

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

MICHIGAN OPEN CARRY, INC,  
Plaintiff/Petitioner,

Case No.: 18-000087-MZ  
Honorable Cynthia Stephens

v.

**DISCOVERY**

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

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**SECOND SET OF DISCOVERY REQUESTS (DATABASE CASE)**

TO: DEFENDANT MICHIGAN DEPARTMENT OF STATE POLICE

As used within this request:

A. "Identify" when referring to an individual, corporation, or other entity shall mean to set forth the name, address, and telephone number, and if a corporation or other entity, its principle place of business, or if an individual, the present or last known home address, his or her job title or titles, by whom employed and address of the place of employment.

B. Where knowledge or information in possession of a party is requested, such request includes knowledge of the party's principals, employees, staffers, agents, insurance companies, representatives, and unless privileged, his, her, or its attorney or attorneys. When an answer/response is made by a corporate or other non-individual party, state the name, address and title of person(s) supplying the information and list the source of his or her information.

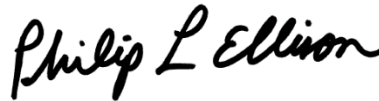
C. The pronoun "you" refers to the party this request is directed at as well as to the individuals and entities mentioned in subsection (B) above.

Kindly answer, respond, and/or produce, in full, all discovery items/requests propounded below pursuant to MCR 2.302, MCR 2.309, MCR 2.310, and/or MCR 2.312 of the Michigan Court Rules:

1. REQUEST TO ADMIT: As part of your answer to the first set of discovery requests, you asserted that Plaintiff sought, by its FOIA request, "the number of times the database was been accessed." Please admit that Plaintiff's FOIA request dated October 26, 2017 did not request the number of times the database was been accessed but rather disclosure of records containing "the reason(s) provided pursuant to MCL 28.421b(2)(f), as well as the related information pertaining to the fulfillment of statutory access obligations pursuant to MCL 28.425e(4)."
2. INTERROGATORY: If the answer to the previous request for admission is anything other than a complete affirmation, please take a pen and clearly circle/mark the specific language in Plaintiff's FOIA request dated October 26, 2017 (copy attached as Exhibit A) which you assert is Plaintiff requesting "the number of times the database was been accessed."
  - a. PRODUCE: Once the above document is circled by a pen, please produce that document.
3. 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.

Date: July 12, 2018

RESPECTFULLY SUBMITTED:

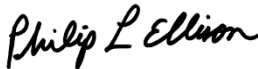


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**PROOF OF SERVICE**

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

12th day of July, 2018.



PHILIP L. ELLISON  
Attorney at Law

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



Tom Lambert &lt;tlambert@miopencarry.org&gt;

EXHIBIT

A

OUTSIDE LEGAL COUNSEL PLC  
www.olicplc.com

## MSP FOIA Request - System Access Records

Tom Lambert &lt;tlambert@miopencarry.org&gt;

Thu, Oct 26, 2017 at 1:03 PM

To: MSP-FOI@michigan.gov

Cc: MiOC Board &lt;board@miopencarry.org&gt;

To whom it may concern,

Pursuant to the Michigan Freedom of Information Act (FOIA), Michigan Public Act 442 of 1976; MCL 15.231 et seq., Michigan Open Carry, Inc. is hereby requesting an opportunity to obtain electronic (or paper) copies of public records. Michigan Open Carry, Inc. is hereby requesting the following from the Michigan Department of State Police:

**- Records created by and/or maintained by the Michigan Department of State Police from peace officers and authorized system users compiled pursuant to MCL 28.421b(2)(f) and MCL 28.425e(4) between October 1st, 2016 and September 30th, 2017.**

MCL 28.421b(1) declares individual's firearm records to be confidential, not subject to FOIA, and specifies that the individual's record(s) shall only be accessed as provided in the section. MCL 28.421b(2)(f) allows these records to be accessed by "A peace officer or an authorized user [who] 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." MCL 28.425e(4) states "(4) Information in the database shall only be accessed and disclosed according to an access protocol that includes the following requirements: (a) That the requestor of the firearms records uses the law enforcement information network or another system that maintains a record of the requestor's identity, time, and date that the request was made. (b) Requires the requestor in an intentional query by name of the firearms records to attest that the firearms records were sought under 1 of the lawful purposes provided in section 1b(2)."

To be clear, this request is not seeking any individual's firearm records, but rather the non-confidential separate public records associated with official acts of public officials and public employees in accessing said confidential records in compliance with their statutory duties. Michigan Open Carry, Inc. is requesting the reason(s) provided pursuant to MCL 28.421b(2)(f), as well as the related information pertaining to the fulfillment of statutory access obligations pursuant to MCL 28.425e(4). Pursuant the public policy of this state, Michigan Open Carry, Inc. "cannot hold our officials accountable [for complying with their public duties under MCL 28.421b(2)(f) and MCL 28.425e(4)] if we do not have the information upon which to evaluate their actions." *Practical Political Consulting v Secretary of State*, 287 Mich App 434, 464 (2010).

Michigan Open Carry, Inc. is also hereby requesting a waiver of all fees as the disclosure of the requested information is in the public interest, and will contribute to the public's understanding and knowledge of proper or improper fulfillment of statutory duties of public officials and public employees.

If you deny any or all of this request, please issue the denial certificate under MCL 15.235(5), cite each specific exemption you feel justifies the refusal, and notify us of the appeal procedures available.

Lastly, please make any copies generated under this request available electronically per MCL 15.234(1)(c). Electronic records held within databases, spreadsheets, and/or all other electronic computer files holding relevant data is/are public records. See *Ellison v Dep't of State*, \_\_ Mich App \_\_ (2017)(Docket No. 336759). It is not only acceptable but preferred for the copies of the requested records to be provided in a .csv or .xls format. If another option would be better for the Department, please let us know and we would be happy to discuss the matter.

Thank you for your time processing this request.

Tom Lambert  
President  
Michigan Open Carry, Inc.