

RECEIVED

2017 APR -3 AM 11:19

STATE OF MICHIGAN
IN THE COURT OF CLAIMS

COURT OF CLAIMS
JEROME W ZIMMER JR, CLERK

SPENCER WOODMAN,

Plaintiff,

Case No. MZ 17-000082-MZ

v

Hon. Stephens

MICHIGAN DEPARTMENT OF CORRECTIONS,

Defendant.

HONIGMAN MILLER SCHWARTZ AND COHN LLP

Robert M. Riley (P72290)

Marie L. Greenman (P80811)

Cooperating Attorneys, American Civil

Liberties Union Fund of Michigan

2290 First National Building

600 Woodward Avenue

Detroit, Michigan 48226

(313) 465-7000

rriley@honigman.com

mgreenman@honigman.com

AMERICAN CIVIL LIBERTIES UNION FUND

OF MICHIGAN

Daniel S. Korobkin (P72842)

Michael J. Steinberg (P43085)

2966 Woodward Avenue

Detroit, Michigan 48201

(313) 578-6800

dkorobkin@aclumich.org

msteinberg@aclumich.org

Attorneys for Plaintiff

FREEDOM OF INFORMATION ACT COMPLAINT

There is no other pending or resolved civil
action arising out of the transaction or
occurrence alleged in the complaint.

/s/ Robert M. Riley

Robert M. Riley (P72290)

Plaintiff Spencer Woodman (“Woodman”), through his attorneys from the American Civil Liberties Union Fund of Michigan and Honigman Miller Schwartz and Cohn LLP, for his complaint against Defendant the Michigan Department of Corrections (“MDOC”), states:

PARTIES, JURISDICTION AND VENUE

1. This action to compel a public body’s disclosure of public records arises under the Michigan Freedom of Information Act, MCL 15.231, *et seq.* (“FOIA”).

2. Woodman is a New York resident and freelance journalist who has written extensively about criminal justice and whose work has made numerous government records available for inspection by taxpayers.

3. MDOC is a “public body” as that term is defined in MCL 15.232(d) and has custody and control of “public records” as that term is defined in MCL 15.232(e) and (h).

4. The Court has subject matter jurisdiction over this dispute pursuant to MCL 15.240(1)(b).

5. Venue is proper in this Court pursuant to MCL 15.240(1)(b).

GENERAL ALLEGATIONS

6. Woodman, as a member of the public, has the right to inspect, copy, or receive copies of public records of a public body, including records of MDOC, pursuant to MCL 15.233.

7. On September 28, 2016, Woodman submitted to MDOC a FOIA request for a copy of a public record.

8. Specifically, Woodman requested from MDOC a copy of video footage (the “Video”) of “the confrontation that led to the fatality of inmate Dustin Szot on September 27, 2016” at the Bellamy Creek Correctional Facility. Woodman’s request included “footage from

any and all available cameras that captured this incident as well as any available accompanying audio records.” A copy of Woodman’s FOIA request is attached as **Exhibit A**.

9. According to local news reports, Szot was killed after a confrontation with another prisoner, during which he was shocked by Tasers discharged by corrections officers. Szot’s death certificate states that his death was a homicide and lists blunt force trauma as its cause. These facts call into question the nature and amount of force used in attempting to secure Szot during the confrontation, and the wisdom of a recent change in MDOC policy allowing corrections officers to carry and use Tasers in Michigan prisons.

10. On October 6, 2016, MDOC denied Woodman’s FOIA request, citing MCL 15.243(1)(c). That statute exempts from disclosure “public record[s] that if disclosed would prejudice a public body’s ability to maintain the physical security of custodial or penal institutions occupied by persons arrested or convicted of a crime or admitted because of a mental disability, unless the public interest in disclosure under this act outweighs the public interest in nondisclosure.” A copy of MDOC’s denial of Woodman’s FOIA request is attached as **Exhibit B**.

11. On October 10, 2016, Woodman submitted an appeal of MDOC’s denial of his FOIA request, challenging the applicability of the exemption set forth in MCL 15.243(1)(c). A copy of Woodman’s appeal is attached as **Exhibit C**.

12. On October 25, 2016, MDOC denied Woodman’s appeal, again citing MCL 15.243(1)(c) and also citing MCL 15.243(1)(u), which exempts from disclosure “[r]ecords of a public body’s security measures, including security plans, security codes and combinations, passwords, passes, keys, and security procedures, to the extent that the records relate to the ongoing security of the public body.” Nonetheless, MDOC conceded that prisoners understand

“cameras are in place throughout [correctional] facilities and that they are under constant surveillance.” A copy of MDOC’s denial of Woodman’s appeal is attached as **Exhibit D**.

13. Because MDOC denied Woodman’s appeal, Woodman is entitled to bring this action pursuant to MCL 15.240(3).

COUNT I: VIOLATION OF THE FREEDOM OF INFORMATION ACT

14. Woodman realleges and incorporates by reference the allegations contained in paragraphs 1-13 as if fully set forth herein.

15. The Legislature has declared that “[i]t is the public policy of this state that all persons . . . 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) (emphasis added).

16. The Video is a public record subject to FOIA.

17. The Video is not exempt from disclosure under any exemption set forth in FOIA or other applicable law.

18. The Video would not, if disclosed, prejudice MDOC’s ability to maintain the physical security of its prisons. MDOC has not asserted that the Video was recorded by a hidden camera. Further, MDOC admitted that prisoners know that cameras are in place throughout facilities and that they are under constant surveillance.

19. Alternatively, the public interest in disclosure of the Video outweighs any public interest in nondisclosure. The public has an overwhelming interest in knowing whether penal institutions treat prisoners humanely, particularly when corrections officers are involved in the death of a prisoner under unusual or violent circumstances. Penal institutions throughout the

country and within this state have on many occasions disclosed video footage of incidents involving the treatment of prisoners because doing so is in the public interest.

20. The Video is not a record of MDOC's security measures, such as its security plans, security codes and combinations, passwords, passes, keys, and security procedures.

21. MCL 15.240(4) provides that "a court that determines a public record is not exempt from disclosure shall order the public body to cease withholding or to produce all or a portion of a public record wrongfully withheld."

22. MCL 15.240(5) provides that actions commenced pursuant to FOIA "shall be assigned for hearing and trial and for argument at the earliest practicable date and expedited in every way."

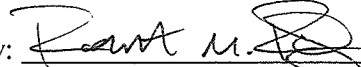
WHEREFORE, Woodman prays that the Court:

- A. Order expedited treatment of this matter as required by MCL 15.240(5);
- B. Enter judgment in favor of Woodman and against MDOC;
- C. Order MDOC to provide to Woodman with a complete, unredacted copy of the Video and any accompanying audio recordings;
- D. Award Woodman reasonable attorney's fees, costs, and disbursements pursuant to MCL 15.240(6);
- E. Enter an award of damages in favor of Woodman and against MDOC pursuant to MCL 15.240(7) because MDOC has arbitrarily and capriciously violated FOIA by denying Woodman the right to inspect, copy, or receive copies of a public record; and
- F. Grant Woodman any other relief as the Court deems necessary and proper.

Respectfully submitted,

HONIGMAN MILLER SCHWARTZ AND COHN LLP

By:



Robert M. Riley (P72290)

Marie L. Greenman (P80811)

Cooperating Attorneys, American Civil

Liberties Union Fund of Michigan

2290 First National Building

660 Woodward Avenue

Detroit, MI 48226-3506

(313) 465-7000

rriley@honigman.com

mgreenman@honigman.com

-and-

Daniel S. Korobkin (P72842)

Michael J. Steinberg (P43085)

American Civil Liberties Union Fund

of Michigan

2966 Woodward Avenue

Detroit, Michigan 48201

(313) 578-6800

dkorobkin@aclumich.org

msteinberg@aclumich.org

Attorneys for Plaintiff

Dated: April 3, 2017

A

3/13/2017

Gmail - Submitting records request



Spencer Woodman <spencer.woodman@gmail.com>

Submitting records request

Spencer Woodman <spencer.woodman@gmail.com>
To: NelsonA9@michigan.gov

Wed, Sep 28, 2016 at 6:06 PM

Hi Aimee,

It turns out that I have another records request to submit. Thanks very much.

Spencer Woodman

--

Under the Michigan Freedom of Information Act § 15.231 et seq., I am requesting a digital copy of video footage of the confrontation that led to the fatality of inmate Dustin Szot on September 27th, 2016 at the Muskegon Correctional Facility. This request includes footage from any and all available cameras that captured this incident as well as any available accompanying audio records.

I would like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of government. This information is not being sought for commercial purposes.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Thank you very much for considering my request, and please feel free to contact me at the number or email address below with any questions.

Contact information:

Email: Spencer.woodman@gmail.com

Phone: [REDACTED]

B

MICHIGAN DEPARTMENT OF CORRECTIONS
RESPONSE TO REQUEST FOR PUBLIC RECORDS - FOIA

CSH-479
 REV 6/16

Requester Name: <i>Spencer Woodman</i>	Requester Type: <i>General Public</i>	Files <input type="checkbox"/>	PB <input type="checkbox"/>	Request Date <i>9/28/2016</i>	Received Date <i>9/29/2016</i>	FOIA No. <i>16 950</i>
---	--	-----------------------------------	--------------------------------	----------------------------------	-----------------------------------	---------------------------

Address: <i>spencer.woodman@gmail.com</i>	Description of Requested Records: <i>"I am requesting a digital copy of 1. video footage of the confrontation that led to the fatality of inmate Dustin Szot on September 27th, 2016 at the Muskegon Correctional Facility. This request includes footage from any and all available cameras that captured this incident as well as 2. any available accompanying audio records."</i>
--	--

THE FOLLOWING ACTION HAS BEEN TAKEN IN COMPLIANCE WITH THE MICHIGAN FREEDOM OF INFORMATION ACT

Request Granted	No. of pages:	See fee assessment below.
Request Granted in Part/Denied in Part	No. of pages:	Portions of requested records are exempt from disclosure. See explanation and fee assessment below.
	<input checked="" type="checkbox"/>	Requested records are exempt from disclosure. See explanation below.
		Requested records do not exist within the records of this Department under the name or description provided or by another name reasonably known to this Department.
Request Denied		Request does not describe the record sufficiently to enable this Department to determine what record is requested.
		To the extent the records are available, home address, telephone numbers, and personnel records of employees of this Department are exempt from disclosure pursuant to MCL 791.230a. This includes but is not limited to investigatory, disciplinary, and time and attendance records.
10 Business Day Extension Taken	Due Date:	Reason for Extension:

FEE ASSESSMENT

Fee Waived.

Non-exempt records will be sent upon receipt of payment in the amount of _____ payable by check or money order to the State of Michigan. Cash cannot be accepted. Send payment to Michigan Department of Corrections, Attn: FOIA Coordinator, at the return address identified on the envelope.

A 50% good faith deposit is required in the amount of _____ payable by check or money order to the State of Michigan. Cash cannot be accepted. Send payment to Michigan Department of Corrections, Attn: FOIA Coordinator, at the return address identified on the envelope. Upon receipt of the deposit, the Department will process your request. Thereafter, you will be informed of the balance due and any applicable exemptions.

SEE BELOW AND BACK OF FORM IF RECORDS ARE EXEMPT FROM DISCLOSURE OR FOR ADDITIONAL INFORMATION

The records you seek are exempt from disclosure under Section 13(1)(c). These records, if disclosed, could threaten the security of Bellamy Creek Correctional Facility by revealing fixed camera placement as well as the scope and clarity of the facility's fixed camera and handheld recordings. Disclosure of these records could also reveal the policies and procedures used by staff for disturbance control and the management of disruptive prisoners.

If your request is denied in whole or in part, you have the right under the Michigan Freedom of Information Act to do either of the following:

- 1 Appeal the denial to the Director. Your appeal must be submitted in writing to the Michigan Department of Corrections, Attn: Administrator of the Office of Legal Affairs, P.O. Box 30003, Lansing, MI 48909. The appeal must be specifically identified as a FOIA appeal and must state the reasons for reversal of the denial. The Director will respond to the appeal in accordance with MCL 15.240.
- 2 Appeal the Department's final determination to deny/partially deny your request by commencing an action in the Court of Claims within 180 calendar days after the final determination is made. If you prevail in such an action, the court is to award reasonable attorney fees, cost and disbursements, and possible damages.

I CERTIFY THAT THE DOCUMENTS PROVIDED IN RESPONSE TO THIS REQUEST ARE TRUE AND ACCURATE COPIES.

FOIA COORDINATOR:

Cheryl A Groves

DATE:

10/6/16

FOIA Exemptions

- (a) Information of a personal nature where the public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy.
- (b) Investigating records compiled for law enforcement purposes, but only to the extent that disclosure as a public record would do any of the following:
 - (i) Interfere with law enforcement proceedings.
 - (ii) Deprive a person of the right to a fair trial or impartial administrative adjudication.
 - (iii) Constitute an unwarranted invasion of personal privacy.
 - (iv) Disclose the identity of a confidential source, or if the record is compiled by a law enforcement agency in the course of a criminal investigation, disclose confidential information furnished only by a confidential source.
 - (v) Disclose law enforcement investigative techniques or procedures.
 - (vi) Endanger the life or physical safety of law enforcement personnel.
- (c) A public record which if disclosed would prejudice a public body's ability to maintain the physical security of custodial or penal institutions occupied by persons arrested or convicted of a crime or admitted because of a mental disability, unless the public interest in disclosure under this act outweighs the public interest in nondisclosure.
- (d) Records or information specifically described and exempted from disclosure by statute.
- (e) A public record or information described in this section that is furnished by the public body originally compiling, preparing or receiving the record or information to a public officer or public body in connection with the performance of the duties of that public officer or public body, if the considerations originally giving rise to the exempt nature of the public record remain applicable.
- (f) Trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy if:
 - (i) The information is submitted upon a promise of confidentiality by the public body.
 - (ii) The promise of confidentiality is authorized by the chief administrative officer of the public body or by an elected official at the time the promise is made.
 - (iii) A description of the information is recorded by the public body within a reasonable time after it has been submitted, maintained in a central place within the public body, and made available to a person upon request. This subdivision does not apply to information submitted as required by law or as a condition of receiving a governmental contract, license or other benefit.
- (g) Information or records subject to the attorney-client privilege.
- (h) Information or records subject to the physician-patient privilege, psychologist-patient privilege, Minister, priest, or Christian Science practitioner privilege, or other privilege recognized by statute or court rule.
- (i) A bid or proposal by a person to enter into a contract or agreement, until the time for the public opening of bids or proposals, or if a public opening is not to be conducted, until the deadline for submission of bids or proposals has expired.
- (j) Appraisals of real property to be acquired by the public body until (i) an agreement is entered into; or (ii) 3 years has elapsed since the making of the appraisal, unless litigation relative to the acquisition has not yet terminated.
- (k) Test questions and answers, scoring keys and other examination instruments or data used to administer a license, public employment, or academic examination, unless the public interest in disclosure under this act outweighs the public interest in nondisclosure.
- (l) Medical, counseling or psychological facts or evaluations concerning an individual if the individual's identity would be revealed by a disclosure of those facts or evaluation.
- (m) Communications and notes within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure. This exemption does not constitute an exemption under state law for purposes of MCL 15.268.
- (n) Records of law enforcement communication codes, or plans for deployment of law enforcement personnel, that if disclosed would prejudice a public body's ability to protect the public safety unless the public interest in disclosure under this act outweighs the public interest in nondisclosure in the particular interest.
- (p) Testing data developed by a public body in determining whether bidder's products meet the specifications for purchase of those products by the public body, if disclosure of the data would reveal that only 1 bidder has met the specifications. This subdivision does not apply after 1 year has elapsed from the time the public body completes testing.
- (s) Unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance, public records of a law enforcement agency, the release of which would do the following:
 - (i) Identify or provide a means of identifying an informer.
 - (ii) Identify or provide a means of identifying a law enforcement undercover officer or agent or a plain clothes officer as a law enforcement officer or agent.
 - (iii) Disclose the personal address or telephone number of law enforcement officers or agents or any special skills they may have.
 - (iv) Disclose the name, address, or telephone numbers of family members, relatives, children, or parents of law enforcement officers or agents.
 - (v) Disclose operational instructions of law enforcement officers or agents.
 - (vi) Reveal the contents of staff manuals provided for law enforcement officers or agents.
 - (vii) Endanger the life or safety of law enforcement officers or agents or their families, relatives, children, parents, or those who furnished information to law enforcement departments or agencies.
 - (viii) Identify or provide a means of identifying a person as a law enforcement officer, agent, or informer.
 - (ix) Disclose personnel records for law enforcement agencies.
 - (x) Identify or provide a means of identifying residences that law enforcement agencies are requested to check in the absence of their owners or tenants.
- (u) Records of a public body's security measures, including security plans, security codes and combinations, passwords, passes, keys, and security procedures, to the extent that the records relate to the ongoing security of the public body.
- (v) Records or information relating to a civil action in which the requesting party and the public body are parties.
- (w) Information or records that would disclose the social security number of any individual.

C



Spencer Woodman <spencer.woodman@gmail.com>

FOIA 16-950

Spencer Woodman <spencer.woodman@gmail.com>
To: "Nelson, Aimee (MDOC)" <NelsonA9@michigan.gov>

Mon, Oct 10, 2016 at 10:01 AM

Dear Ms. Nelson:

I am writing to appeal the denial of FOIA 16-950. I will address the two explanations were provided for this denial in order.

First, the state invokes Section 13(1)(c) in asserting that disclosure of the requested footage would reveal the placements and the level of clarity of the cameras within the jail. It is my understanding that many correctional institutions often do not attempt to hide their cameras at all and that inmates generally understand they are under constant surveillance. It seems unlikely to me that the Bellamy Creek Correctional Facility would have taken pains to hide its cameras in the first place. Even if the Bellamy Creek Correctional Facility's camera's are in fact hidden, the fact that so many other correctional facilities not only install their cameras in plain view of inmates, but also routinely release such footage to the public, confirms what I believe to be common sense: That the release of prison surveillance footage does not present a danger insofar as camera placement is concerned. The same argument applies to the state's assertion regarding the clarity of the camera footage. (For a recent example of such voluntary disclosure, see Cook County Sheriff Tom Dart's decision to release, unprompted by external pressure, various recordings of altercations between his employees and inmates in the Cook County Jail.)

Second, the state asserts that disclosure of the footage would reveal the policies and procedures used for disturbance control and to manage disruptive prisoners. Again, footage of inmate altercations with prison guards has been routinely released across the country, and such means of control are already and rightly widely known. Perhaps more importantly, as part of its commitment to insuring the civil rights of everyone working and living within prisons, correctional facilities must be able to publicly disclose the means by which they restrain, pacify and use force against prisoners.

This latter point applies to both explanations behind the state's denial: The public interest of the release of the requested footage is abundantly clear, imminent, and outweighs the state's arguments against releasing this footage. Taxpaying citizens must be afforded the opportunity to understand why the death of a state inmate occurred reportedly after he was shocked by Tasers, which are intended to be non-lethal.

Please feel free to email me or call me at the number below with any questions.

Many thanks,

Spencer Woodman


[Quoted text hidden]

D

**MICHIGAN DEPARTMENT OF CORRECTIONS
NOTICE OF FREEDOM OF INFORMATION ACT APPEAL**

Date Received: October 11, 2016

Appeal Number: 2016-36

Requestor's Name: Spencer Woodman

Date of FOIA Response: October 6, 2016

Requestor's Address: Spencer.woodman@gmail.com

- FOIA disclosure denial reversed
- FOIA disclosure denial upheld
- FOIA disclosure denial upheld in part, reversed in part

Reason for Decision:

On September 29, 2016, the Michigan Department of Corrections (MDOC), received your request dated September 28, 2016, made under the Freedom of Information Act (FOIA), MCL 15.231 *et seq.* Your request stated:

"I am requesting a digital copy of video footage of the confrontation that led to the fatality of inmate Dustin Szot on September 27th, 2016 at the Muskegon Correctional Facility. This request includes footage from any and all available cameras that captured this incident as well as any available accompanying audio records."

On October 6, 2016, the MDOC denied your request under 13(1)(c) of FOIA stating, "These records, if disclosed, could threaten the security of Bellamy Creek Correctional Facility by revealing fixed camera placement as well as the scope and clarity of the facility's fixed camera and handheld recordings. Disclosure of these records could also reveal the policies and procedures used by staff for disturbance control and the management of disruptive prisoners."

On October 11, 2016, the MDOC received your appeal regarding the denial of your FOIA request. You stated, "It is my understanding that many correctional institutions often do not attempt to hide their cameras at all and that inmates generally understand that they are under constant surveillance. It seems unlikely to me that the Bellamy Creek Correctional Facility would have taken pains to hide its cameras in the first place. Even if the Bellamy Creek Correctional Facility's camera's are in fact hidden, the fact that so many other correctional facilities not only install their cameras in plain view of inmates, but also routinely release such footage to the public, confirms what I believe to be common sense: That the release of prison surveillance footage does not present a danger insofar as camera placement is concerned." You also assert, "Footage of inmate altercations with prison guards has been routinely released across the country, and such means of control are already and rightly widely known. Perhaps more importantly, as part of its commitment to insuring the civil rights of everyone working and living within prisons, correctional facilities must be able to publicly disclose the means by which they restrain, pacify and use force against prisoners."


While prisoners understand that cameras are in place throughout facilities and that they are under constant surveillance, the MDOC does not routinely release video footage to the public as you incorrectly assert. Release of the video footage compromises the safety, security, and order of the facility. Under Section 13(1)(c) records are exempt from disclosure that if disclosed would prejudice a public body's ability to maintain the physical security of custodial or penal institutions occupied by

person arrested or convicted of a crime. In addition, Section 13(1)(u) of the FOIA Statute also exempts from disclosure records of a public body's security measures. The release of video footage would reveal the recording and security capabilities of the facility's video monitoring system.

Therefore, the FOIA disclosure denial is upheld.

As noted in MCL 15.240(1)(b), you have the option to commence an action in the Court of Claims to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request. If you prevail in such an action, the court is to award reasonable attorney fees, costs, and disbursements, and possible damages.

Signature:


Heidi E. Washington, Director

Date:

10/25/16