANSWER: Subject to and without waiving the above objection, MSP states that it has not yet determined whether it will name an expert witness in this action.

**11. INTERROGATORY:** In regard to the three previous interrogatories, identify with particularity all criminal convictions of those witnesses (especially any crime containing an element of dishonesty, false statement, or theft), and all reprimands or censures by professional organizations, including the name and complete address of the court or professional organization rendering conviction, reprimand, or censure, the specific charge, the date of the conviction, reprimand, or

censure, and the docket number of the court file for each conviction, or attach copies to your answers to these discovery requests.

ANSWER: Upon information and belief, none of the above-identified potential witnesses have any criminal convictions, reprimands, or censures.

**12. INTERROGATORY:** Identify the contents of all items you or your attorney will seek to introduce into evidence at any trial or hearing in this matter (including demonstrative evidence) not disclosed in your prior answers to these discovery requests, or attach copies to your answers to these discovery requests.

OBJECTION: MSP objects to this interrogatory as premature given that discovery has not yet closed and a scheduling order has not yet issued. Further, given the premature nature of this interrogatory, MSP has not yet identified *all* documents that it intends to introduce into evidence.

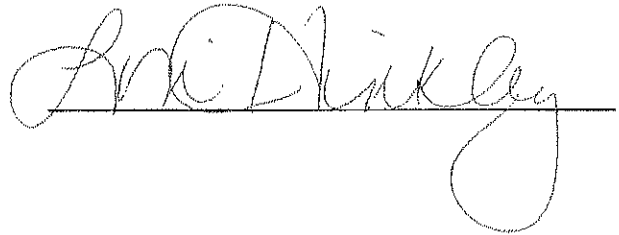
ANSWER: Subject to and without waiving the above objections, MSP states that the documents currently in its possession that may be admitted into evidence include the exhibits to Plaintiff's complaint and the records produced in response to Plaintiff's request for production.

**13. INTERROGATORY:** Identify all persons with whom you consulted and/or checked with to investigate actual or possible answers to these discovery requests; for each person, itemize each discovery request the person contributed information which became your answer in response thereto.

ANSWER: MSP states that the following individuals have been collectively involved with the response to Plaintiff's discovery requests: Lori Hinkley, Lance

Gackstetter, David Morris, Kevin Collins, Amanda Baker, Shawn Sible, Dawn Brinningstaull.

I DECLARE THAT THE FOREGOING ANSWERS TO PLAINTIFF'S FIRST INTERROGATORIES ARE TRUE TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF AND BASED UPON INFORMATION THAT I OBTAINED OR THAT WAS OBTAINED OR GATHERED BY PERSONS WHO REPORT TO ME.

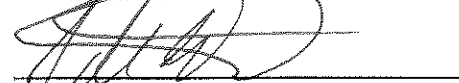


Subscribed and sworn to before me  
this 9 day of July, 2018

Staci Lee Yenc  
Notary Public  
Ingham County, MI

My Commission Expires: 1-13-24  
Acting in Eaton County, MI

AS TO ANY OBJECTIONS



Adam R. de Bear (P80242)  
Attorney for Defendant  
State Operations Division  
P.O. Box 30754  
Lansing, Michigan 48909

Dated: July 9, 2018

STATE OF MICHIGAN

COURT OF CLAIMS

MICHIGAN OPEN CARRY, INC,

Plaintiff/Petitioner,

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**DEFENDANT MICHIGAN STATE POLICE'S ANSWERS TO PLAINTIFF'S  
FIRST DISCOVERY REQUESTS – REQUESTS FOR ADMISSION**

Defendant Michigan State Police (“MSP”), through counsel, responds to  
Plaintiffs’ First Discovery requests (Requests for Admission) as follows:

**General Objections**

Defendants object to each instruction, definition, and request to the extent that it purports to impose any requirement or discovery obligation greater than or different from those under the Michigan Court Rules and any applicable rules and orders of the Court. Defendants further object to each instruction, definition, and request to the extent that it seeks information or documents protected from

disclosure by the attorney-client privilege, deliberative process privilege, attorney work product doctrine or any other applicable privilege.

**1. REQUEST TO ADMIT:** Please admit that Plaintiff Michigan Open Carry, Inc's Oct 26 FOIA Request (attached as Exhibit A to the Verified Complaint) was not correctly fulfilled as you did not provide the information actually sought by the request.

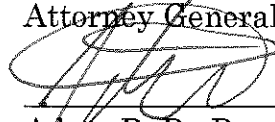
ANSWER: MSP denies that that it did not properly fulfill Plaintiff's FOIA request.

**3. REQUEST TO ADMIT:** MCL 28.421b(2)(f) provides that *"[f]irearms records may only be accessed and disclosed by a peace officer or authorized system user for the following purposes: \*\*\* A peace officer or an authorized user has reason to believe that access to the firearms records is necessary within the commission of his or her lawful duties. The peace officer or authorized system user shall enter and record the specific reason in the system in accordance with the procedures in section 5e."* Please admit that the "specific reason" information entered and recorded into the Department's "system" as required by MCL 28.421b(2)(f) is not exempt from disclosure under the Freedom of Information Act, MCL 15.231 et seq.

ANSWER: MSP denies that the "specific reason" information identified by Plaintiff in this request is not exempt from disclosure under the Freedom of Information Act.

Respectfully submitted,

Bill Schuette  
Attorney General

A handwritten signature in dark ink, appearing to read 'A. De Bear', is written over the printed name 'Adam R. De Bear'.

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Adam R. De Bear (P80242)  
Assistant Attorneys General  
Attorneys for Defendant  
State Operations Division

Dated: July 9, 2018



STATE OF MICHIGAN

COURT OF CLAIMS

MICHIGAN OPEN CARRY, INC,

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**DEFENDANT MICHIGAN STATE POLICE'S ANSWERS TO PLAINTIFF'S  
FIRST DISCOVERY REQUESTS – REQUESTS FOR PRODUCTION**

Defendant Michigan State Police ("MSP"), through counsel, responds to  
Plaintiffs' First Discovery requests (Requests for Production) as follows:

**General Objections**

Defendants object to each instruction, definition, and request to the extent  
that it purports to impose any requirement or discovery obligation greater than or  
different from those under the Michigan Court Rules and any applicable rules and  
orders of the Court. Defendants further object to each instruction, definition, and  
request to the extent that it seeks information or documents protected from

disclosure by the attorney-client privilege, deliberative process privilege, attorney work product doctrine or any other applicable privilege.

**7. REQUEST FOR PRODUCTION:** All email and/or written communications involving Plaintiff Michigan Open Carry, Inc's Oct 26 FOIA request, including (but not limited to) all communications to/from/between the Department of State Police's FOIA Coordinator and any other employee/agent/contractor/official within the Michigan Department of State Police.

**OBJECTION:** MSP objects to this Request for Production to the extent that it seeks communications created after the lawsuit was filed. Such communications are not discoverable under the attorney-client and work product privileges.

**ANSWER:** See MSP000001 – 000029 which are being transmitted to Plaintiff's counsel via email and not US mail.

**8a. REQUEST FOR PRODUCTION:** All documents, papers, and/or exhibits (or crisp clean copies of all documents, papers, and/or exhibits) you have or claim to have which support any claim(s) or defense(s) you will assert this legal action.

**OBJECTION:** MSP objects to this interrogatory as premature given that discovery has not yet closed and a scheduling order has not yet issued. Further, given the premature nature of this request, MSP has not yet identified *all* documents that support its defense to this legal action.

**ANSWER:** Subject to and without waiving the above objections, see MSP000001 – 000049.

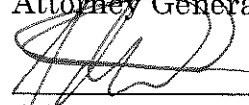
**12a. REQUEST FOR PRODUCTION:** All items (or crisp clean copies of all items) you or your attorney will seek to introduce into evidence at any trial or hearing in this matter (including demonstrative evidence).

OBJECTION: MSP objects to this interrogatory as premature given that discovery has not yet closed and a scheduling order has not yet issued. Further, given the premature nature of this request, MSP has not yet identified *all* documents that support its defense to this legal action.

ANSWER: Subject to and without waiving the above objections, see MSP000001 – 000049.

Respectfully submitted,

Bill Schuette  
~~Attorney General~~



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Adam R. De Bear (P80242)  
Assistant Attorneys General  
Attorneys for Defendant  
State Operations Division

Dated: July 9, 2018