

STATE OF MICHIGAN
IN THE COURT OF CLAIMS

SPENCER WOODMAN,

Plaintiff,

Case No. 17-000082-MZ
Hon. Cynthia D. Stephens

v

MICHIGAN DEPARTMENT OF CORRECTIONS,

Defendant.

GEORGE JOSEPH,

Plaintiff,

Case No. 17-000230-MZ
Hon. Cynthia D. Stephens

v

MICHIGAN DEPARTMENT OF CORRECTIONS,

Defendant.

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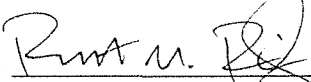
30/01/2018 PLAINTIFFS' MOTION FOR SUMMARY DISPOSITION
PURSUANT TO MCR 2.116(C)(10)

Plaintiffs Spencer Woodman and George Joseph (collectively “Plaintiffs”), by and through their undersigned *pro bono* counsel Honigman Miller Schwartz and Cohn LLP and pursuant to MCR 2.116(C)(10), move the Court for entry of an Order granting summary disposition in Plaintiffs’ favor in each of the above-captioned, consolidated cases against Defendant Michigan Department of Corrections (“MDOC”).

In support of their Motion, Plaintiffs rely on the attached Brief in Support.

Respectfully submitted,

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Dated: January 30, 2018

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BRIEF IN SUPPORT OF 30/01/2018 PLAINTIFFS'
MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(10)

I. INTRODUCTION

“The degree of civilization in a society can be judged by entering its prisons.” Fyodor Dostoyevsky and David McDuff, *The House of the Dead* (2004). The ability to make informed judgments about what goes on behind Michigan’s prisons’ doors must not be taken for granted. The Freedom of Information Act (“FOIA”) is often the only means for getting a glimpse of the state’s treatment of prisoners.

Plaintiffs Spencer Woodman and George Joseph have written extensively about criminal justice and made countless government records available for public inspection. In these consolidated cases, Plaintiffs submitted FOIA requests to the MDOC seeking video and audio recordings related to an altercation at the Bellamy Creek Correctional Facility that led to the death of inmate Dustin Szot. The MDOC denied both requests. These cases ensued.

The Court should grant summary disposition to Plaintiffs for two reasons. First, the MDOC admitted that it never reviewed the requested videos and instead summarily denied Plaintiffs’ requests—a flagrant violation of MDOC’s duties in responding to FOIA requests. Second, even if the MDOC had reviewed the videos, it is black letter law that videos recorded within MDOC facilities are not categorically exempt from disclosure. For these reasons and those set forth below, the Court should grant Plaintiffs’ Motion and order the MDOC to disclose the requested videos.

II. FACTUAL BACKGROUND

On September 27, 2016, Szot was involved in an altercation with another prisoner at the MDOC’s Bellamy Creek Correctional Facility. The fight was stopped when guards discharged their Tasers on the inmates. Shortly after being Tasered, Szot died. His death certificate lists homicide caused by blunt force trauma as the cause of death. Szot’s death is of great public interest

because, among other things, it calls into question (1) the nature and amount of force used by guards in attempting to subdue Szot during the confrontation; (2) the propriety of criminal investigations wherein the victims are prisoners; and (3) the soundness of a recent change in MDOC policy allowing corrections officers to carry and use Tasers in Michigan prisons.

A. Woodman's FOIA Request

On September 28, 2016, Woodman submitted a FOIA request to obtain video footage of “the confrontation that led to the fatality of inmate Dustin Szot on September 27, 2016” at the Bellamy Creek Correctional Facility. (**Exhibit A**, Woodman's FOIA Request.) Woodman also requested “footage from any and all available cameras that captured this incident as well as any available accompanying audio records.” (*Id.*)

On October 6, 2016, the MDOC summarily denied Woodman's request, citing MCL 15.243(1)(c). (**Exhibit B**, Def's Resp to Woodman's FOIA Request.) That statute exempts from disclosure records 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.”

On October 10, 2016, Woodman appealed the denial, challenging the applicability of MCL 15.243(1)(c). (**Exhibit C**, Woodman's Appeal.) On October 25, 2016, the MDOC denied Woodman's appeal, again citing MCL 15.243(1)(c), and also citing for the first time 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.” (**Exhibit D**, Def's Resp to Woodman's Appeal.)

Woodman filed his Complaint against the MDOC on April 3, 2017. In response to the MDOC's April 28, 2017 Motion to Dismiss, Woodman filed his First Amended Verified Complaint on May 12, 2017. The Court ultimately denied the MDOC's motion to dismiss and on October 5, 2017, the MDOC filed its Answer and Affirmative Defenses. There, the MDOC again cited MCL 15.243(1)(c) (the only exemption cited in its original FOIA denial). The MDOC also cited MCL 15.243(1)(a), alleging that the requested records include personal information and the identities of the other individuals and that disclosure of their identities would constitute an unwarranted invasion of privacy, and MCL 15.243(1)(u), alleging that release of the Taser recordings would depict the officers' equipment, tactics, and procedures.

B. Joseph's FOIA Request

On June 28, 2017, Joseph submitted a FOIA request seeking video footage of "the confrontation that led to the fatality of inmate Dustin Szot on September 27, 2016." (**Exhibit E**, Joseph's FOIA Request.) Joseph's request included "footage from any and all available cameras that captured any parts of the confrontation, including but not limited to cameras installed on tasers" and "any audio records that accompany footage found to be responsive." (*Id.*) On July 7, 2017, the MDOC denied Joseph's request, citing MCL 15.243(1)(c). (**Exhibit F**, Def's Resp to Joseph's FOIA Request.)

Joseph filed suit against the MDOC on August 17, 2017. The MDOC filed its Answer and Affirmative Defenses to his Complaint on September 15, 2017. There, the MDOC cited MCL 15.243(1)(c) (the original exemption the MDOC's cited in its denial of Joseph's original request) and MCL 15.243(1)(a) and (1)(u).

C. Plaintiffs Unearth the MDOC's Unlawful FOIA Practices

On November 30, 2017, Plaintiffs deposed MDOC corporate representatives: (i) Cheryl Groves, the former MDOC FOIA Coordinator who denied Woodman's FOIA request;

(ii) Christine Wakefield, an Inspector at the MDOC's Bellamy Creek facility, and (iii) Andrew Phelps, an MDOC Litigation Specialist. Plaintiffs also deposed Groves in her individual capacity. Through these depositions, Plaintiffs learned of the MDOC's unlawful practices for processing video and audio FOIA requests, practices that constitute flagrant violations not only of Michigan law, but the MDOC's internal policies and procedures.

Groves explained how the MDOC processes FOIA requests. When a request is received, Assistant FOIA Coordinator Aimee Nelson would review it, prepare an initial response, and send it to Groves for review. (**Exhibit G**, Groves Indiv Dep Tr, p 44:13-44:19; **Exhibit H**, Groves Corp Rep Dep Tr, p 26:7-27:17.) Without further analysis, Groves would sign Nelson's proposed response and send it to the requestor. (Exhibit G, p 45:5-45:9.) Groves testified that she did not review *any materials* responsive to Woodman's FOIA request even though responsive records exist. (*Id.* at p 45:10-45:13.) Nor were the responsive recordings obtained from Bellamy Creek for her review. (*Id.* at p 45:22-45:24, 49:3-49:12.)

Groves further explained that requests for video recordings do not receive the same treatment as requests for other records. (*Id.* at p 45:19-45:24; Exhibit H, p 44:21-48:18.) She explained the MDOC's blanket denial policy: "Because of the request, which was for video footage, we deny that under our custody and safety security measures exemption; we do not release video[.]" (Exhibit G, p 45:24-46:1.) Groves later confirmed the MDOC's rubber-stamp denial process: "We would contact the facility and say, 'Do you have responsive records?' And in this case they would say, yes, we have video footage, but we would still deny it[.]" (*Id.* at p 47:14-47:16.) The MDOC does not require a person processing a FOIA request to determine the types of videos that were made or the recording devices that were used to create them. (*Id.* at p 47:20-48:9.) "[W]e know that we don't release it. All we need to verify is that the documents do exist,

and then we are appropriate in [] rejecting that, or taking an exemption.” (*Id.* at p 48:6-48:9.) Nor does the MDOC review any video footage before denying a FOIA request that seek those records:

- Q.* [A]t what point, if any, would the videos in the custody of the local facility be transferred to the Central Office [for review]?
- A.* We would not ask for that. We would ask if it exists, but we would not ask them to transfer those files to us.
- Q.* . . . So is anyone reviewing the video prior to making a determination?
- A.* No.

(*Id.* at p 49:4-49:15; see also Exhibit H, p 40:6-40:7, 51:1-54:11.) Groves admitted that the MDOC routinely denies FOIA requests without reviewing responsive recordings. (Exhibit G, pp 74:8-75:14, 76:6-78:18, 89:6-90:12, 91:17-92:19, 92:20-94:4, 94:5-95:19, 95:23-96:25.)

Groves also stated that the MDOC withholds all videos, regardless of the device used to create them:

- Q.* [W]ould you go through each one and make a determination of, this is a facility recording, this is a hand-held recording, this is a body mic, if it existed?
- A.* All that we would say is, do recordings exist, and if the answer is yes, then we would respond, ‘Your request has been denied based on 13(1)(c).’
- Q.* And then you would inform them that each type of video existed?
- A.* No, we would not.
- Q.* Is there a reason for that?
- A.* Because they’re all video recordings in some manner.

(*Id.* at p 88:18-89:3.)

The MDOC also ignores its duty under Section 13(1)(c) to consider the public interest. Remarkably, Groves admitted that she could not recall having *ever* considered the public interest when responding to a FOIA request because the MDOC’s statutory duty is superfluous:

- Q.* So is it the Department’s policy that even in [the gravest scenarios, such as the death of an inmate], the MDOC’s security is always going to outweigh the disclosure in every case?
- A.* From the ones that I have been presented with as a FOIA Coordinator, yes.

(*Id.* at p 72:25-73:4.) Wakefield testified to the significant differences between the eight responsive recordings and the four recording devices. (**Exhibit I**, Wakefield Dep Tr, pp 26:3-28:18, 33:6-33:8, 49:7-50:10, 50:19-50:25.) In doing so, she substantiated the impropriety of the MDOC's summary denial process and corroborated Groves' testimony that the MDOC ignores its statutory duties by failing to make case-by-case exemption determinations.

III. ARGUMENT

A motion brought under MCR 2.116(C)(10) tests the factual support of a plaintiff's claim. *Rataj v City of Romulus*, 306 Mich App 735, 747; 858 NW2d 116 (2014). The trial court reviews the record in the light most favorable to the nonmoving party. *Taylor v Lansing Bd of Water & Light*, 272 Mich App 200, 203; 725 NW2d 84 (2006). "The court considers the affidavits, pleadings, depositions, admissions, and other documentary evidence submitted or filed in the action to determine whether a genuine issue of any material fact exists to warrant a trial." *Rataj*, 306 Mich at 747. The court must grant the motion if it finds no genuine issue as to any material fact and determines that the moving party is entitled to judgment as a matter of law. *Id.*

"As with all statutes, the proper interpretation and application of FOIA is a question of law[.]" *Id.* Whether a public record is exempt from disclosure under FOIA is a mixed question of fact and law, but when the facts are undisputed and reasonable minds could not differ, whether a public record is exempt from disclosure is a pure question of law. *Id.* Here, the requested video recordings are "without question" public records. *Id.* at 747-48; see also **Exhibit J**, MDOC Policy Directive 01.06.110, effective March 31, 2016 (the "MDOC Policy Directive"), p 1)¹ Thus, the only remaining question is whether the MDOC's application of FOIA was proper. It was not.

¹ The MDOC Policy Directive defines a public record as: "A writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. This includes but is not limited to photographs, photocopies, drawings, *video*,

A. Plaintiffs Are Entitled To Summary Disposition Because the MDOC Summarily Denied Plaintiffs' Requests in Violation of FOIA

It is the public policy of this state that all persons are entitled to full and complete information regarding affairs of government and the official acts of public officials and employees. MCL 15.231(2). "On its express terms, FOIA is a prodisclosure statute, and the exemptions listed in § 13 are narrowly construed. The burden of proof rests on the party asserting the exemption." *Herald Co v Bay City*, 463 Mich 111, 119; 614 NW2d 873 (2000) (citations omitted). FOIA presumes that all records are to be disclosed unless the governmental agency can show that records are exempt from disclosure. *Farrell v City of Detroit*, 209 Mich App 7, 11; 530 NW2d 105 (1995).

Generic assertions that responsive records are exempt from disclosure do not satisfy FOIA's pro-disclosure mandate. *Evening News Ass'n v City of Troy*, 417 Mich 481, 491–92; 339 NW2d 421 (1983); see also *Booth Newspapers, Inc v University of Michigan Bd of Regents*, 192 Mich App 574; 481 NW2d 778 (1992) (holding that claimed FOIA exemptions must be supported by substantial justification and explanation, not merely by conclusory assertions). Public bodies are required to review responsive records to make informed exemption determinations on a case-by-case basis. *Krug v Ingham Co Sheriff's Office*, 264 Mich App 475, 478; 691 NW2d 50 (2004) (holding unlawful the defendant's blanket denial of all FOIA requests); *Evening News*, 417 Mich at 503 (holding that the defendant's "generic determination" policy failed to meet its statutory obligation to separate exempt material from that which was nonexempt); see also *Ballard v Dept of Corr*, 122 Mich App 123, 126–27; 332 NW2d 435 (1982).

Any information not entitled to an exemption must be disclosed. MCL 15.244.

and audio tapes, computer data or documents retained on a computer, CD, DVD, and any other means of recording or retaining information." (Exhibit J, p 1 (emphasis added).)

1. The MDOC Admitted That It Did Not Review the Requested Videos before Denying Plaintiffs' FOIA Requests

When processing Plaintiffs' FOIA requests, the MDOC completely disregarded FOIA. At no point in denying Plaintiffs' requests did an MDOC employee review the recordings in question. (Exhibit H, p 30:8-30:11.) Instead, MDOC employees rubber-stamped denials of Plaintiffs' requests. Michigan courts have expressly held that practices like the MDOC's violate FOIA.

This case is analogous to *Ballard*. There, the plaintiff inmate submitted a request for surveillance video recorded in an MDOC facility. 122 Mich App at 126-27. The recording at issue showed the plaintiff being forcibly removed from a jail cell. *Id.* The MDOC argued the video was exempt because "disclosure of films of this type would prejudice [the MDOC's] ability to maintain the physical security of its institutions because such films may reveal the methods, tactics, and equipment used to restrain and subdue prisoners and because, by studying such films, prisoners might learn to circumvent such methods, tactics, and equipment." *Id.* at 124-25. After conducting an *in camera* review, the trial court ruled that video posed no danger to prison security and ordered the MDOC to disclose the video. *Id.*

On appeal, the MDOC argued that the video was exempt under Section 13(1)(c). The Court of Appeals rejected the MDOC's argument and held that the trial court properly compelled disclosure, recognized that nothing in the legislative history of Section 13(1)(c) suggests that the generic approach advocated by defendants was intended by the Legislature:

[T]he balancing test contained in [Section 13(1)(c)] at issue here suggests that a case-by-case approach is required because it reveals a legislative intent to accom[m]odate, insofar as it is possible, the respective public interests in institutional security and freedom of information. If the balancing test must be performed with generalizations rather than specifics, there will be cases in which one of these public interests must be sacrificed without any countervailing advancement of the other public interest. [*Id.*]

Similarly, in *Krug v Ingham Co Sheriff's Office*, 264 Mich App 475, 478; 691 NW2d 50 (2004), the Court of Appeals struck down a practice nearly identical to practice the MDOC uses to deny FOIA requests. In *Krug*, the plaintiff requested a file involved in an ongoing investigation. The defendant summarily denied the request—like it did all requests for information relating to investigations—citing MCL 15.243(1)(b)(i), which exempts from disclosure records that would interfere with an ongoing criminal investigation.

The Court of Appeals held that the defendant's blanket FOIA denial policy was improper: "Defendant was not entitled to deny plaintiff's FOIA request without actually determining that the entire case file was exempt from disclosure." *Id.* at 479. Particularly germane to these cases, the Court of Appeals also considered the defendant's deposition admission that its "policy [was] to issue blanket denials of all FOIA requests relating to open case files and that he actually failed to review the file before issuing defendant's response[.]" *Id.* The Court held that the "defendant's denial was clearly improper." *Id.*²

Ballard and *Krug* mandate summary disposition in favor of Plaintiffs in these cases. As detailed above, the MDOC's sworn testimony reveals that it never reviews requested videos and

² Courts have struck down similar policies. See *Evening News*, 417 Mich at 503; *Lawrence v City of Troy*, unpublished opinion per curiam of the Court of Appeals, issued June 23, 2009 (Docket No. 289509) (holding improper the defendant's perfunctory assertions that a FOIA request sought exempt information) (**Exhibit K.**) Other states echo Michigan's disapproval of blanket FOIA denial practices. See, e.g., *Friedman v Rice*, ___ NE3d ___, 2017 WL 5574476 (NY, 2017) (recognizing that "[D]efendants are not entitled to a blanket exemption from disclosure[.]"). Federal courts too have struck down blanket FOIA denial policies. See, e.g., *Jefferson v Reno*, 123 F Supp 2d 1, 4 (D DC, 2000) (holding that the defendant was barred from relying on its blanket denial policy because "[s]uch a practice would clearly violate the FOIA and binding case law," and "Plaintiff's assertion that [the defendant's] policy is to use Exemption 7(A) as a blanket exemption in direct violation of the law is an extremely serious charge."); *Gonzales & Gonzales Bonds & Ins Agency Inc v US Dept of Homeland Sec*, 913 F Supp 2d 865, 878–79 (ND Cal, 2012) (holding that the defendant failed to fulfill its FOIA obligations when it made no attempt to search for responsive documents, summarily refused to produce records, did not perform any analysis, and did not conduct the balancing test required by FOIA).

therefore never (a) determines whether disclosure of a particular video would prejudice prison security or (b) considers the public interest in disclosure. Further, the MDOC's own "Freedom of Information Act Guide" lists *Ballard* and *Krug* as relevant FOIA authority, demonstrating that the MDOC is perfectly aware that its policy violates Michigan law. (**Exhibit L**, MDOC FOIA Guide, pp 22, 31.) "We cannot hold our [corrections] officials accountable if we do not have the information upon which to evaluate their actions." *Rataj*, 306 Mich App at 751 (internal quotation marks omitted) (requiring disclosure of video showing police beating suspect inside police station). The MDOC's blanket policy of denying all video requests represents a dangerous effort to escape public accountability for even the most egregious abuses and misconduct in its facilities. In sum, the MDOC admitted that it failed to satisfy its obligations under FOIA, *Evening News*, *Ballard*, *Krug*, and other case law by summarily denying Plaintiffs' requests. There is no genuine issue of material fact and the Court should enter summary disposition in favor of Plaintiffs.

2. The MDOC Failed to Respond to All Portions of Plaintiffs' FOIA Requests

In addition to video, Plaintiffs' FOIA requests sought audio of the September 27, 2016, events. The MDOC admitted that six of the eight responsive videos also captured audio. (Exhibit I, p 33:6-33:8, 50:19-50:25.) The MDOC further recognized that the audio requests were separate and distinct from Plaintiffs' video requests. (Exhibit G, p 50:2-51:12.)

Here, the MDOC failed to separately respond to Plaintiffs' requests for audio recordings and instead rubber-stamp denied Plaintiffs' requests in their entirety. This too was improper, especially given Groves' admission that the audio recordings would not reveal the scope of surveillance cameras or their clarity—the MDOC's two professed security concerns in support of its denials. (*Id.* at 53:11-53:21.) Groves further testified that, in order to determine whether the audio recordings are exempt under Section 13(1)(c), the MDOC would need to make case-by-case

determinations, which it did not do. (*Id.* at 53:22-54:6.) Because the MDOC admitted that it failed to consider the audio portion of Plaintiffs' requests, the MDOC could not properly rely on any statutory exemption. *Evening News*, 417 Mich at 513. Again, there is no genuine issue of material fact and the Court should enter summary disposition in favor of Plaintiffs.

B. Even If the MDOC Properly Responded to Plaintiffs' Requests, the Videos Should Be Disclosed Because No Exemption Applies

Even if the MDOC had satisfied its FOIA obligations, none of the claimed exemptions apply to Plaintiffs' requests and the requested information must be disclosed. This is a second and independent basis for entry of summary disposition in favor of Plaintiffs.

1. Section 13(1)(c) Does Not Apply

The MDOC claims that its denials were proper under Section 13(1)(c) because releasing the video recordings would threaten the security of the Bellamy Creek facility. (Def's Answer to Woodman's First Am Verified Compl, ¶ 6.) The MDOC is incorrect.

MCL 15.243(1)(c) exempts from disclosure "A public record 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." The MDOC Policy Directive provides examples of records that may fall within the Section 13(1)(c) exemption:

Blueprints or maps of facility grounds; names of informants; mobilization scenarios and critiques; Special Problem Offender Notice; movement plans; Security Threat Group designations and related documentation; exempt policy directives and operating procedures; post orders for security sensitive assignment (e.g., sallyport); descriptions of security fencing; description of operation of personal protection devices; videos that would disclose capability of any monitoring device; document determined to be confidential by a hearing officer at a hearing conducted pursuant to MCL 791.252.

(Exhibit J, pp 4-5.) Here, Groves admitted that, from the list above, the only applicable example is “videos that would disclose capability of any monitoring device.” (Exhibit G, p 57:21-59:5.) The MDOC further contends that disclosure of the videos would provide the public with a layout of the secured areas of Bellamy Creek and reveal cameras’ blind spots. (Def’s Answer to Woodman’s First Am Verified Compl, ¶ 6.) This argument fails.

First, it is no secret that Michigan prisons are under 24/7 video surveillance; the MDOC conceded that prisoners understand “cameras are in place throughout [prison] facilities and that they are under constant surveillance.” (Exhibit D, Def’s Resp to Woodman’s FOIA Appeal.) This concession alone entirely negates the MDOC’s argument that releasing the video would impermissibly disclose MDOC surveillance capabilities. Wakefield confirmed that inmates are aware that they are under video surveillance. (Exhibit I, p 22:9-22:16.) In light of this testimony, disclosing the requested video would not reveal the capability of a monitoring device.

Moreover, the MDOC’s overbroad argument that all requested videos are exempt from disclosure ignores the nature and type of responsive recordings. According to the MDOC, there are eight distinct responsive recordings in these cases, only two of which were made by facility cameras. (*Id.* at p 26:3-28:18.) The other six videos were recorded by Taser cameras, a hand-held camera, and two iPhone cameras and are therefore not from fixed recording devices. (*Id.*) After Wakefield described “facility” cameras as fixed cameras, she admitted that the six other videos were not recorded by fixed cameras and are not monitored in the prison’s control center:

- Q.* Inspector, can you define, tell me what a monitoring device is?
- A.* Fixed video, the tasers, you know record number one through eight, everything in that, basically; a hand-held camera, I mean, it’s a device we could use, potentially, within prison to monitor.
- Q.* So we talked about this earlier, and you described a difference between videos that go to the Control Center versus videos that don’t?
- A.* Right.
- Q.* Is someone monitoring the videos in the Control Center?

A. Well the facility cameras, yes.

Q. Is someone monitoring, in the Control Center, [the Taser, hand-held camera, and iPhone recordings]? Those aren't streaming?

A. No.

(*Id.* at p 49:7-50:10; see also Exhibit H, p 35:25-36:13, 37:22-38:5 (neither the hand-held camera nor the iPhones are surveillance cameras).)

Wakefield's testimony clearly establishes that the Taser, hand-held, and iPhone devices that recorded six of the videos responsive to Plaintiffs' requests are not part of the MDOC's surveillance system. As such, the MDOC's claim that those videos are exempt because disclosure would reveal the capability of the prison's surveillance system fails.

The MDOC also incorrectly claims that disclosing the videos would jeopardize the safety of other inmates and prison officers. First, the altercation between Szot and the other inmate occurred outdoors in front of numerous other inmates and officers. Those present were able to identify the other inmate involved and the identities of the officers that responded to the incident. To the extent that the MDOC argues that releasing the videos would provide inmates with this information, and that alone would create a security risk, this argument is moot; those present were already able to observe those facts on September 27, 2016. (Exhibit I, p 33:1-33:5.) The same can be said regarding the restraint methods the responding officers used to subdue Szot and the other inmate. The MDOC has also failed to explain how inmates would be able to review the video footage while incarcerated in the event the videos are disclosed. See MCL 15.232(c) (excluding prisoners from those entitled to request records under FOIA).

Finally, the MDOC makes a dangerously misplaced argument that if it is compelled to release videos from within the secured areas of Bellamy Creek in these cases, it will likely be compelled to release similar video footage in the future. This argument is a red herring, has no

basis in law, and should be rejected. See *Evening News*, 417 Mich at 505 (rejecting portions of trial court’s decision that did not speak directly to any exemption requirements). Whether future videos may be disclosed at an undetermined future time is of no legal consequence to whether the MDOC fulfilled its statutory obligations to disclose responsive information in these cases.

In sum, all of the MDOC’s arguments in support of Section 13(1)(c) share a common attribute—they are conclusory and lack merit. The Supreme Court rejected a conclusory FOIA response policy in *Evening News*. The Court should follow the Supreme Court’s lead and reject the MDOC’s conclusory approach in these (and all other) cases.³

2. Neither Section 13(1)(u) Nor Section 13(1)(a) Applies to these Cases

The MDOC Policy Directive provides that “FOIA responses *must* include all applicable exemptions.” (Exhibit J, p 4 (emphasis added).) Here, the MDOC only cited Section 13(1)(c) when it originally denied Plaintiffs’ requests. Yet now the MDOC claims that two additional exemptions (Sections 13(1)(u) and 13(1)(a)) also apply and bar disclosure of the requested information. The Court should hold the MDOC to its internal standards and should not allow the MDOC to rely on its newly-cited exemptions. And it is axiomatic that when a public body provides no supporting authority or legal analysis in support of an exemption’s applicability, the public body is deemed to have abandoned the exemption. *Bitterman v Village of Oakley*, 309 Mich App 53, 68-69; 868 NW2d 642 (2015).

The Court should reach the same conclusion here and reject the MDOC’s late-cited exemptions. But even if the Court considers those exemptions on their merits, they do not apply.

³ When faced with similar FOIA requests, courts in other jurisdictions have required the disclosure of videos. See, e.g., *Mack v Howard*, 91 AD3d 1315; 937 NYS2d 785 (2012) (holding that videotape depicting altercation between inmate and several deputy sheriffs in a jail cell was not exempt from disclosure under FOIA); *American Civil Liberties Union v Department of Defense*, 389 F Supp 2d 547 (SDNY, 2005) (ordering the defendant to release requested videos and photographs and denying the claimed exemption).

a. Section 13(1)(u): Security Measures

MCL 15.243(1)(u) 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.”

The MDOC Policy Directive provides examples of records that may fall within this exemption:

Movement plans; exempt policy directives and operating procedures; post orders for security sensitive assignment (e.g., sallyport); descriptions of security fencing; description of operation of personal protection devices; videos that would disclose capability of any monitoring device.

(Exhibit J, p 5.) Groves admitted that, from this list, the only possibly applicable example is “videos that would disclose capability of any monitoring device.” (Exhibit G, p 64:1-64:12.)

A plain reading of Section 13(1)(u) shows that it does not apply here. Neither of Plaintiffs’ requests seek records of the MDOC’s security measures, security plans, codes, combinations, or security procedures. And as explained above, the requested videos do not reveal the capability of any monitoring device, especially since the MDOC admitted that six of the videos were not recorded by the Bellamy Creek facility’s monitoring devices. Section 13(1)(u) does not apply.

b. Section 13(1)(a): Invasion of Privacy

Nor does MCL 15.243(1)(a) apply; that statute exempts from disclosure “[i]nformation of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual’s privacy.” This exemption has two prongs. Under the first prong, information “of a personal nature” is exempt if it is intimate, embarrassing, private, or confidential. *Rataj*, 306 Mich App at 750. If the first prong is met, the question then becomes whether public disclosure of the information contained in the public record “would constitute a clearly unwarranted invasion of an individual’s privacy.” *Id.* at 751. To answer this question, courts must

balance the public interest in disclosure against the interest [the Legislature] intended the exemption to protect . . . [T]he only relevant public interest in disclosure to be weighed in this balance is the extent to which disclosure would serve the core purpose of the FOIA, which is contributing significantly to public understanding of the operations or activities of the government.

Id. As part of this balancing test, “it is necessary to ask whether the requested information would shed light on the governmental agency’s conduct or further the core purposes of FOIA. ***In all but a limited number of circumstances, the public’s interest in governmental accountability prevails over an individual’s, or a group of individuals’, expectation of privacy.***” *Id.* (internal citations and quotations omitted) (emphasis added).

The MDOC Policy Directive lists examples of exempt information under Section 13(1)(a):

Home addresses and home telephone numbers; emergency contact information; driver license numbers; Social Security numbers; victims’ requests to receive information pursuant to PD 01.06.120 “Victim Notification” and the Department’s response unless the requestor is the victim; fingerprint cards; resumes of unsuccessful job applicants except for the resume of the requestor.

(Exhibit J, p 4.)

There is absolutely no basis for application of Section 13(1)(a) to these cases. The MDOC feigns a claim that disclosure of the requested videos would be an invasion of privacy because they show the (1) identities of inmates and officers, (2) altercation between Szot and the other inmate, and (3) attempts made by Bellamy Creek personnel to resuscitate Szot. (Def’s Answer to Woodman’s First Am Verified Compl, pp 6-7 ¶ 5.) This Hail Mary argument is belied by Groves’ admission that Plaintiffs do not seek any information that would otherwise be exempt under the MDOC Policy Directive. (Exhibit G, p 64:13-65:18.) Further, Groves admitted that she did not know on what the MDOC was relying to support its claim that Section 13(1)(a) applies here. (Exhibit H, p 41:12-41:24.)

Even without these admissions, the MDOC's Section 13(1)(a) argument fails. The identities of inmates and corrections officers do not constitute "information of a personal nature" and therefore does not satisfy the first prong of the Section 13(1)(a) analysis. Wakefield testified that inmates are fully aware that they are under surveillance. What's more, the State of Michigan publicly displays inmates' identities through its Offender Tracking Information System website. And in *Detroit Free Press, Inc v Oakland County Sheriff*, 164 Mich App 656; 418 NW2d 124 (1987), the Court of Appeals held that booking photographs of persons arrested, charged with felonies, and awaiting trial are not exempt from disclosure under Section 13(1)(a). The MDOC's claimed exemption here is illogical because it would extend greater privacy protections to inmates than the law extends to individuals not yet convicted of criminal wrongdoing.

Corrections officers' identities are similarly not exempt from disclosure under Section 13(1)(a). Courts have steadfastly refused to extend Section 13(1)(a) to prevent disclosure of documents containing information about public employees' conduct on the job. See *Bitterman*, 309 Mich App at 66 (holding that in the absence of special circumstances, an individual's name is not information of a personal nature for purposes of FOIA's privacy exemption). In fact, the Supreme Court has upheld the disclosure of law enforcement officers' address information—information that is significantly more personal than the officers' names or identities in these cases. See *Intl Union, United Plant Guard Workers of Am (UPGWA) v Dept of State Police*, 422 Mich 432, 453–54; 373 NW2d 713 (1985) (holding that the state failed to meet its burden of demonstrating that the requested address lists contained information so personal and private that the lists should not be disclosed).

In addition, Michigan law recognizes that prisoners lose nearly all of their privacy rights while in MDOC custody. Accordingly, the requested audio and video of the altercation and

subsequent resuscitation attempts do not satisfy the first prong of the Section 13(1)(a) analysis. Further, the incident in question occurred in an outdoor area of the prison accessible to the general inmate population. Therefore, there is no personal privacy interest that justifies exempting the video from disclosure. But even if the Court finds that footage of either event constitutes personal information, the MDOC's arguments fail to satisfy the second prong of the Section 13(1)(a) analysis.

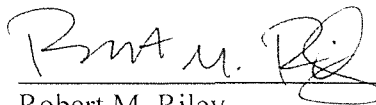
In *Rataj*, the plaintiff sought disclosure of a video related to an altercation between a Romulus Police Officer and a civilian that occurred inside the portion of the department used for detaining arrestees, in which the citizen spat on the officer and the officer used a racial slur. *Rataj*, 306 Mich App at 751. The defendant denied his request, citing Section 13(1)(a), among other exemptions. The Court of Appeals reversed the trial court's ruling that the records were exempt from disclosure under Section 13(1)(a), holding that even though the video could well be considered embarrassing and therefore of a personal nature, it was not exempt from disclosure:

Notwithstanding the personal and embarrassing information that is apparently depicted on the video[]recording, we conclude that the video would shed light on the operations of the RPD and, in particular, its treatment of those arrested and detained by its officers. These are matters of legitimate public concern. [W]e cannot hold our officials accountable if we do not have the information upon which to evaluate their actions. [*Id.*]

The public interests that mandated disclosure of the video in *Rataj* apply with equal force to these cases. If disclosed, the videos Plaintiffs requested would shed light on the MDOC's treatment of prisoners within the Bellamy Creek prison and potentially shed further light on the cause of Szot's death. Allowing the public to review the events that led to Szot's death would give the public the power to witness firsthand officers' actions and potentially hold them accountable if they acted improperly. Just as in *Rataj*, the public interest in disclosure significantly outweighs the nominal (if not nonexistent) privacy interests claimed by the MDOC.

CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2018, a copy of the foregoing document was served on all counsel of record by first class mail.


Robert M. Riley

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

SPENCER WOODMAN,

Plaintiff,

Case No. 17-000082-MZ
Hon. Cynthia D. Stephens

v

MICHIGAN DEPARTMENT OF CORRECTIONS,

Defendant.

GEORGE JOSEPH,

Plaintiff,

Case No. 17-000230-MZ
Hon. Cynthia D. Stephens

v

MICHIGAN DEPARTMENT OF CORRECTIONS,

Defendant.

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Attorneys for Defendant

INDEX OF EXHIBITS

EX. NO.	DATE	DESCRIPTION
A	09/28/2016	FOIA Request from Woodman to the MDOC
B	10/06/2016	MDOC's Response to Woodman's FOIA Request
C	10/10/2016	Woodman's FOIA Appeal
D	10/25/2016	MDOC's Response to Woodman's FOIA Appeal
E	06/28/2017	FOIA Request from Joseph to the MDOC
F	07/07/2017	MDOC's Response to Plaintiff Joseph's FOIA Request
G	11/30/2017	Transcript of the Deposition of Cheryl Groves
H	11/30/2017	Transcript of the Deposition of Cheryl Groves (as MDOC Corporate Representative)
I	11/30/2017	Transcript of the Deposition of Christine Wakefield
J	03/31/2016	MDOC Policy Directive 01.06.110, eff. 3/31/2016
K	06/23/2009	<i>Lawrence v City of Troy</i> , unpublished per curiam opinion of the Court of Appeals issued June 23, 2009 (Docket No. 289509); 2009 WL 1782691
L	11/10/2015	MDOC Freedom of Information Act Guide, rev. 11/10/2015

EXHIBIT A

**Spencer Woodman** <spencer.woodman@gmail.com>

Submitting records request

Spencer Woodman <spencer.woodman@gmail.com>

Wed, Sep 28, 2016 at 6:06 PM

To: NelsonA9@michigan.gov

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: (919) 418-0817

EXHIBIT 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. 16 950
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						
<input type="checkbox"/> Request Granted	No. of pages:	See fee assessment below.				
<input type="checkbox"/> 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"/> Request Denied	<input checked="" type="checkbox"/> Requested records are exempt from disclosure. See explanation below.					
<input type="checkbox"/> Request Denied	<input type="checkbox"/> 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.					
<input type="checkbox"/> Request Denied	<input type="checkbox"/> Request does not describe the record sufficiently to enable this Department to determine what record is requested.					
<input type="checkbox"/> Request Denied	<input type="checkbox"/> 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.					
<input type="checkbox"/> 10 Business Day Extension Taken	Due Date:	Reason for Extension:				
FEE ASSESSMENT						
<input type="checkbox"/> 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.						
<input type="checkbox"/> 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						
<i>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.</i>						
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: <i>Cheryl A Groves</i>						DATE: <i>10/6/16</i>

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.

EXHIBIT 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
(919) 418-0817

[Quoted text hidden]

EXHIBIT 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."

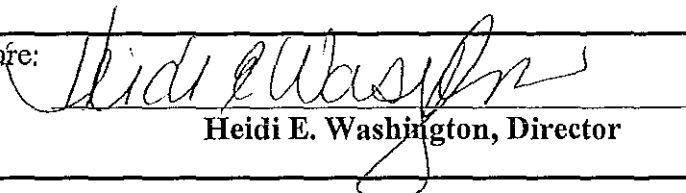
While prisoners understand that cameras are in place throughout facilities and that they are under constant surveillance, the MDOC does not routinely release video footage to the public as you incorrectly assert. Release of the video footage compromises the safety, security, and order of the facility. 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

EXHIBIT E

----- Original Message -----

Subject: George Joseph June 28, 2017 FOIA Request to MDOC re the Death of Dustin Szot

Local Time: June 28, 2017 3:12 PM

UTC Time: June 28, 2017 7:12 PM

From: gmjoseph@protonmail.com

To: MDOC-OLAFOIA@michigan.gov <MDOC-OLAFOIA@michigan.gov>

Dear Michigan Department of Corrections,

Pursuant to the Michigan Freedom of Information Act, I hereby request a digital copy of any and all footage of the September 27, 2016 confrontation that led to the death of inmate Dustin Szot at the Muskegon Correctional Facility. This request should be understood to include footage from any and all available cameras that captured the any parts of the confrontation, including but not limited to cameras installed on tasers deployed at the Muskegon Correctional Facility. This request should also be understood to include any audio records that accompany footage found to be responsive to this request.

As a member of the media, freelancing for national outlets such as National Public Radio and The Guardian US, I request a fee waiver for this FOIA request as this information is being sought for dissemination to the public, rather than for commercial purposes. The death of Dustin Szot has become a public issue since last year, sparking several news articles in publications such as the Ionia Sentinel Standard (See: March 21, 2017 Ionia Sentinel Standard article entitled "No charges in death of Ionia Bellamy Creek prisoner Dustin Szot").

There is thus clearly a significant level of public interest in Szot's fatality and the subsequent response to it on the part of public officials. This request therefore merits a fee waiver as information about this issue would significantly contribute to the public's understanding of the government institution in which Szot's death occurred.

If you choose to deny any part of this request, please cite the specific each exemption used to refuse the release of records found to be responsive to this request and tell me what appeal procedures are available to me under Michigan state law.

Thank you for accepting my request, and feel free to contact me at my email gmjoseph@protonmail.com or on my cell phone at 940-300-0181.

Thank you,
George Joseph

Sent with ProtonMail Secure Email.

EXHIBIT F

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

CSH-479
 REV 6/16

Requester Name: <i>George Joseph</i>	Requester Type: <i>General Public</i>	Files <input type="checkbox"/>	PB <input type="checkbox"/>	Request Date <i>6/28/2017</i>	Received Date <i>6/29/2017</i>	FOIA No. <i>17- 602</i>
Address: <i>gmjoseph@prontonmail.com</i>		Description of Requested Records: <i>Szot 961740</i> <i>"I hereby request a digital copy of any and all footage of the September 27, 2016 confrontation that led to the death of inmate Dustin Szot at the Muskegon Correctional Facility."</i>				

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

Request Granted <input type="checkbox"/>	No. of pages:	See fee assessment below.
Request Granted in Part/Denied in Part <input type="checkbox"/>	No. of pages:	Portions of requested records are exempt from disclosure. See explanation and fee assessment below.
Request Denied <input type="checkbox"/>	<input checked="" type="checkbox"/>	Requested records are exempt from disclosure. See explanation below.
	<input type="checkbox"/>	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.
	<input type="checkbox"/>	Request does not describe the record sufficiently to enable this Department to determine what record is requested.
	<input type="checkbox"/>	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 <input type="checkbox"/>	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

To the extent these records are available, they are exempt from disclosure under Section 13(1)(c).

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, costs and disbursements, and possible damages.

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

FOIA COORDINATOR:

Zed BL

DATE:

7/10/17

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.

EXHIBIT G

1 STATE OF MICHIGAN
2 IN THE COURT OF CLAIMS

3 SPENCER WOODMAN,

4 Plaintiff,

5 -vs-

Case No. 17-000082
Hon. Cynthia D. Stephens

6 MICHIGAN DEPARTMENT OF CORRECTIONS,

7 Defendant.
8 _____/

9 DEPOSITION OF CHERYL GROVES

10 Taken by the Plaintiff on Thursday, the 30th day of
11 November, 2017 at the office of Michigan Department of
12 Attorney General, 525 West Ottawa Street, Lansing, Michigan
13 at 9:00 a.m.

14
15 APPEARANCES:

16
17 For the Plaintiff: OLIVIA K. VIZACHERO (P81699)
18 Honigman Miller Schwartz and Cohn, LLP
19 Cooperating Attorneys, American
20 Civil Liberties Union Fund of Michigan
21 2290 First National Building
22 600 Woodward Avenue
23 Detroit, Michigan 48226
24 (313) 465-7000
25 ovizachero@honigman.com

Page 2			Page 4		
1	For the Defendant:	ADAM R. DE BEAR (P80242)	1	Deposition Exhibit G	74
2		Michigan Department of Attorney General	2	(FOIA Request)	
3		525 West Ottawa Street	3	Deposition Exhibit H	76
4		2nd Floor G. Mennen Williams Building	4	(FOIA Request)	
5		Lansing, Michigan 48909	5	Deposition Exhibit I	78
6		(517) 373-1162	6	(FOIA Request)	
7		debeara@michigan.gov	7	Deposition Exhibit J	89
8			8	(FOIA Request)	
9			9	Deposition Exhibit K	90
10	Reported By:	Heidi A. Cook, CSR 4827	10	(FOIA Request Response)	
11			11	Deposition Exhibit L	90
12			12	(FOIA Request Response)	
13			13	Deposition Exhibit M	90
14			14	(FOIA Request Response)	
15			15	Deposition Exhibit N	90
16			16	(FOIA Request Response)	
17			17	Deposition Exhibit O	97
18			18	(Newspaper Article)	
19			19	Deposition Exhibit P	97
20			20	(Newspaper Article)	
21			21		
22			22	*	*
23			23		
24			24		
25			25		

Page 3			Page 5		
1	EXAMINATION INDEX		1	Thursday, November 30, 2017	
2	-----		2	Lansing, Michigan	
3	ATTORNEY'S NAME	EXAMINATION RE-EXAMINATION	3	9:39 a.m.	
4	-----		4	* * *	
5			5	CHERYL GROVES,	
6	BY MS. VIZACHERO:	5	6	having been first duly sworn, testified as follows:	
7			7	EXAMINATION	
8	*	* *	8	BY MS. VIZACHERO:	
9			9	Q Good morning, Ms. Groves. How are you today?	
10	EXHIBIT INDEX		10	A Fine. How are you?	
11	-----		11	Q Wonderful. Thank you.	
12	EXHIBIT	MARKED IDENTIFIED	12	A Good.	
13	-----		13	Q Would you mind stating your full name and spelling your last	
14	Deposition Exhibit A	35 35	14	name for the record?	
15	(2012 Policy Directive)		15	A Cheryl Ann Groves, G-r-o-v, as in Victor, e-s.	
16	Deposition Exhibit B	36 36	16	Q I say V, as in Victor, for my name, too.	
17	(7/1/15 Policy Directive)		17	How are you currently employed?	
18	Deposition Exhibit C	38 38	18	A I work for the Michigan Department of Corrections as the EPIC	
19	(3/31/16 Policy Directive)		19	Manager.	
20	Deposition Exhibit D	38 38	20	Q Okay. And what is an EPIC Manager?	
21	(2/21/17 Policy Directive)		21	A EPIC stands for Effective Process Improvement and	
22	Deposition Exhibit E	42 42	22	Communication, so that is our Process Improvement Office.	
23	(FOIA Request)		23	Q Okay. So as I stated earlier, my name is Olivia Vizachero,	
24	Deposition Exhibit F	59 59	24	and I am representing Spencer Woodman and George Joseph in	
25	(Defendant's Answer and Affirmative Defenses)		25	the current litigation, and you're going to be deposed today	

<p style="text-align: right;">Page 42</p> <p>1 the request is submitted govern?</p> <p>2 A I guess I don't understand your question.</p> <p>3 Q Not a problem.</p> <p>4 A So I'm sorry.</p> <p>5 Q We'll use real dates.</p> <p>6 A Okay.</p> <p>7 Q If an event -- the most recent change happened in February --</p> <p>8 A Correct.</p> <p>9 Q -- of 2017. If an event took place on January 1st of 2017,</p> <p>10 and two people submitted requests, one January 2nd and the</p> <p>11 other person March 1st of 2017, would one Policy Directive</p> <p>12 govern those two -- would the same Policy Directive --</p> <p>13 A I see. No, it would not. The Policy Directive that is in</p> <p>14 place, in effect governs FOIA Requests that are received of</p> <p>15 that date.</p> <p>16 Q Okay.</p> <p>17 A Does that make sense?</p> <p>18 Q Yes.</p> <p>19 A Okay.</p> <p>20 Q So if a -- I won't say if, we'll just use the actual one. I</p> <p>21 am going to have Plaintiff, Spencer Woodman's First Amended</p> <p>22 Verified Freedom of Information Complaint marked as</p> <p>23 Exhibit E.</p> <p>24 (Deposition Exhibit E marked for identification.)</p> <p>25 Q (BY MS. VIZACHERO) And I'm going to direct you, Ms. Groves,</p>	<p style="text-align: right;">Page 44</p> <p>1 address.</p> <p>2 Q Only her E-mail?</p> <p>3 A Yes.</p> <p>4 Q Okay.</p> <p>5 A So we had that, and we could get them in the mail, we could</p> <p>6 have them faxed, and sometimes people would hand-deliver</p> <p>7 them.</p> <p>8 Q To the Central Office?</p> <p>9 A Yes.</p> <p>10 Q Was there a general E-mail address for the office, like an</p> <p>11 info@, that wasn't assigned to one person?</p> <p>12 A No, there was not.</p> <p>13 Q All right. And can you tell me what you know about this FOIA</p> <p>14 Request; it gets received by Aimee, and then what happened?</p> <p>15 A Right. So she would get this information, and she would look</p> <p>16 at the request; obviously, this is a request for a digital</p> <p>17 copy of video footage of an incident that happened. And she</p> <p>18 would prepare the initial response, and send it to me for my</p> <p>19 review.</p> <p>20 Q What was the first conversation you had with Ms. Nelson about</p> <p>21 Mr. Woodman's FOIA Request?</p> <p>22 A I don't recall.</p> <p>23 Q Prior to talking to you, or bringing you the, her final draft</p> <p>24 of the response, what did she do?</p> <p>25 A I don't know.</p>
<p style="text-align: right;">Page 43</p> <p>1 to the exhibits.</p> <p>2 A Okay.</p> <p>3 Q Which, as you explained earlier, you reviewed prior to coming</p> <p>4 here today, I believe. Have you seen that document before?</p> <p>5 A Yes, I have.</p> <p>6 Q Okay. And what is it?</p> <p>7 A It's a request; it's a FOIA Request.</p> <p>8 Q From whom?</p> <p>9 A Spencer Woodman.</p> <p>10 Q And when is it dated?</p> <p>11 A September 28, 2016.</p> <p>12 Q So which Policy Directive would have been in effect at that</p> <p>13 time?</p> <p>14 A September 28th. It would be the one dated 3/31/16.</p> <p>15 Q Perfect. And who received this request?</p> <p>16 A It looks like it was addressed to Aimee Nelson.</p> <p>17 Q Was that common, for requests to be directed specifically</p> <p>18 to --</p> <p>19 A Yes.</p> <p>20 Q -- one person?</p> <p>21 A (Witness nodding head.)</p> <p>22 Q While you were FOIA Coordinator what different ways did the</p> <p>23 office receive requests?</p> <p>24 A We had them by E-mail, because her E-mail was on our web page</p> <p>25 as the FOIA contact, so that's how they have her E-mail</p>	<p style="text-align: right;">Page 45</p> <p>1 Q Did she talk to anyone?</p> <p>2 A Did she?</p> <p>3 Q Yes.</p> <p>4 A I don't recall. I don't know that.</p> <p>5 Q What do you recall in capacity with your involvement?</p> <p>6 A Simply to review the request, and look at the proposed</p> <p>7 response that she had drafted, and when I agreed with the</p> <p>8 content, then I signed it and we processed it. By process, I</p> <p>9 just mean put in the mail, put a stamp on it.</p> <p>10 Q What did you review?</p> <p>11 A What did I review? Only this request.</p> <p>12 Q Only this page?</p> <p>13 A Correct.</p> <p>14 Q The form titled, Response to Request for Public Records?</p> <p>15 A Oh, I'm sorry. Yes.</p> <p>16 Q I'm just making sure.</p> <p>17 A That's what she had given me, so I would see the request and</p> <p>18 proposed response on the FOIA Response Form.</p> <p>19 Q You indicated earlier that when you review responses you also</p> <p>20 review whatever materials were responsive?</p> <p>21 A Correct.</p> <p>22 Q Okay. So were there responsive materials in this, for this</p> <p>23 FOIA Request?</p> <p>24 A Not that we had in our office. Because of the request, which</p> <p>25 was for video footage, we deny that under our custody and</p>

<p style="text-align: right;">Page 46</p> <p>1 safety security exemption; we do not release video footage.</p> <p>2 Q In all circumstances?</p> <p>3 A While I was FOIA Coordinator, yes.</p> <p>4 Q Okay. And is that a rule that you came up with, or is that</p> <p>5 something you were told to do?</p> <p>6 A I don't know that either one of those. It's in our FOIA</p> <p>7 Policy, and it doesn't specifically say that, it just -- it's</p> <p>8 an example of what can be exempted.</p> <p>9 Q And when you say FOIA policy, are you saying FOIA Policy</p> <p>10 Directive?</p> <p>11 A Yes.</p> <p>12 Q Okay.</p> <p>13 A Yes.</p> <p>14 Q Can you show me where it says in all cases --</p> <p>15 A It doesn't say that.</p> <p>16 Q Okay. How do you know that in all cases, that it shouldn't</p> <p>17 be, that the video or audio shouldn't be released?</p> <p>18 A Because of the nature of that.</p> <p>19 Q Can you explain that in a little more detail?</p> <p>20 A Right. Our prisons -- obviously there's a lot that goes on</p> <p>21 in our prisons, and if we were to release video footage it</p> <p>22 shows the camera angles, it shows the capability, it shows</p> <p>23 how our staff responds to incidents. We consider that a</p> <p>24 custody and safety security issue, therefore, we exempt that;</p> <p>25 we take exemption 13(1)(c).</p>	<p style="text-align: right;">Page 48</p> <p>1 A To give me information that says, We have this video that's</p> <p>2 from this time, and this video --</p> <p>3 Q Yes.</p> <p>4 A No.</p> <p>5 Q And why is that?</p> <p>6 A Because we know that we don't release it. All we need to</p> <p>7 verify is that the documents do exist, and then we are</p> <p>8 appropriate in redacting that, or rejecting that, or taking</p> <p>9 an exemption.</p> <p>10 Q So at any point would there be a transfer of videos from, in</p> <p>11 this case it was Muskegon Correctional Facility?</p> <p>12 A I think that was a mistake, because it was Bellamy Creek.</p> <p>13 Q Right?</p> <p>14 A Right.</p> <p>15 Q Okay. I've been going through that, and I keep going back</p> <p>16 and forth.</p> <p>17 A Right.</p> <p>18 Q You would know better than I would. I'm like, are they right</p> <p>19 next to each other?</p> <p>20 A No, they're not; one is in Muskegon, and one is in Ionia.</p> <p>21 Q So it was at Bellamy Creek, yes?</p> <p>22 A Correct.</p> <p>23 Q Now I've got it in my mind's eye; we're good to go.</p> <p>24 A Okay.</p> <p>25 Q Do you know who was the, would it have been, I want to use</p>
<p style="text-align: right;">Page 47</p> <p>1 Q So whose job in this case would it have been to, say,</p> <p>2 Mr. Woodman's request comes in, we see it, it gets received</p> <p>3 on September 28, 2016, or that was the date that the request</p> <p>4 was made, it was received the following day, and as a side</p> <p>5 note, is that -- that's Department Policy, right, if you</p> <p>6 receive a request, it's dated as received the --</p> <p>7 A The following day, correct.</p> <p>8 Q -- subsequent day? So Ms. Nelson would have had to contact</p> <p>9 someone in order to determine whether there was responsive</p> <p>10 records for Mr. Woodman's request?</p> <p>11 A I don't know how to answer that, because I can't speak for</p> <p>12 what she did.</p> <p>13 Q Just in your understanding as --</p> <p>14 A In general, we would typically contact the facility and say,</p> <p>15 Do you have responsive records? And in this case they would</p> <p>16 say, yes, we have video footage, but we would still deny it</p> <p>17 because we wanted to make sure that we take the exemption</p> <p>18 correctly. So, yes, it does exist, and we're not going to</p> <p>19 release it.</p> <p>20 Q Okay. So -- well, let me say this: In your role as FOIA</p> <p>21 Coordinator, would you have expected Ms. Nelson to determine</p> <p>22 what videos, like enumerate a list of what videos were</p> <p>23 responsive to the request before drafting a response?</p> <p>24 A Would I ask her to do that?</p> <p>25 Q Yes.</p>	<p style="text-align: right;">Page 49</p> <p>1 the right term, the local FOIA Coordinator?</p> <p>2 A I do not know who that is at Bellamy Creek.</p> <p>3 Q In your understanding of how these are typically processed,</p> <p>4 of how FOIA Requests and responses are typically handled, at</p> <p>5 what point, if any, would the videos in the custody of the</p> <p>6 local facility be transferred to the Central Office?</p> <p>7 A Under FOIA?</p> <p>8 Q Yes.</p> <p>9 A Or in general?</p> <p>10 Q For the processing, like, making a determination on --</p> <p>11 A We would not ask for that. We would ask if it exists, but we</p> <p>12 would not ask them to transfer those files to us.</p> <p>13 Q Okay. So is anyone reviewing the video prior to making a</p> <p>14 determination?</p> <p>15 A No.</p> <p>16 Q Okay.</p> <p>17 A In our FOIA Office, I'm talking about our Central Office FOIA</p> <p>18 Office, we do not review those videos.</p> <p>19 Q Okay. Will you go to page four, please, of the March 31st</p> <p>20 Policy Directive.</p> <p>21 MR. DE BEAR: On Exhibit C?</p> <p>22 MS. VIZACHERO: C, yes. Give me just a second.</p> <p>23 (Off the record discussion.)</p> <p>24 Q (BY MS. VIZACHERO) Okay. So, initially, what exemption was</p> <p>25 cited for Spencer Woodman's FOIA Request?</p>

<p style="text-align: right;">Page 50</p> <p>1 A 13(1)(c).</p> <p>2 Q Okay. So let's turn to 13(1)(c). And if you can, for the</p> <p>3 record, can you read what was requested?</p> <p>4 A Yes. I am requesting a digital copy of, one, video footage</p> <p>5 of the confrontation that led to the fatality of inmate</p> <p>6 Dustin Szot on September 27, 2016 at the Muskegon</p> <p>7 Correctional Facility. This request includes footage from</p> <p>8 any and all available cameras that captured this incident, as</p> <p>9 well as any, number two, any available accompanying audio</p> <p>10 records.</p> <p>11 Q Okay. And then can you read for me the explanation provided</p> <p>12 in the response portion?</p> <p>13 A In our response? The records you seek are exempt from</p> <p>14 disclosure under Section 13(1)(c). These records, if</p> <p>15 disclosed, could threaten the security of Bellamy Creek</p> <p>16 Correctional Facility by revealing fixed camera placement, as</p> <p>17 well as the scope and clarity of the facility's fixed camera</p> <p>18 and hand-held recordings.</p> <p>19 Disclosure of these records could also reveal the</p> <p>20 policies and procedures used by staff for disturbance control</p> <p>21 and the management of disruptive prisoners.</p> <p>22 Q Okay. So is it common if -- strike that.</p> <p>23 The one and the two in the description of the requested</p> <p>24 record --</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 52</p> <p>1 A It might not. It won't, but it will threaten the security of</p> <p>2 the facility.</p> <p>3 Q How?</p> <p>4 A By audio. Because anything that happens in an incident, we</p> <p>5 are not releasing that information; we're not releasing the</p> <p>6 video footage or the audio that goes along with that.</p> <p>7 Q And why not the audio?</p> <p>8 A They are together; the camera records the video and audio as</p> <p>9 one.</p> <p>10 Q Is there a way that, for redaction purposes, the Department</p> <p>11 could separate the two, and only provide an audio?</p> <p>12 A I don't know that.</p> <p>13 Q It's possible that a recording could be made just by taking a</p> <p>14 recording device, holding it up to a speaker, if audio was</p> <p>15 recorded, and then separating that from the video?</p> <p>16 A I have not ever been involved with that, so I can't speak to</p> <p>17 that.</p> <p>18 Q I just mean, like, you would be able to, if someone was</p> <p>19 playing a tape right now, we would be able to turn on our</p> <p>20 phones, record, and even though we wouldn't be capturing the</p> <p>21 image, video footage, we would be able to record the audio.</p> <p>22 Does that make sense to you?</p> <p>23 A Yes.</p> <p>24 Q So it's possible that that could take place and be</p> <p>25 accomplished?</p>
<p style="text-align: right;">Page 51</p> <p>1 Q -- who puts those there?</p> <p>2 A Aimee does.</p> <p>3 Q Okay. And why?</p> <p>4 A We do that so we make sure that we have answered each one of</p> <p>5 the parts of their request appropriately below.</p> <p>6 Q Okay.</p> <p>7 A So part one, we make sure that we have that, and we have our</p> <p>8 response to that request, and part two, we make sure we</p> <p>9 respond to both parts.</p> <p>10 Q Okay. Do you see that included in the response portion</p> <p>11 below?</p> <p>12 A No, I do not.</p> <p>13 Q Okay. So with the description it says, Revealing the</p> <p>14 requested records would reveal the camera placement?</p> <p>15 A Correct.</p> <p>16 Q As well as the scope --</p> <p>17 A Correct.</p> <p>18 Q -- and the clarity of the camera?</p> <p>19 A Yes.</p> <p>20 Q And the hand-held recordings?</p> <p>21 A Right.</p> <p>22 Q Would that have related to request one or request two;</p> <p>23 request one was video?</p> <p>24 A It applies to both of them.</p> <p>25 Q How would an audio recording reveal fixed camera placement?</p>	<p style="text-align: right;">Page 53</p> <p>1 A Yes.</p> <p>2 Q Okay. And that's kind of consistent with redacting, right,</p> <p>3 you start with a whole --</p> <p>4 A Uh-huh.</p> <p>5 Q -- file or a larger item and then you say, Nope, we're not</p> <p>6 going to do all of that, but we're going to take some of it?</p> <p>7 A Right.</p> <p>8 Q Okay. And then looking at scope, how would audio relate to</p> <p>9 revealing the scope of a fixed camera?</p> <p>10 A Scope means -- I'm sorry. What did you say?</p> <p>11 Q How would audio recordings reveal the scope of a camera?</p> <p>12 A Audio does not.</p> <p>13 Q Okay. And would you answer the same for clarity of a fixed</p> <p>14 camera?</p> <p>15 A For audio?</p> <p>16 Q Uh-huh.</p> <p>17 A No.</p> <p>18 Q I'm sorry. Clarify the no.</p> <p>19 A Clarity does not include audio. Was that the question?</p> <p>20 Q Audio wouldn't reveal a camera's clarity?</p> <p>21 A Correct.</p> <p>22 Q Okay. And audio wouldn't reveal placement, scope or clarity</p> <p>23 for a hand-held recording?</p> <p>24 A Audio, it depends on what's said in the audio. I mean, it's</p> <p>25 possible, but it would depend on what is said.</p>

<p style="text-align: right;">Page 54</p> <p>1 Q So you'd have to make, like, a case-by-case determination?</p> <p>2 A Right, because if you said, Okay, I'm standing here in East</p> <p>3 Wing, you know, the audio could reveal some of the security</p> <p>4 issues.</p> <p>5 Q Okay. But it could not?</p> <p>6 A Correct.</p> <p>7 Q Okay. The second page on the FOIA, following the FOIA</p> <p>8 Request.</p> <p>9 A Uh-huh.</p> <p>10 Q Do you recognize that page?</p> <p>11 A Yes, I do.</p> <p>12 Q And what is that?</p> <p>13 A That is a list of FOIA exemptions.</p> <p>14 Q Okay. And who creates this list?</p> <p>15 A I honestly don't know who created it.</p> <p>16 Q Okay. Would it be under your understanding that this is</p> <p>17 consistent with the actual FOIA Exemption Statute?</p> <p>18 A Yes.</p> <p>19 Q And you said C was marked on Mr., in response to the</p> <p>20 exemption used for Mr. Woodman's request?</p> <p>21 A Yes.</p> <p>22 Q Okay. And that says, A public record, which if disclosed,</p> <p>23 would prejudice a public body's ability to maintain the</p> <p>24 physical security of custodial and penal institutions</p> <p>25 occupied by persons arrested or convicted of a crime,</p>	<p style="text-align: right;">Page 56</p> <p>1 Department's possession.</p> <p>2 Who did that with regard to this; it was Ms. Nelson?</p> <p>3 A Initially, Aimee Nelson, correct.</p> <p>4 Q And then in Section R, The FOIA Coordinator shall review the</p> <p>5 documents responsive to the Request to insure information</p> <p>6 exempt from disclosures not provided.</p> <p>7 A Uh-huh.</p> <p>8 Q Who would have done that in this case?</p> <p>9 A Initially, Aimee Nelson.</p> <p>10 Q Is there any policy that allows, that says, as a matter of</p> <p>11 course or habit or, you know, just knee jerk response, when</p> <p>12 there's an informal policy that something is not able to be</p> <p>13 disclosed because it falls under an exemption that a FOIA</p> <p>14 Coordinator shall not review documents?</p> <p>15 A Well, we don't have any informal policies.</p> <p>16 Q Okay.</p> <p>17 A So I'm not quite sure how to answer your question.</p> <p>18 Q So there is no policy or provision or procedure that allows,</p> <p>19 that states that someone cannot review in response. The only</p> <p>20 one on point in terms of reviewing documents is it says,</p> <p>21 Shall review documents?</p> <p>22 A Is there something that says they don't have to?</p> <p>23 Q Yeah.</p> <p>24 A Not to my knowledge.</p> <p>25 Q Okay. The list of FOIA exemptions on page four.</p>
<p style="text-align: right;">Page 55</p> <p>1 admitted because of a mental disability, unless the public</p> <p>2 interest and disclosure under this Act outweighs the public</p> <p>3 interest and nondisclosure.</p> <p>4 That last phrase, what do you understand that to mean?</p> <p>5 MR. DE BEAR: I'm going to object to the extent</p> <p>6 you're asking for a legal conclusion.</p> <p>7 THE WITNESS: From my understanding of what that</p> <p>8 means is that the public has more of a need to know, and that</p> <p>9 would outweigh our security concerns of the Department.</p> <p>10 Q (BY MS. VIZACHERO) Okay. And have you ever made a</p> <p>11 determination involving audio or video where the public had</p> <p>12 more of an interest in knowing than, that supported</p> <p>13 disclosure versus nondisclosure?</p> <p>14 A No, I have not.</p> <p>15 Q Okay. And we're going to flip back and forth between this</p> <p>16 Request and then the Policy Directive, the March 2016 one.</p> <p>17 A Okay.</p> <p>18 Q On page three, Section Q.</p> <p>19 A Uh-huh.</p> <p>20 Q When it says, The FOIA Coordinator shall, is it your</p> <p>21 understanding that that's either the FOIA Coordinator or the</p> <p>22 Assistant FOIA Coordinator shall do these things?</p> <p>23 A Yes.</p> <p>24 Q Okay. So Section Q says, The FOIA Coordinator shall review</p> <p>25 the request and determine which records are in the</p>	<p style="text-align: right;">Page 57</p> <p>1 A Uh-huh.</p> <p>2 Q Who comes up with this list; where does this list --</p> <p>3 A Are you looking at the Policy?</p> <p>4 Q The Policy Directive, yes.</p> <p>5 A Okay. So the list of FOIA exemptions here are taken from the</p> <p>6 Statute.</p> <p>7 Q Okay. And who comes up with the list of examples under each</p> <p>8 one?</p> <p>9 A It could be -- I don't know who came up with these. I can't</p> <p>10 tell you that, but it could be the Policy Manager, the FOIA</p> <p>11 Manager, or the Administrator.</p> <p>12 Q So someone from within your office?</p> <p>13 A Correct.</p> <p>14 Q And what information would they use to come up with a list of</p> <p>15 examples?</p> <p>16 A Knowledge, history of the Department.</p> <p>17 Q Any other outside authority?</p> <p>18 A The Attorney General's Office.</p> <p>19 Q Are Attorney General opinions binding?</p> <p>20 A I don't know that.</p> <p>21 Q Okay. So looking at Section X, Paragraph 2.</p> <p>22 A Uh-huh.</p> <p>23 Q Which is the same language for Exemption C?</p> <p>24 A Yes.</p> <p>25 Q The examples listed below, and I know this is going to sound</p>

<p style="text-align: right;">Page 58</p> <p>1 redundant, but we're just going to check them off. Okay?</p> <p>2 A Okay.</p> <p>3 Q Did Mr. Woodman request blueprints or maps of a facility?</p> <p>4 A No.</p> <p>5 Q Okay. Did he request names of informants?</p> <p>6 A No, he did not.</p> <p>7 Q Did he request mobilization scenarios and critiques?</p> <p>8 A No.</p> <p>9 Q Did he request Special Problem Offender Notice?</p> <p>10 A No, he did not.</p> <p>11 Q Did he request movement plans?</p> <p>12 A No.</p> <p>13 Q Did he request Security Threat Group designations?</p> <p>14 A No.</p> <p>15 Q And related documentation?</p> <p>16 A No.</p> <p>17 Q Did he request Exempt Policy Directives and Operating</p> <p>18 Procedures?</p> <p>19 A No.</p> <p>20 Q Did he request Post Orders for Security Sensitive Assignment?</p> <p>21 A No.</p> <p>22 Q Did he request description of security fencing?</p> <p>23 A No.</p> <p>24 Q Did he request description of operation of personal</p> <p>25 protection devices?</p>	<p style="text-align: right;">Page 60</p> <p>1 we take a quick break after she answers her question?</p> <p>2 MS. VIZACHERO: Not at all.</p> <p>3 THE WITNESS: This included 13(1)(a), (c) and (u).</p> <p>4 Q (BY MS. VIZACHERO) Okay. Perfect. And then I'll direct</p> <p>5 your attention back to the Policy Directive.</p> <p>6 A Okay.</p> <p>7 Q So you added in the appeal 13(u) --</p> <p>8 A Correct.</p> <p>9 Q -- is that correct?</p> <p>10 A Yes.</p> <p>11 Q Why did you choose to do that?</p> <p>12 A Because it also is applicable. If I can be -- I honestly did</p> <p>13 not add U, my supervisor did.</p> <p>14 Q Okay. By all means, all the facts.</p> <p>15 A Okay. Sure. I mean, I know it was added, and the Director</p> <p>16 did sign off, but when the Administrator reviewed it, she</p> <p>17 added U.</p> <p>18 Q Okay. And that was Daphne?</p> <p>19 A Correct.</p> <p>20 Q Did you two have a conversation about that?</p> <p>21 A We reviewed all of the appeals together.</p> <p>22 Q Together?</p> <p>23 A Right.</p> <p>24 Q Okay. So you had prepared the appeal --</p> <p>25 A (Witness nodding head.)</p>
<p style="text-align: right;">Page 59</p> <p>1 A No.</p> <p>2 Q Did he request a document determined to be confidential by a</p> <p>3 Hearing Officer at a hearing conducted pursuant to MCL</p> <p>4 791.252?</p> <p>5 A No.</p> <p>6 Q Okay. And while we're on this page, and you participated in</p> <p>7 composing a response for purposes of Mr. Woodman's appeal?</p> <p>8 A Yes, I did.</p> <p>9 Q Okay. What other exemptions were cited?</p> <p>10 A 13(1)(u).</p> <p>11 Q Do you know if since then any other exemptions have been</p> <p>12 relied upon by the MDOC for this request?</p> <p>13 A I don't know that.</p> <p>14 Q Okay.</p> <p>15 MS. VIZACHERO: If I can have that marked; I think</p> <p>16 we're on Exhibit F.</p> <p>17 (Deposition Exhibit F marked for identification.)</p> <p>18 Q (BY MS. VIZACHERO) Ms. Groves, I'm handing you what's been</p> <p>19 marked as Exhibit F, which is Defendant's Answer and</p> <p>20 Affirmative Defenses to Plaintiff's First Amended and</p> <p>21 Verified Freedom of Information Act Complaint. And for</p> <p>22 purposes of clarification, I'm just going to have you review</p> <p>23 page four, and tell me if it helps you understand whether any</p> <p>24 other exemptions have been relied upon by the Department?</p> <p>25 MR. DE BEAR: When she's reviewing, do you mind if</p>	<p style="text-align: right;">Page 61</p> <p>1 Q -- response?</p> <p>2 A Correct.</p> <p>3 Q With anyone's help?</p> <p>4 A No.</p> <p>5 Q Just you?</p> <p>6 A I mean, I would get the information from Aimee; I got the</p> <p>7 original request from Aimee, the appeal, prepared the</p> <p>8 response.</p> <p>9 Q But you didn't work with Aimee in preparing the response?</p> <p>10 A No.</p> <p>11 Q Just you?</p> <p>12 A Correct.</p> <p>13 Q And then you take what you prepare?</p> <p>14 A To the Administrator.</p> <p>15 Q And then you and Daphne would sit down and go through the</p> <p>16 appeal response?</p> <p>17 A Yes.</p> <p>18 Q Is that correct?</p> <p>19 A Yes.</p> <p>20 Q Okay. And what were the reasons for adding Exemption U to</p> <p>21 the appeal?</p> <p>22 MR. DE BEAR: I'm just going to object to the</p> <p>23 extent that you're requesting a legal conclusion.</p> <p>24 THE WITNESS: I want to find the language for U.</p> <p>25 All right. So 13(1)(u) states, Records of a public body's</p>

<p style="text-align: right;">Page 62</p> <p>1 security measures, including security plans, security codes 2 and combinations, passwords, passes, keys, and security 3 procedures, to the extent that the records relate to the 4 ongoing security of the public body. 5 So she felt that this was a security issue, and that 6 this was an applicable exemption to apply. 7 Q (BY MS. VIZACHERO) And just for the record, were you reading 8 from a document when you were reading that language? 9 A Oh, I'm sorry. That's from the Policy Directive. 10 Q And what page, page five? 11 A Page five. 12 Q Okay. 13 A Number five. 14 Q And you were reading the exact language; I don't believe you 15 read the examples underneath, correct? 16 A Nope, I read that from the Statute. 17 Q Okay. So let's go through -- did you agree with her decision 18 to add U? 19 A Yes. 20 Q Was it custom for you, up until this conversation, to add, to 21 include U in video or audio request responses? 22 A I can't speak to that. I honestly can't remember. 23 Q Okay. All right. Going through Paragraph 5, did 24 Mr. Woodman request a public body's security measures? 25 A In our opinion, yes.</p>	<p style="text-align: right;">Page 64</p> <p>1 Q Okay. Did he request movement plans? 2 A No, he did not. 3 Q Did he request exempt Policy Directives and Operating 4 Procedures? 5 A No. 6 Q Did he request Post Orders for security sensitive assignment? 7 A No. 8 Q Did he request descriptions of security fencing? 9 A No. 10 Q Did he request description of operation of personal 11 protection devices? 12 A No. 13 Q Okay. And then I'm going to turn to page four, and we'll go 14 through Section X, Paragraph 1. Just give me a general 15 understanding before we get into the examples listed, what is 16 Section (1)(a) used for? 17 MR. DE BEAR: I'm going to object to the extent 18 that you're calling for a legal conclusion. 19 THE WITNESS: We call 13(1)(a) as our Privacy 20 Exemption. 21 Q (BY MS. VIZACHERO) Okay. And privacy of what? 22 A It could be a number of things. It could be a telephone 23 number, a home address, a name of a victim, a Social Security 24 Number; anything that would be a personal number or, I'm 25 sorry, a personal -- something of somebody that they would</p>
<p style="text-align: right;">Page 63</p> <p>1 MR. DE BEAR: Are you on Paragraph 5 of the 2 response to Mr. Woodman's appeal? 3 MS. VIZACHERO: Paragraph 5 of the Policy 4 Directive. 5 THE WITNESS: The Policy. 6 MR. DE BEAR: Oh, okay. 7 MS. VIZACHERO: Exhibit C. 8 Q (BY MS. VIZACHERO) Did he request security plans? 9 A No, he did not. 10 Q Did he request security codes? 11 A No. 12 Q Or combinations? 13 A No. 14 Q Or passwords? 15 A No. 16 Q Or passes? 17 A Nope. 18 Q Or keys? 19 A No. 20 Q Or security procedures? 21 A He requested something that would reveal our security 22 procedures. 23 Q But he didn't expressly request the procedures promulgated by 24 the Department? 25 A Correct.</p>	<p style="text-align: right;">Page 65</p> <p>1 not release to the general public. 2 Q Okay. Did Mr. Woodman ask for, request information including 3 home addresses and home telephone numbers? 4 A No, he did not. 5 Q Did he request emergency contact information? 6 A No. 7 Q Did he request Driver License Numbers? 8 A No. 9 Q Did he request Social Security Numbers? 10 A No. 11 Q Did he request victims' requests to receive information 12 pursuant to Policy Directive for victim notification and the 13 Department's response? Sorry. That's a mouthful. 14 A And I have to read how that is. No. 15 Q Did he request fingerprint cards? 16 A No. 17 Q Did he request resumes' of unsuccessful job applicants? 18 A No. 19 MR. DE BEAR: Do you mind if we take that break? 20 MS. VIZACHERO: Oh, I'm sorry. Not a problem. 21 We're going to go off the record. 22 (Whereupon, a short break was taken.) 23 MS. VIZACHERO: Okay. We'll go back on the 24 record. 25 Q (BY MS. VIZACHERO) Okay. I just want to go through the</p>

<p style="text-align: right;">Page 70</p> <p>1 interests outweighing, public interests favoring disclosure</p> <p>2 as opposed to not favoring disclosure?</p> <p>3 A Do I understand the difference?</p> <p>4 MR. DE BEAR: I'm just going to go ahead and object</p> <p>5 to the extent you're calling on Ms. Groves to speculate as to</p> <p>6 Mr. Woodman's intentions. Go ahead and answer.</p> <p>7 THE WITNESS: Can you ask the question again?</p> <p>8 Q (BY MS. VIZACHERO) Sure. Did you -- did you take his</p> <p>9 request, or his information language that he's using here,</p> <p>10 it's kind of presenting an argument that there are reasons</p> <p>11 that favor disclosure versus nondisclosure?</p> <p>12 A Yes.</p> <p>13 Q And do you take arguments -- how do you consider arguments</p> <p>14 favoring disclosures in these instances; how did you take it</p> <p>15 in this case?</p> <p>16 A In this instance I still look at the overall, and in our</p> <p>17 opinion from the Department of Corrections, the overall</p> <p>18 guiding concern as the security and custody of our facility.</p> <p>19 I understand that he felt differently, but it was still</p> <p>20 our Department's understanding and belief that we had the</p> <p>21 right to exempt this material for custody and safety security</p> <p>22 reasons.</p> <p>23 Q Okay. But that's without you having seen the video,</p> <p>24 yourself?</p> <p>25 A Correct.</p>	<p style="text-align: right;">Page 72</p> <p>1 A Correct.</p> <p>2 Q -- or any confrontation?</p> <p>3 A Correct.</p> <p>4 Q And those would be on a really low scale compared to the</p> <p>5 security risks you're expressing, is that fair?</p> <p>6 MR. DE BEAR: I guess I'm going to object to the</p> <p>7 extent that you're asking for a legal conclusion.</p> <p>8 THE WITNESS: How I would answer that is, even</p> <p>9 though what they are capturing might be different, the</p> <p>10 security concern is still there from the, from the Department</p> <p>11 of Corrections' standpoint of you're releasing what it looks</p> <p>12 like inside our prison. You're looking at escape routes;</p> <p>13 you're looking at other things that we take very seriously,</p> <p>14 and would not want in the general public's hands.</p> <p>15 Q (BY MS. VIZACHERO) So -- I want to phrase this properly. So</p> <p>16 the underlying events that were at the heart of Mr. Woodman's</p> <p>17 request, what were those, do you know, in terms of what was</p> <p>18 the incident that happened?</p> <p>19 A The death of a prisoner.</p> <p>20 Q Okay. So that would be probably on the opposite side of the</p> <p>21 scale rather than innocuous walking around, no event?</p> <p>22 A Correct.</p> <p>23 Q That's one of the most severe things?</p> <p>24 A Correct.</p> <p>25 Q Okay. So is it the Department's policy that even in those</p>
<p style="text-align: right;">Page 71</p> <p>1 Q So could you -- could there be an instance where conduct is</p> <p>2 captured on a video that's so heinous that it would switch</p> <p>3 the scale, where we would have to know about it?</p> <p>4 A I don't know that. I have not been involved in that</p> <p>5 situation.</p> <p>6 Q Do you think that's possible?</p> <p>7 A There would have to be some discussion on it with</p> <p>8 Administration, so I can't answer that question.</p> <p>9 Q Do you think all videos capture events of the same severity?</p> <p>10 A No.</p> <p>11 Q Okay. So some would be worse than others?</p> <p>12 A Correct.</p> <p>13 Q Okay. I'm sure you're more than familiar with all of the</p> <p>14 video requests, having processed all of these.</p> <p>15 A Uh-huh.</p> <p>16 Q Have you received some really innocuous video requests, like</p> <p>17 all videos regarding inmate John Smith?</p> <p>18 A Yes, we have.</p> <p>19 Q Okay. And that could just be any video of them walking</p> <p>20 around doing nothing throughout the day, right?</p> <p>21 A I can't tell you specifically what they would say, but in</p> <p>22 general terms, yes, it could be any request for any time that</p> <p>23 they would be under surveillance.</p> <p>24 Q No violence -- there would be responsive videos that wouldn't</p> <p>25 involve any violent activity --</p>	<p style="text-align: right;">Page 73</p> <p>1 scenarios, the MDOC's security is always going to outweigh</p> <p>2 the disclosure in every case?</p> <p>3 A From the ones that I have been presented with as FOIA</p> <p>4 Coordinator, yes.</p> <p>5 Q Okay. In all of those ones that you've presented with, been</p> <p>6 presented with as FOIA Coordinator --</p> <p>7 A Uh-huh.</p> <p>8 Q -- did you review any of the videos prior to determining</p> <p>9 whether the public interest favored disclosure or</p> <p>10 nondisclosure?</p> <p>11 A I can't recall if I've ever reviewed videos; I can't recall</p> <p>12 that.</p> <p>13 Q Would you say chances are closer to you haven't or --</p> <p>14 A If I review videos, there were very few that I reviewed.</p> <p>15 Q Okay.</p> <p>16 A But I can't say that I didn't review any.</p> <p>17 Q In drafting your response, did you differentiate between the</p> <p>18 audio he requested, which was separate from the video that he</p> <p>19 requested, or was it grouped together?</p> <p>20 A It was grouped together.</p> <p>21 Q Okay. I'm going to go through a series of related and</p> <p>22 unrelated FOIA Requests --</p> <p>23 A Okay.</p> <p>24 Q -- that you processed.</p> <p>25 A Okay.</p>

<p style="text-align: right;">Page 74</p> <p>1 Q Just really -- we won't get into too much detail, but just 2 briefly going through them. 3 Do you remember if you processed other FOIA Requests for 4 this video footage, the same that Mr. Woodman -- 5 A For this particular one, I don't recall that. 6 MS. VIZACHERO: Okay. We'll start with that. 7 (Deposition Exhibit G marked for identification.) 8 (BY MS. VIZACHERO) Ms. Groves, I'm handing you what's been 9 marked as Exhibit G. Tell me if you are familiar with that 10 document. 11 A Yes, I did sign this one. 12 Q Can you tell me what it is? 13 A It's a FOIA Request from Adam Duke requesting access to video 14 footage connected to tasing of inmate Dustin Szot at Bellamy 15 Creek Correctional Facility in Ionia; it happened on 9/27, 16 2016. 17 Q Okay. And just for the record, will you read the FOIA number 18 request? 19 A The FOIA Request is 16-951. 20 Q Okay. And was the request granted or denied? 21 A It was denied. 22 Q And on what grounds? 23 A They're exempt from disclosure under Section 13(1)(c). 24 Q Do you remember who prepared, which Assistant FOIA 25 Coordinator prepared this Response?</p>	<p style="text-align: right;">Page 76</p> <p>1 same? 2 A We treated it the same because of what the nature of what 3 they were requesting, video footage, which we would not 4 release. 5 (Deposition Exhibit H marked for identification.) 6 Q (BY MS. VIZACHERO) I'm handing you another FOIA Request, 7 which has been marked as Exhibit H. Are you familiar with 8 that Request and Response? 9 A Yes. I did sign this one, as well. 10 Q Okay. And can you tell me who it's from, and the FOIA number 11 for the record? 12 A Troy Baker, and the FOIA number is 16-948. 13 Q Okay. And what did he request? 14 A A copy of the Central Office file for Dustin Szot, MDOT, 15 which is wrong; it should be MDOC, but it's MDOT Number 16 961740. A copy of video and audio recordings of a fight that 17 took place on or about September 27, 2016 at the Bellamy 18 Creek Correctional Facility, that led to a confrontation with 19 prison officers and, eventually, Szot's death. 20 Q Okay. And who would have been responsible for the initial 21 response? 22 A Aimee Nelson. 23 Q And then Aimee would have presented it to you? 24 A Correct. 25 Q For approval?</p>
<p style="text-align: right;">Page 75</p> <p>1 A This would be Aimee Nelson, as well. 2 Q Was she the only one at the time; I know we talked about 3 there being two earlier? 4 A In October. I honestly can't recall. 5 Q Okay. 6 A I can't remember the dates. 7 Q Okay. But you know this was prepared by Aimee Nelson? 8 A Yes. 9 Q Okay. 10 A She did the majority of them. 11 Q And I apologize for the redundancy, but as you understand it 12 neither Aimee nor you reviewed video in response to 13 Mr. Duke's request, correct? 14 A Correct. 15 Q And do you know if anyone that Aimee would have contacted 16 reviewed video in response to Mr. Duke's request? 17 A I'm not sure who she contacted for this, so I don't know 18 that. 19 Q Would they have -- do you know if they would have 20 reviewed -- 21 A I don't know that. 22 Q Okay. Did you consider this request to be identical to 23 Mr. Woodman's? 24 A It's not identical, but it's very similar. 25 Q Because it's similar, would you have just treated it as the</p>	<p style="text-align: right;">Page 77</p> <p>1 A (Witness nodding head.) 2 Q Yes? 3 A Yes. 4 Q And did you approve it? 5 A It was granted in part and denied in part. 6 Q Okay. And why is that? 7 A Because some of the information that he was requesting was 8 releasable. 9 Q And which information was that? 10 A A copy of the Central Office file, with certain exemptions 11 taken. 12 Q Okay. And then there is a -- there's a few pages involved 13 with this; there's a second answer sheet, so to speak, for a 14 continued portion? 15 A Yes. 16 Q So taking the first page, and then what I think is the third 17 page of this in whole, is there anything on the first page 18 that addresses video or audio recordings? 19 A No, there is not. 20 Q Okay. On the second page? 21 A Uh-huh. 22 Q Part two is denied on what grounds? 23 A Part two is video, and that's denied under Section 13(1)(c). 24 Q Okay. And part three was what? 25 A Part three was a request for audio recordings of a fight that</p>

<p style="text-align: right;">Page 78</p> <p>1 took place.</p> <p>2 Q Okay. And was that granted or denied?</p> <p>3 A It was denied.</p> <p>4 Q And why was it denied?</p> <p>5 A Because the requested records do not exist within the records</p> <p>6 of the Department under the name or description provided, or</p> <p>7 by another name reasonably known to the Department.</p> <p>8 Q So what is your understanding of audio not existing for</p> <p>9 this? So there would have been audio recording made?</p> <p>10 A I don't know what recording was made, because I did not</p> <p>11 review that.</p> <p>12 Q Okay. Do you know if the videos had audio on them, or</p> <p>13 included with them?</p> <p>14 A I don't know that.</p> <p>15 Q Okay. And then, again, for the sake of redundancy, to the</p> <p>16 best of your knowledge, neither you nor Aimee Nelson reviewed</p> <p>17 video prior to responding to this?</p> <p>18 A Correct.</p> <p>19 Q Okay.</p> <p>20 (Deposition Exhibit I marked for identification.)</p> <p>21 Q (BY MS. VIZACHERO) I'm handing you what's been marked as</p> <p>22 Exhibit I, and once you've had a second to review that, can</p> <p>23 you tell me what that is?</p> <p>24 A This is another request, a FOIA Request from Stephen</p> <p>25 Kloosterman, FOIA Request Number 16-947, for photos and audio</p>	<p style="text-align: right;">Page 80</p> <p>1 Q Is there a reason, and I'm just curious, why the narratives</p> <p>2 are different between the different requests; they change a</p> <p>3 little bit, if you noticed?</p> <p>4 A The narrative of the response?</p> <p>5 Q Yes. Just because they're all being prepared --</p> <p>6 A Well, the one 948 was different because there was a part that</p> <p>7 was granted, so that's going to be different. The rest of</p> <p>8 them should be fairly similar in nature, stating 13(1)(c).</p> <p>9 Q Give me one second. In Mr. Woodman's, there's a reference to</p> <p>10 hand-held recordings that's not in Troy Baker's request --</p> <p>11 A Okay.</p> <p>12 Q Is there a reason for that?</p> <p>13 A In the response or in the request?</p> <p>14 Q In the response.</p> <p>15 A I have to see what was actually requested; one of them may</p> <p>16 have requested a hand-held recording. Troy Baker, you said?</p> <p>17 Q Yes.</p> <p>18 MR. DE BEAR: Troy Baker's request is Exhibit H.</p> <p>19 THE WITNESS: Okay. So I'm sorry, could you repeat</p> <p>20 the question again.</p> <p>21 Q (BY MS. VIZACHERO) So in response on Troy Baker's request.</p> <p>22 A Uh-huh.</p> <p>23 Q And I think it will help if you flip to the third page;</p> <p>24 that's the one with the two parts.</p> <p>25 A Okay.</p>
<p style="text-align: right;">Page 79</p> <p>1 and visual digital files showing the September 27th fight and</p> <p>2 tasing that involved prisoner Dustin Allen Szot at the</p> <p>3 Bellamy Creek Correctional Facility in Ionia.</p> <p>4 Q Okay. And are you familiar with this document?</p> <p>5 A Yes, I am.</p> <p>6 Q And why is that?</p> <p>7 A Because I signed it as the FOIA Coordinator.</p> <p>8 Q Okay. And would Ms. Nelson have prepared this, as well?</p> <p>9 A Yes.</p> <p>10 Q And was anything disclosed in response to?</p> <p>11 A No, there was not.</p> <p>12 Q And how do you know that?</p> <p>13 A Because it is marked that the requested records are exempt</p> <p>14 from disclosure.</p> <p>15 Q Okay. And we have three different categories here, correct?</p> <p>16 A Correct.</p> <p>17 Q And those are what?</p> <p>18 A One is photos, two is audio, and three is visual digital</p> <p>19 files.</p> <p>20 Q Okay. And in the exempt from the explanation why the records</p> <p>21 are exempt from disclosure, is there an enumeration of the</p> <p>22 first, second, and third?</p> <p>23 A No, there is not.</p> <p>24 Q Okay. It's just all grouped together?</p> <p>25 A Correct.</p>	<p style="text-align: right;">Page 81</p> <p>1 Q There is no reference to hand-held camera, hand-held</p> <p>2 recordings?</p> <p>3 A Okay.</p> <p>4 Q Whereas, in Mr. Woodman's there's a reference to hand-held</p> <p>5 recordings, as well as in Stephen Kloosterman?</p> <p>6 A So if you're asking why there's a difference in the answers,</p> <p>7 I can't tell you that, but I can say that hand-held</p> <p>8 recordings are also video.</p> <p>9 Q Okay.</p> <p>10 A So the recordings, when the officer responds, has a camera,</p> <p>11 that's a video recording. So I'm not sure why it wasn't</p> <p>12 mentioned in each one, it just hasn't been. Sometimes, I</p> <p>13 mean, the responses are never going to be 100 percent cookie</p> <p>14 cutter all the way through.</p> <p>15 Q Okay. Have there been changes to -- were there changes</p> <p>16 during the time that you were in charge of FOIA policies</p> <p>17 regarding the Department's position on hand-held recordings</p> <p>18 being discloseable under FOIA?</p> <p>19 A No.</p> <p>20 Q No?</p> <p>21 A That's always been consistent.</p> <p>22 Q Was there change to language to include that, expressly --</p> <p>23 was there change to language of a Policy Directive at any</p> <p>24 time to include a reference to hand-held recordings?</p> <p>25 A I would have to look at each version of the Policy Directive</p>

<p style="text-align: right;">Page 86</p> <p>1 A Correct.</p> <p>2 Q Right?</p> <p>3 A (Witness nodding head.)</p> <p>4 Q It's kind of the main station, you would say?</p> <p>5 A Right.</p> <p>6 Q Hand-held recording devices don't, they're not monitoring</p> <p>7 hand-held recording devices in that, correct?</p> <p>8 A No. Those cameras in the Control Center are from the fixed</p> <p>9 camera placement; the hand-held is brought to the scene when</p> <p>10 it's needed.</p> <p>11 Q Okay. Do you know, when you're going through any of the FOIA</p> <p>12 Requests that we've reviewed thus far, if you were aware that</p> <p>13 a hand-held camera had recorded any of the video footage</p> <p>14 responsive to the requests?</p> <p>15 A I do not know that. Now, if Aimee called the facility, they</p> <p>16 would have told her that information.</p> <p>17 Q Okay. And would she have told that to you?</p> <p>18 A She would typically put it in the response, if it was</p> <p>19 something that we were going to exempt. So if a hand-held</p> <p>20 recording existed, then we would mention that, that we're not</p> <p>21 going to release that.</p> <p>22 Q So if someone received a -- if someone submitted a FOIA</p> <p>23 Request for all videos responsive to a confrontation, a</p> <p>24 physical confrontation or a death, like we have in this</p> <p>25 instance?</p>	<p style="text-align: right;">Page 88</p> <p>1 A Right.</p> <p>2 Q Any others?</p> <p>3 A Tasers may have a camera on them; I don't know if all of them</p> <p>4 do, but I know some of them do.</p> <p>5 Q Okay. Any other times that recordings would be made, that</p> <p>6 you've seen?</p> <p>7 A No.</p> <p>8 Q That you've learned about?</p> <p>9 A Not that I've seen, or not that I'm aware of.</p> <p>10 Q Do you know if there's, like, body mics worn by correctional</p> <p>11 facility officers?</p> <p>12 A I don't know that.</p> <p>13 Q I didn't know if you ever saw that --</p> <p>14 A I have not ever seen that.</p> <p>15 Q -- in response to a FOIA Request.</p> <p>16 So let's say all of those things existed, and you</p> <p>17 received just a request, a blanket request for audio and</p> <p>18 video, would you go through each one and make a determination</p> <p>19 of, this is a facility recording, this is a hand-held</p> <p>20 recording, this is a body mic, if it existed?</p> <p>21 A Right, right. All that we would say is, do recordings exist,</p> <p>22 and if the answer is yes, then we would respond, Your request</p> <p>23 has been denied based on 13(1)(c).</p> <p>24 Q And then would you inform them that each type of video</p> <p>25 existed?</p>
<p style="text-align: right;">Page 87</p> <p>1 A Right.</p> <p>2 Q Just so I see it in my mind's eye, Aimee would call the</p> <p>3 facility?</p> <p>4 A Uh-huh.</p> <p>5 Q And she would get what from them?</p> <p>6 A What she would typically say is, Here is our request. We</p> <p>7 have a request for all video recordings; does this exist?</p> <p>8 And they would say yes or no.</p> <p>9 Q Okay.</p> <p>10 A Sometimes -- I mean, they may or may not say the difference</p> <p>11 between the types of recordings that they have, but as long</p> <p>12 as we know recordings exist, then we can respond to the</p> <p>13 request.</p> <p>14 Q Okay.</p> <p>15 A And keep in mind that these examples that are listed are not</p> <p>16 all inclusive; these are strictly examples.</p> <p>17 Q Are there any other recordings that get created within prison</p> <p>18 facilities? We've got hand-held, and what is the hand-held?</p> <p>19 A It's a video camera; you walk up with a video camera.</p> <p>20 Q Just old school?</p> <p>21 A Yep, old school video camera.</p> <p>22 Q Okay. And then facility?</p> <p>23 A The cameras.</p> <p>24 Q Like you would typically think of as a security system,</p> <p>25 right?</p>	<p style="text-align: right;">Page 89</p> <p>1 A No, we would not.</p> <p>2 Q Is there a reason for that?</p> <p>3 A Because they're all video recordings in some manner.</p> <p>4 Q Okay.</p> <p>5 (Deposition Exhibit J marked for identification.)</p> <p>6 Q (BY MS. VIZACHERO) I'm handing you what's been marked as</p> <p>7 Exhibit J. Can you tell me what that is?</p> <p>8 A It's another public request for records from Steven Lee, FOIA</p> <p>9 Request Number 16-1046.</p> <p>10 Q Did you -- were you involved with responding to that?</p> <p>11 A Yes, I was.</p> <p>12 Q And how so?</p> <p>13 A I was the FOIA Coordinator at the time, and I responded to</p> <p>14 the FOIA Request.</p> <p>15 Q Okay. And who would have processed this as the Assistant?</p> <p>16 A Aimee Nelson.</p> <p>17 Q And what happened with this?</p> <p>18 A I have to read it first. Hold on.</p> <p>19 Q Not a problem.</p> <p>20 A Okay. So what it appears, is that the request came in, and</p> <p>21 we took a 10-day extension. After the extension we had</p> <p>22 gathered the documentation, realized that there was going to</p> <p>23 be a fee associated with this request due to the volume of</p> <p>24 materials.</p> <p>25 Q Okay.</p>

<p style="text-align: right;">Page 90</p> <p>1 A So the requester would have been sent the Freedom of 2 Information Act Fee Calculation Sheet, telling him the amount 3 of money that he owed us before we would begin processing the 4 request. 5 The check is obviously attached. At the very end he 6 submitted a check for the amount of \$16.81. When we receive 7 that check, then we process the request. 8 Q Okay. And for the sake of redundancy, to the best of your 9 knowledge, neither you nor Aimee reviewed any video? 10 A Correct. 11 Q Okay. And did you disclose video? 12 A No, we did not. 13 Q And that's Number 13. Did you disclose 14, photographs? 14 A No, we did not. 15 Q Did you review any photographs before exempting them? 16 A I don't recall. 17 Q Could there be photographs outside of camera surveillance 18 that would be taken in an incident? 19 A Yes. 20 Q Okay. 21 MS. VIZACHERO: Will you mark these individually, 22 please. 23 (Deposition Exhibits K-N 24 marked for identification.) 25 Q (BY MS. VIZACHERO) The Steven Lee request that we were just</p>	<p style="text-align: right;">Page 92</p> <p>1 Q Okay. Is it also a different facility? 2 A Correct. 3 Q And are you familiar with this document? 4 A Yes, I am. 5 Q Okay. And how is that? 6 A I was the FOIA Coordinator at the time. 7 Q Okay. And you signed it? 8 A Yes, I did. 9 Q And would it have been prepared by Ms. Nelson? 10 A Yes. 11 Q And we don't need to get into the facts of this. Did you 12 just, again, did you, to the best of your knowledge, or 13 Ms. Nelson review any of the documents? 14 A No. Video documents? 15 Q Video documents. 16 A Correct, we did not. 17 Q And were the videos disclosed, or was disclosure denied in 18 that? 19 A That was denied. 20 Q Okay. You can turn to the next one. 21 A Okay. 22 Q And can you reveal the requester's name? 23 A Blake Roznowski, R-o-z-n-o-w-s-k-i. 24 Q And are you familiar with this document? 25 A Yes, I am.</p>
<p style="text-align: right;">Page 91</p> <p>1 looking at. 2 A Uh-huh. 3 Q The request is being made by -- does it say what capacity 4 he's requesting those videos? 5 A It does not. 6 Q Or the requests are typed. I'm sorry. 7 A It looks like he is from the Neumann Law Group, and the 8 requester type is attorney. 9 Q Okay. Do you know if, at any time while you were still 10 working as FOIA Coordinator, this video was released in 11 coordination with any suit brought on behalf of the decedent, 12 Mr. Szot? 13 A I do not know that. 14 Q Okay. I'm going to give you a whole slew of exhibits: K, L, 15 M and N, and they are similarly all FOIA Request Responses 16 from other incidents, and I will give them to Mr. De Bear. 17 Okay. The first one you have is, what's the requester's 18 name? 19 A Paul Abboud. 20 Q And that's marked Exhibit K? 21 A K. 22 Q K. Thank you. And is this regarding -- is his request 23 requesting the same footage that was requested by 24 Mr. Woodman, or is this unrelated? 25 A The incident is unrelated.</p>	<p style="text-align: right;">Page 93</p> <p>1 MR. DE BEAR: Sorry. Let me just pause. The 2 requester's name is Roznowski? 3 MS. VIZACHERO: 16-88. 4 MR. DE BEAR: 16-88. 5 MS. VIZACHERO: Zero. 6 MR. DE BEAR: Okay. I'll look off of your 7 exhibit. Sorry, Ms. Vizachero. Go ahead. 8 MS. VIZACHERO: You're fine. 9 Q (BY MS. VIZACHERO) And did this requester also request 10 surveillance video? 11 A Surveillance video from the Kinross Correctional Facility 12 Housing Units during protests on 9/10, 2016. 13 Q Okay. And did videos exist responsive to this request? 14 A Yes, they did. 15 Q Do you know how many -- do you know anything about that? 16 A I do not know that, no. 17 Q So how do you know that they existed? 18 A Because we would have -- Aimee would have called the facility 19 to make sure that they existed prior to taking the exemption. 20 Q And what exemption is cited for nondisclosure here? 21 A 13(1)(c). 22 Q Do you know why 13(u) or 13(a) was not used? 23 A I do not. 24 Q Were you trained that it was best practice to include all 25 responsive exemptions?</p>

<p style="text-align: right;">Page 94</p> <p>1 A Yes.</p> <p>2 Q Okay. And then again, neither you nor Aimee, to the best of</p> <p>3 your knowledge, reviewed any video --</p> <p>4 A Correct.</p> <p>5 Q -- in connection with this one? You can move to the next</p> <p>6 one.</p> <p>7 A Okay.</p> <p>8 Q And will you read me the requester's name?</p> <p>9 A Dustin Ordway.</p> <p>10 Q And that is Exhibit --</p> <p>11 A M, as in Mary.</p> <p>12 Q Thank you. And I know there's two different responses here.</p> <p>13 Is it accurate that one displays your signature, and one does</p> <p>14 not?</p> <p>15 A Correct.</p> <p>16 Q Okay. And going through the one that you approved --</p> <p>17 A Uh-huh.</p> <p>18 Q -- did Mr. Ordway's request involve video?</p> <p>19 A Yes, video and other electronic records.</p> <p>20 Q Okay. And involving what underlying event?</p> <p>21 A A stabbing at the Kinross Correctional Facility.</p> <p>22 Q And initially -- this is an initial response, is that fair to</p> <p>23 say?</p> <p>24 A Yes.</p> <p>25 Q It happens in two parts?</p>	<p style="text-align: right;">Page 96</p> <p>1 this response I signed the initial response.</p> <p>2 Q Gotcha. Let's look over your initial response.</p> <p>3 A Okay.</p> <p>4 Q This was requesting video in connection with incidents at</p> <p>5 Kinross during the same time as the last exhibit?</p> <p>6 A Correct.</p> <p>7 Q Including video recordings?</p> <p>8 A Actually, the dates are different between this one and the</p> <p>9 last one.</p> <p>10 Q Thank you. What are these dates?</p> <p>11 A The one on this request is between September 9, 2016 and</p> <p>12 September 22, 2016.</p> <p>13 Q Perfect. Thank you for clarifying. An initial determination</p> <p>14 was made that some records were exempt; is that fair?</p> <p>15 A Correct.</p> <p>16 Q Okay. And what records were exempt?</p> <p>17 A It's not listed on this document, but we would have exempted</p> <p>18 the video that's being requested, video recordings.</p> <p>19 Q Okay. And who prepared this?</p> <p>20 A Aimee Nelson.</p> <p>21 Q And neither you nor Ms. Nelson reviewed video before --</p> <p>22 A Correct.</p> <p>23 Q -- issuing this initial determination that some records were</p> <p>24 exempt?</p> <p>25 A Correct.</p>
<p style="text-align: right;">Page 95</p> <p>1 A Right.</p> <p>2 Q Why does that happen?</p> <p>3 A Because of the volume of records that are requested, and the</p> <p>4 amount of time that it takes to produce it. If it's over a</p> <p>5 threshold, then we have a fee that we assess in order to</p> <p>6 produce the documents.</p> <p>7 Q Okay. And then this is marked, Granted In Part, Denied In</p> <p>8 Part?</p> <p>9 A Correct.</p> <p>10 Q And even though no exemptions are cited below?</p> <p>11 A That's right, because we knew we were not going to release</p> <p>12 the video.</p> <p>13 Q Okay. And then again, neither you -- who would have prepared</p> <p>14 this for you, Ms. Nelson?</p> <p>15 A This one would be Ms. Nelson, correct.</p> <p>16 Q And neither you nor Ms. Nelson reviewed video --</p> <p>17 A Correct.</p> <p>18 Q -- before making that determination; that's correct?</p> <p>19 A Yes, correct.</p> <p>20 Q All right. Do you have one more, or was that it?</p> <p>21 A N.</p> <p>22 Q N?</p> <p>23 A Yes. Number 16-1011 from Brendan O'Connor.</p> <p>24 Q Okay. And what was -- are you familiar with this document?</p> <p>25 A I did not sign this one; this is signed by Todd Butler. For</p>	<p style="text-align: right;">Page 97</p> <p>1 Q And those records would have been the video records, correct?</p> <p>2 A Right.</p> <p>3 Q Okay. We will finish up with two last documents.</p> <p>4 A Okay.</p> <p>5 Q While you were FOIA Coordinator did you ever authorize the</p> <p>6 release of video recording taken within an MDOC facility?</p> <p>7 A Not to my knowledge.</p> <p>8 Q Okay. Is it your understanding that is a Department wide</p> <p>9 policy --</p> <p>10 A It's --</p> <p>11 Q -- or stance?</p> <p>12 A Correct, that's our stance. It's not written in policy, as</p> <p>13 in always, but it is our stance that custody and security</p> <p>14 takes first priority.</p> <p>15 Q Okay. And you understand that to mean that that means never</p> <p>16 disclosing any audio or video recording?</p> <p>17 A Correct.</p> <p>18 Q Recorded within a correctional facility, yes?</p> <p>19 A Correct.</p> <p>20 Q Okay.</p> <p>21 (Deposition Exhibits O-P</p> <p>22 marked for identification.)</p> <p>23 Q (BY MS. VIZACHERO) Okay. I've just handed you what's been</p> <p>24 marked Exhibits O and P.</p> <p>25 A Okay.</p>

EXHIBIT H

1 STATE OF MICHIGAN
2 IN THE COURT OF CLAIMS

3 SPENCER WOODMAN,

4 Plaintiff,

5 -vs-

Case No. 17-000082
Hon. Cynthia D. Stephens

6 MICHIGAN DEPARTMENT OF CORRECTIONS,

7 Defendant.
8 _____/

9 DEPOSITION OF CORPORATE REPRESENTATIVE FOR

10 MICHIGAN DEPARTMENT OF CORRECTIONS

11 CHERYL GROVES

12 Taken by the Plaintiff on Thursday, the 30th day of
13 November, 2017 at the office of Michigan Department of
14 Attorney General, 525 West Ottawa Street, Lansing, Michigan
15 at 1:15 p.m.
16

17 APPEARANCES:

18 For the Plaintiff: OLIVIA K. VIZACHERO (P81699)
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<div>Page 2</div> <div>1 For the Defendant: ADAM R. DE BEAR (P80242)</div> <div>2 Michigan Department of Attorney General</div> <div>3 525 West Ottawa Street</div> <div>4 2nd Floor G. Mennen Williams Building</div> <div>5 Lansing, Michigan 48909</div> <div>6 (517) 373-1162</div> <div>7 debeara@michigan.gov</div> <div>8</div> <div>9</div> <div>10 Reported By: Heidi A. Cook, CSR 4827</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>	<div>Page 4</div> <div>1 Thursday, November 30, 2017</div> <div>2 Lansing, Michigan</div> <div>3 1:15 p.m.</div> <div>4 * * *</div> <div>5 CORPORATE REPRESENTATIVE FOR</div> <div>6 MICHIGAN DEPARTMENT OF CORRECTIONS</div> <div>7 CHERYL GROVES,</div> <div>8 having been first duly sworn, testified as follows:</div> <div>9 EXAMINATION</div> <div>10 BY MS. VIZACHERO:</div> <div>11 Q Good afternoon, Ms. Groves. How are you?</div> <div>12 A Good afternoon. Good. How are you?</div> <div>13 Q Wonderful. Thank you.</div> <div>14 A Good.</div> <div>15 Q Okay. I know we took some testimony earlier today, as I</div> <div>16 explained, of you testifying to facts, do you remember, in</div> <div>17 your individual capacity, is that correct?</div> <div>18 A Yes.</div> <div>19 Q Okay. And you understand that this is separate, and you're</div> <div>20 testifying now on behalf of MDOC?</div> <div>21 A Yes.</div> <div>22 Q Okay. And by MDOC, you understand that I am referring to</div> <div>23 Michigan Department of Corrections?</div> <div>24 A Correct.</div> <div>25 Q Perfect. For our lovely court reporter, can you please state</div>
<div>Page 3</div> <div>1 EXAMINATION INDEX</div> <div>2 -----</div> <div>3 ATTORNEY'S NAME EXAMINATION RE-EXAMINATION</div> <div>4 -----</div> <div>5</div> <div>6 BY MS. VIZACHERO: 4</div> <div>7</div> <div>8 * * *</div> <div>9</div> <div>10 EXHIBIT INDEX</div> <div>11 -----</div> <div>12 EXHIBIT MARKED IDENTIFIED</div> <div>13 -----</div> <div>14 Deposition Exhibit Q 8 8</div> <div>15 (Freedom of Information Act Guide)</div> <div>16 Deposition Exhibit R 25 25</div> <div>17 (MDOC's Answers)</div> <div>18 Deposition Exhibit S 48 48</div> <div>19 (Verified FOIA Complaints)</div> <div>20 Deposition Exhibit T 50 50</div> <div>21 (MDOC's Responses)</div> <div>22</div> <div>23</div> <div>24 * * *</div> <div>25</div>	<div>Page 5</div> <div>1 your first name and spell your last name for the record?</div> <div>2 A Cheryl Groves, G-r-o-v, as in Victor, e-s.</div> <div>3 Q And your current position and employer, please?</div> <div>4 A EPIC Manager, the Michigan Department of Corrections.</div> <div>5 Q Perfect. And did you have a chance to review the notice for</div> <div>6 this deposition today?</div> <div>7 A Yes.</div> <div>8 Q And you understand the topics that you're a designated</div> <div>9 representative for?</div> <div>10 A Yes, I do.</div> <div>11 Q Okay. And just to go over the formalities, you understand</div> <div>12 that this deposition is under oath, correct?</div> <div>13 A Yes, I do.</div> <div>14 Q Okay. And is there any reason that you cannot testify</div> <div>15 truthfully today?</div> <div>16 A No, there's not.</div> <div>17 Q Okay. And you understand that we're going to try and do our</div> <div>18 best, like we did this morning, to not talk over each other?</div> <div>19 A Yes.</div> <div>20 Q Perfect, because Heidi will get mad. And you understand that</div> <div>21 if you don't understand something, I need you to let me know</div> <div>22 you don't understand something?</div> <div>23 A Yes.</div> <div>24 Q That way, I can clarify.</div> <div>25 A Okay.</div>

<p style="text-align: right;">Page 26</p> <p>1 Q Correct. Who is listed as --</p> <p>2 A Mike Walczak is listed as the FOIA Coordinator.</p> <p>3 Q Okay.</p> <p>4 A Now, I'm not sure how current this list is. If he was the</p> <p>5 FOIA Coordinator at the time that incident happened, I can't</p> <p>6 speak to that.</p> <p>7 Q Understood. And would an Assistant -- who would -- in this</p> <p>8 case Aimee Nelson handled the initial inquiry with finding</p> <p>9 out if there were responsive documents?</p> <p>10 A Uh-huh.</p> <p>11 Q Correct?</p> <p>12 A Correct.</p> <p>13 Q Who would she call at Bellamy Creek?</p> <p>14 A She would contact the FOIA Coordinator.</p> <p>15 Q So she would have contacted, if he was in place at the</p> <p>16 time --</p> <p>17 A Correct.</p> <p>18 Q -- Mike Walczak?</p> <p>19 A Walczak, uh-huh.</p> <p>20 Q And what would Mike -- how would that process -- how would</p> <p>21 that conversation go?</p> <p>22 A So she would E-mail him or call him and say we have a FOIA</p> <p>23 Request for X, Y and Z; do you have this material?</p> <p>24 Sometimes they would respond immediately, or they would</p> <p>25 have to get back to her after they've done a search for those</p>	<p style="text-align: right;">Page 28</p> <p>1 release under FOIA for safety, custody and security reasons.</p> <p>2 Q For the MDOC -- scratch that. Strike that. Sorry.</p> <p>3 What recordings are listed on the subsequent page to</p> <p>4 Exhibit R? I'll give you a second to review that, and let me</p> <p>5 know if you're familiar with that list.</p> <p>6 A I am not familiar with that list; I have not seen it before.</p> <p>7 Q Okay. Have you seen any similar lists like that before?</p> <p>8 A No, I have not.</p> <p>9 Q Okay.</p> <p>10 MR. DE BEAR: Olivia, would it be a problem to</p> <p>11 mark, as an exhibit, the dep notice that contains the 12</p> <p>12 subjects? I'm not entirely sure that these are one of the 12</p> <p>13 that Ms. Groves is supposed to be testifying to; I could be</p> <p>14 wrong --</p> <p>15 MS. VIZACHERO: No problem.</p> <p>16 MR. DE BEAR: -- but I was just wondering if we</p> <p>17 could mark that.</p> <p>18 MS. VIZACHERO: We can. Prior to going on the</p> <p>19 record I talked to the court reporter, and I was going to</p> <p>20 mark it at the end --</p> <p>21 MR. DE BEAR: Oh, okay.</p> <p>22 MS. VIZACHERO: -- of all of them, because we're</p> <p>23 keeping a running list, but I have an extra if you would</p> <p>24 like.</p> <p>25 MR. DE BEAR: Thanks. I do apologize.</p>
<p style="text-align: right;">Page 27</p> <p>1 records.</p> <p>2 Q Okay.</p> <p>3 A And then he would call her back or E-mail her and say, yes,</p> <p>4 we do have responsive records.</p> <p>5 Q Okay. And who's job is it to review the video recording?</p> <p>6 A From what perspective? There are a lot of people who review</p> <p>7 those, so I'm not sure what you're referring to.</p> <p>8 Q In the context of a FOIA Request.</p> <p>9 A At the facility, or in Central Office?</p> <p>10 Q Start with Central Office.</p> <p>11 A Okay. It would not be the FOIA Coordinator; it would not be</p> <p>12 anybody in the FOIA Office to review those videos.</p> <p>13 Q Okay. Who would -- would any other person be responsible for</p> <p>14 reviewing those videos?</p> <p>15 A To respond to a FOIA Request?</p> <p>16 Q Yes.</p> <p>17 A No.</p> <p>18 Q Okay. Does MDOC train FOIA Coordinators to review videos, or</p> <p>19 to not review videos; does the MDOC take a stance on that?</p> <p>20 A When we do our training we do, basically, what the policy</p> <p>21 says. These are exemptions that you can take, and these are</p> <p>22 the items, are examples of things that we would exempt or</p> <p>23 redact under this exemption.</p> <p>24 So they are trained that, yes, for when we talk about</p> <p>25 13(1)(c), that videos are those documents that we do not</p>	<p style="text-align: right;">Page 29</p> <p>1 MS. VIZACHERO: Oh, you're fine. You're fine.</p> <p>2 MR. DE BEAR: I withdraw the objection. It appears</p> <p>3 that it's responsive to number -- I'm not entirely sure that</p> <p>4 it actually is responsive. So to the extent that it's</p> <p>5 inconsistent with the topics that Ms. Groves is testifying</p> <p>6 to, I'd just object as it's outside the scope of her required</p> <p>7 testimony.</p> <p>8 MS. VIZACHERO: Okay.</p> <p>9 MR. DE BEAR: But she can answer if she knows.</p> <p>10 MS. VIZACHERO: It's been a while since I asked</p> <p>11 that question, so --</p> <p>12 THE WITNESS: So I'll have to have you repeat it,</p> <p>13 please.</p> <p>14 MS. VIZACHERO: Let's refresh. Actually, can read</p> <p>15 back the question?</p> <p>16 COURT REPORTER: Yes.</p> <p>17 MS. VIZACHERO: Thank you.</p> <p>18 (Requested portion of the record</p> <p>19 was read by the reporter.)</p> <p>20 THE WITNESS: And, no, I haven't seen any similar</p> <p>21 list to this.</p> <p>22 Q (BY MS. VIZACHERO) Okay. Would anyone have reviewed any of</p> <p>23 those videos prior to responding to Mr. Woodman's or</p> <p>24 Mr. Joseph's request?</p> <p>25 A From the FOIA Office, no.</p>

<p style="text-align: right;">Page 30</p> <p>1 Q Okay. Would Mr. Walczak have been required to review that in 2 order to assist Ms. Nelson's request for whether or not 3 videos existed? 4 A I can't speak to whether he did review them. We would not 5 have asked him to review them; we would simply have asked 6 him, do they exist. 7 Q Okay. Who else -- strike that. 8 Prior to responding to Mr. Woodman's request and 9 Mr. Woodman's appeal, and Mr. Joseph's request, to the best 10 of your knowledge, has anyone reviewed any of those videos? 11 A From the FOIA Office, no. I can only speak to the FOIA 12 Office. Many people have reviewed these videos, but not from 13 the FOIA Office. 14 Q Who has reviewed those videos, to the best of your knowledge? 15 A To the best of my knowledge, and I'm only speculating here 16 because I don't know who all has reviewed these, but it's 17 common that the Inspector at the facility would have reviewed 18 them; the Warden would have reviewed them, the Deputy 19 Director would have reviewed them, and possibly the Director. 20 Q Why would those individuals have reviewed the video? 21 A Because they're looking at the security aspects of it to make 22 sure that our response was appropriate. 23 Q Why else? 24 A Because it's a significant event that happened in a facility. 25 Q Is significant event a Department term?</p>	<p style="text-align: right;">Page 32</p> <p>1 A Yes, we do. 2 Q And what is that? 3 A One year from the date of the last action with that request. 4 Q And what has to be retained? 5 A All of the documents: The requests, the appeals, any 6 responsive documents that are provided; any E-mails that are 7 associated with obtaining those records. 8 Q So for responsive documents, would videos be considered 9 responsive? 10 A It's a responsive document, but it's not that we have it in 11 our Central Office. We are not retaining that, that's not 12 part of our retention, because it's not a document that we 13 requested. 14 Q The retention policy applies to all facilities, correct? 15 A Correct. 16 Q So they would also have to maintain -- 17 A Yes. 18 Q -- these records? 19 A Yes. 20 Q Turning to Exhibit Q. 21 MR. DE BEAR: Q is the Reference Manual? 22 MS. VIZACHERO: Yes. 23 Q (BY MS. VIZACHERO) Can we walk through Paragraph 20, What 24 must the response contain? 25 A Do you want me to read it?</p>
<p style="text-align: right;">Page 31</p> <p>1 A Yes, it is. 2 Q Okay. Can you explain that? 3 A Anything that rises to the level of out of the ordinary, I 4 should say. It's something that is going to cause public 5 attention; it's something that -- obviously, there was a 6 death involved here; that's pretty important. That's a 7 significant event. 8 I'm not sure how else to qualify it, just something 9 that's out of the ordinary, that is of a significant issue. 10 Q You said these individuals at the facility would review the 11 video to determine if the response is appropriate? 12 A Correct. 13 Q Can you explain what you mean by that? 14 A There are a lot of things that go into events that happen at 15 a facility. Our officers are trained to respond in a certain 16 manner. Our staff are instructed what is appropriate for 17 security, and that's one of the things that we're looking 18 for. Our response to a situation like this, our health care 19 responded, obviously, to make sure that our responses to 20 every step of what happened was appropriate. 21 Q Okay. How, for FOIA purposes, how are videos saved from a 22 facility? 23 A I don't know how they save them. 24 Q Does the Michigan Department of Corrections have a document 25 retention policy for FOIA documents?</p>	<p style="text-align: right;">Page 33</p> <p>1 Q No, I will ask some questions. 2 A Okay. 3 Q Thank you. Are FOIA Coordinators required to respond to 4 every request, every subrequest made in a request? 5 A Yes. 6 Q And what is the proper way to do that? 7 A How Aimee has done it, and how we have instructed them is to 8 do what we saw in the request that we reviewed earlier this 9 morning, is to number them so that we know that we are 10 responding to each part of that request. 11 Q And what description, if any, has to be put -- can you just 12 say, We deny it? 13 A No. 14 MR. DE BEAR: Object to the extent that you're 15 calling for a legal conclusion. You can answer. 16 THE WITNESS: What we do is if there are certain 17 things in there that we're approving and some denying, that's 18 why they're numbered, so that we can say, item number one is 19 denied; item number two is being provided with exemptions 20 taken. So it's outlined that way in the bottom of the 21 response. 22 Q (BY MS. VIZACHERO) Can you just say it's denied, or do you 23 have to include any extra information? 24 A If you're denying it in whole, all you have to say is, 25 Documents are denied in whole based on, and why.</p>

<p style="text-align: right;">Page 34</p> <p>1 Q Okay. So what do you have to put in the why part?</p> <p>2 A The reason why you're denying it. So if there's a statutory</p> <p>3 exemption, or just any of the exemptions that are listed on</p> <p>4 the FOIA Statute, that's what we would list. Your request is</p> <p>5 denied based on 13(1)(a), and then give just a little bit of</p> <p>6 an explanation why, because the readers won't know what</p> <p>7 13(1)(a) is.</p> <p>8 Q Correct. So you provide some extra reasoning?</p> <p>9 A Correct.</p> <p>10 Q How much, in the Department's opinion, is enough information</p> <p>11 to be a proper response?</p> <p>12 A Well, we typically will recite the statutory language.</p> <p>13 Q Okay.</p> <p>14 A And to us, that's appropriate.</p> <p>15 Q Okay. What does the Department require in terms of listing</p> <p>16 all applicable exceptions, or exemptions?</p> <p>17 A We're required to do that. Is that what you mean?</p> <p>18 Q You're required to --</p> <p>19 A To list all of the exemptions that apply to the document that</p> <p>20 we are responding to.</p> <p>21 Q Okay. So if three applied, how many should be listed on --</p> <p>22 A If three exemptions apply?</p> <p>23 Q Yes.</p> <p>24 A All three should be listed.</p> <p>25 Q Okay. Once something is denied and a person chooses to</p>	<p style="text-align: right;">Page 36</p> <p>1 camera is a facility -- I'm not sure what you're -- it's</p> <p>2 still a facility video, it's just not mounted.</p> <p>3 Q Okay. That's not part of the control system video?</p> <p>4 A Right. The Control Center videos would be number one and</p> <p>5 number five. The hand-held camera, like we said, is a</p> <p>6 portable camera.</p> <p>7 Q Not a surveillance camera?</p> <p>8 A Correct. Correct. And the iPhone cameras are exactly what</p> <p>9 they are. Our Inspectors are allowed to have their iPhones,</p> <p>10 and sometimes the Wardens and Deputies are, depending on if</p> <p>11 approval has been granted for them to have their iPhones into</p> <p>12 the facility, which they could use, obviously they did here,</p> <p>13 to record.</p> <p>14 Q Okay. Can you walk me through all of that with the iPhones?</p> <p>15 A Okay. And I have to say that I don't -- the Policy has</p> <p>16 changed, and I'm not sure on the specifics of it. At one</p> <p>17 time they were allowed to have their --</p> <p>18 MR. DE BEAR: I'm just going to place an objection,</p> <p>19 and for the sake of not interrupting you continuously, I'll</p> <p>20 ask that this be continuing.</p> <p>21 It's my opinion it's outside the scope of the seven</p> <p>22 items that Ms. Groves is testifying to, and so to the extent</p> <p>23 that it is outside, because I don't believe that it deals</p> <p>24 with FOIA policies, it's different policies, so to the extent</p> <p>25 that it's outside those seven items, I'd object to the line</p>
<p style="text-align: right;">Page 35</p> <p>1 appeal it, appeal the denial, what happens?</p> <p>2 A We will receive an appeal, it will be received in by any</p> <p>3 means like we spoke of earlier of how FOIA Requests come in,</p> <p>4 and the FOIA Coordinator would provide them to me, and I</p> <p>5 would log them so we could keep a log of all the requests</p> <p>6 that we received, and I would do the additional research of</p> <p>7 pulling our previous FOIA Request and our response and the</p> <p>8 responsive documents, and review that to make sure we were</p> <p>9 appropriate, and then prepare our response accordingly.</p> <p>10 Q Was the information listed on, like, the list of video</p> <p>11 recordings, that information would have been available to the</p> <p>12 Central Office if an inquiry had been made at the time that</p> <p>13 the Central Office responded to Mr. Woodman's appeal?</p> <p>14 A Would I have -- would I have reviewed the video, is that what</p> <p>15 you're asking?</p> <p>16 Q No.</p> <p>17 A Okay.</p> <p>18 Q We just looked at a list of responsive videos, correct?</p> <p>19 A Right.</p> <p>20 Q And on there there's seven videos?</p> <p>21 A Uh-huh.</p> <p>22 Q And how many are from facility cameras?</p> <p>23 A They all should be, in my opinion, but I don't know that.</p> <p>24 Let me look.</p> <p>25 Facility cameras would be one, two; now, a hand-held</p>	<p style="text-align: right;">Page 37</p> <p>1 of questioning. And to avoid having to repeat that same</p> <p>2 objection, I'll ask that that be continuing, but you can</p> <p>3 answer the question.</p> <p>4 THE WITNESS: Okay. To the best of my knowledge on</p> <p>5 that, there was a point in time when they were allowed to</p> <p>6 have their phones inside a facility. That policy changed,</p> <p>7 where they were no longer allowed to have their phones inside</p> <p>8 the facility, due to the fact that we were finding so many</p> <p>9 cell phones in prisoner's hand. And I believe that that has</p> <p>10 recently changed again to allow Inspectors to have their</p> <p>11 phones back into the facilities again, but that's without me</p> <p>12 looking at the Policy Directive; I'd have to see the current</p> <p>13 language on there. That's to the best of my recollection.</p> <p>14 Q (BY MS. VIZACHERO) If a video is recorded in a facility on</p> <p>15 an MDOC employee's phone, would that be a responsive document</p> <p>16 under FOIA?</p> <p>17 A It would be a State issued cell phone?</p> <p>18 Q Yes.</p> <p>19 A Yes, it would.</p> <p>20 Q Do you have any idea what's on either of the iPhone videos?</p> <p>21 A I do not.</p> <p>22 Q On the appeal that we referenced earlier, and I'm handing you</p> <p>23 Exhibit E, which is Spencer Woodman's first Complaint, and</p> <p>24 attached to it is the appeal. Both the -- well, let's start</p> <p>25 with the iPhone videos. You stated that those wouldn't be</p>

<p>Page 38</p> <p>1 mounted, correct?</p> <p>2 A An iPhone is not mounted.</p> <p>3 Q That's not part of the facility's cameras?</p> <p>4 A That's not part of a facility camera; it's assigned to an</p> <p>5 employee.</p> <p>6 Q Would iPhone cameras deal with, and I'm going to go through a</p> <p>7 list. Would a video taken on an iPhone be considered a</p> <p>8 blueprint or a map of a facility?</p> <p>9 A No.</p> <p>10 Q Would it include names of informants?</p> <p>11 A If it's used for a video, yes, it could.</p> <p>12 Q Did the video in this case have names of informants?</p> <p>13 A I don't know that.</p> <p>14 Q Did the iPhone videos in this case, were they mobilization</p> <p>15 scenarios and critiques?</p> <p>16 A No.</p> <p>17 Q Were they Special Problem Offender Notices?</p> <p>18 A No.</p> <p>19 Q Movement plans?</p> <p>20 A No.</p> <p>21 Q Security Threat Group designations and related documentation?</p> <p>22 A No.</p> <p>23 Q Exempt Policy Directives?</p> <p>24 A No.</p> <p>25 Q Operating Procedures?</p>	<p>Page 40</p> <p>1 and I think she answered, but I was just wondering if you</p> <p>2 could be a bit more specific as to no one from where in the</p> <p>3 MDOC is reviewing those videos.</p> <p>4 Q (BY MS. VIZACHERO) No one from the Central Office, to start;</p> <p>5 no one responding to the FOIA Request?</p> <p>6 A Nobody involved with the FOIA Request has reviewed any of</p> <p>7 those videos at all.</p> <p>8 Q To the extent that the listed examples in the Manual for</p> <p>9 13(c) and 13(u) are the same, would your answers be the same,</p> <p>10 so movement plans under 13(1)(u)?</p> <p>11 A Movement plans, would that have been recorded on an iPhone,</p> <p>12 is that what you're asking?</p> <p>13 Q Yeah.</p> <p>14 A Movement plans, it possibly could.</p> <p>15 Q Okay. Earlier you said that, in response to my earlier</p> <p>16 question you said that Mr., for Mr. Woodman's case, the</p> <p>17 videos that were recorded, I asked if those were movement</p> <p>18 plans; you said no.</p> <p>19 A Okay. But what I had clarified, depending on what they</p> <p>20 videoed. So if officers came to a situation and moved a</p> <p>21 prisoner from this hallway down to segregation, that's</p> <p>22 showing a movement plan, in my opinion.</p> <p>23 Q Are there documents -- are there procedures within the MDOC</p> <p>24 that would set forth the proper procedures from movement</p> <p>25 plans?</p>
<p>Page 39</p> <p>1 A No.</p> <p>2 Q Post Orders for security sensitive assignment?</p> <p>3 A No.</p> <p>4 Q Descriptions of security fencing?</p> <p>5 A No.</p> <p>6 Q Description of operating of personal protection devices?</p> <p>7 A No.</p> <p>8 Q Would they disclose the capability of any monitoring device?</p> <p>9 A Potentially, yes.</p> <p>10 Q How?</p> <p>11 A It depends on what they took a video of.</p> <p>12 Q Is there --</p> <p>13 A I mean, in any of those situations, I mean, you could say yes</p> <p>14 to some degree, from the standpoint of I'm not sure what they</p> <p>15 videoed with their hand-held. If they were videoing the</p> <p>16 walls, the cameras, I mean, the beds; I don't know what they</p> <p>17 videoed. So in some of those situations, yes, depending on</p> <p>18 how far you take that, it's the potential to have some of</p> <p>19 that information on that recording.</p> <p>20 Q But there's a chance that it wouldn't?</p> <p>21 A True.</p> <p>22 Q Okay. But no one is making that -- no one is reviewing the</p> <p>23 videos to make that determination?</p> <p>24 A Not from the FOIA Office.</p> <p>25 MR. DE BEAR: I just want to place an objection,</p>	<p>Page 41</p> <p>1 A Yes.</p> <p>2 Q Like I could request what is your -- I'll have you explain;</p> <p>3 you said yes.</p> <p>4 A So there are Post Orders in our facilities, which are written</p> <p>5 instructions for each assignment, each officer assignment;</p> <p>6 there are Operating Procedures that guide each facility. So,</p> <p>7 yes, those do outline movement plans of prisoners. When they</p> <p>8 go to lunch, when they go to education, when they go out to</p> <p>9 the yard, all of that stuff is documented in either a Post</p> <p>10 Order, or their Operating Procedures or their movement plan</p> <p>11 of the facility.</p> <p>12 Q Okay. What bases does the Department state that 13(1)(a)</p> <p>13 applies to Mr. Woodman's request, or Mr. Joseph's request?</p> <p>14 A I did not take that exemption when I responded, so I cannot</p> <p>15 respond to that.</p> <p>16 Q That's the Department's stance, however, at this point?</p> <p>17 A The Department applied 13(1)(a), but I can't speak to that</p> <p>18 because I was not involved in that discussion.</p> <p>19 Q So is it just fair to say you don't know --</p> <p>20 A I do not know.</p> <p>21 Q -- what the Department is relying on?</p> <p>22 A Correct.</p> <p>23 Q What bases there is to support 13(1)(a)?</p> <p>24 A Correct.</p> <p>25 Q Okay. In responding to an appeal, is it required for any</p>

<p style="text-align: right;">Page 42</p> <p>1 documents to be reviewed by a person who hadn't already 2 processed the underlying request? Does the Director have to 3 review any documents? 4 A In order to sign the FOIA Appeal Response? 5 Q Yes. 6 A No. 7 Q Okay. So what new information would be gathered pertaining 8 to the documents, themselves? 9 A Any information that is listed in the appeal language like we 10 got from Mr. Woodman where he provided some additional 11 information. 12 Q Okay. So no one is taking a second pass at, a first or 13 second pass at the underlying documents? No one is required 14 to make a separate determination from the determination 15 already made? 16 MR. DE BEAR: I'm going to object to the extent 17 that you're seeking a legal conclusion. 18 THE WITNESS: When I would do a FOIA appeal, I 19 would look at the information that was previously provided. 20 So in my opinion, that's taking a second look at what was 21 originally provided. And then when it would go to the 22 Administrator for review, she oftentimes would look at the 23 documentation that was collected for the first response. 24 Does that answer your question? 25 Q (BY MS. VIZACHERO) Often, she would oftentimes look at the</p>	<p style="text-align: right;">Page 44</p> <p>1 Q Okay. What percentage of FOIA Requests are received at the 2 Central Office? 3 A About 80 percent. 4 Q Do you know how many FOIA Requests, on average, a year 5 request video or audio recordings? 6 A That, I do not know. 7 MR. DE BEAR: Do you think we should take a break, 8 or are you almost finished? 9 MS. VIZACHERO: I'm almost done. 10 MR. DE BEAR: Sorry to interrupt you. 11 MS. VIZACHERO: You're fine. I want to go through 12 one more thing. 13 MR. DE BEAR: Okay. 14 Q (BY MS. VIZACHERO) Okay. I am handing you Exhibit B and 15 Exhibit D, which are Policy Directives -- scratch that. 16 I am handing you Exhibit C and Exhibit D, which were the 17 Policy Directives in place. 18 MR. DE BEAR: Exhibit C and Exhibit D? 19 MS. VIZACHERO: Yes. 20 MR. DE BEAR: Okay. 21 Q (BY MS. VIZACHERO) Exhibit C is a Policy Directive on FOIA 22 that was in place when Mr. Woodman made his request, and D is 23 the Policy Directive in place when Mr. Joseph made his 24 request. Turning to -- and I'm providing them to you so you 25 have them in case you want to compare between the two --</p>
<p style="text-align: right;">Page 43</p> <p>1 documentation? 2 A Right. 3 Q When you say documentation, are you talking about -- define 4 documentation. 5 A Any records that were provided. 6 Q Okay. When you say provided, you don't mean disclosed, do 7 you? 8 A Yes, I do. Anything that was released to the FOIA requester 9 through the FOIA process. 10 Q Okay. It wouldn't be common practice to review documents 11 that had been exempted? 12 MR. DE BEAR: Do you want to -- object just as to 13 vagueness. It wouldn't be common practice by whom? 14 Q (BY MS. VIZACHERO) It wouldn't be common practice for the 15 Director, in reviewing an initial response on appeal, to look 16 at the documents that had been exempt from disclosure that 17 someone was now challenging by way of appeal? 18 A She could. She could. If she asked for those documents, we 19 would provide those to her. 20 Q It's not required, though, is that correct? 21 A That is not required. 22 Q And is it common for that to happen? 23 A Is it common for her to request to see documents? 24 Q To request, to see them? 25 A No, it is not common.</p>	<p style="text-align: right;">Page 45</p> <p>1 A Okay. 2 Q -- but I'll work off of C, for the most part. 3 On page four, Paragraph Q says, the FOIA Coordinator 4 shall review the request and determine which records in the 5 Department's possession are responsive to the FOIA Request. 6 How does someone make the determination of responsive? 7 MR. DE BEAR: Just quickly, would you mind 8 clarifying whom you mean by someone? 9 MS. VIZACHERO: A FOIA Coordinator or an Assistant 10 FOIA Coordinator. 11 MR. DE BEAR: At the Central Office or the 12 individual facilities? I'm assuming you mean at Central 13 Office, I just want to be -- 14 MS. VIZACHERO: We'll start with Central Office. 15 THE WITNESS: Okay. How do we determine what is 16 responsive? 17 MS. VIZACHERO: Yes. 18 THE WITNESS: Okay. Taking a look at the 19 information that's provided, so I guess if we were to ask 20 somebody to provide us with documentation, we would tell them 21 what the request was, and rely on that person to collect 22 documents that they believe are responsive to that request, 23 so those would go to our Assistant FOIA Coordinator for 24 review. 25 It's possible we could say, Okay, I think you're missing</p>

<p style="text-align: right;">Page 46</p> <p>1 something, or we need something different, because they might</p> <p>2 have misunderstood what was being requested. So it's on the</p> <p>3 Assistant FOIA Coordinator to look at the documents that are</p> <p>4 provided in response to make sure that they are responsive,</p> <p>5 accurately responsive.</p> <p>6 Q (BY MS. VIZACHERO) Okay. The use of the word shall here --</p> <p>7 A Uh-huh.</p> <p>8 Q -- does that mean that the FOIA Coordinator must, has to</p> <p>9 review the request and make a responsive determination?</p> <p>10 MR. DE BEAR: Object to the extent that you're</p> <p>11 calling for a legal conclusion.</p> <p>12 THE WITNESS: In our policies we use the word shall</p> <p>13 in place of must; it basically means you must.</p> <p>14 Q (BY MS. VIZACHERO) Okay. And then in the following</p> <p>15 paragraph, that would mean the FOIA Coordinator must review</p> <p>16 the documents responsive?</p> <p>17 A Correct.</p> <p>18 Q Does the MDOC -- you stated earlier that there are no</p> <p>19 informal policies, right?</p> <p>20 A Correct.</p> <p>21 Q So the current Policy Directive is the whole world?</p> <p>22 A That is our policy.</p> <p>23 Q Okay.</p> <p>24 A That is our guide.</p> <p>25 Q Is there any portion of this that allows, once a</p>	<p style="text-align: right;">Page 48</p> <p>1 matching game, I assume?</p> <p>2 A It's all the same information. The exemptions that are</p> <p>3 listed in the policy are taken from the Manual; do you know</p> <p>4 what I mean? They're taken from the Statute; the Statute</p> <p>5 overrides.</p> <p>6 The Attorney General's Office put together a Handbook</p> <p>7 that has all of the information in there; our policy is built</p> <p>8 off of what's in that information. Does that make sense?</p> <p>9 Q Yes.</p> <p>10 A Okay.</p> <p>11 Q In order -- so we just determined you need to do, per the</p> <p>12 policy, a case-by-case review of documents?</p> <p>13 A For each request that comes in.</p> <p>14 Q For each request?</p> <p>15 A Yes.</p> <p>16 Q In a typical FOIA Request, do you make the determination that</p> <p>17 something is exempt after you review it?</p> <p>18 A Yes.</p> <p>19 Q Okay. And then I just want to touch on --</p> <p>20 MS. VIZACHERO: Can you mark that.</p> <p>21 (Deposition Exhibit S marked for identification.)</p> <p>22 Q (BY MS. VIZACHERO) This is Mr. Joseph's Verified FOIA</p> <p>23 Complaints, and I am just going to direct, Ms. Groves, your</p> <p>24 attention to Exhibits A and B at the back. And I know you</p> <p>25 said that you did not review this --</p>
<p style="text-align: right;">Page 47</p> <p>1 determination is made in one request, without reviewing the</p> <p>2 documents you can just apply, like --</p> <p>3 A I'm not sure I understand that question. Is there something</p> <p>4 written in this document that says you do not have to review;</p> <p>5 is that what you're asking me?</p> <p>6 Q Yes.</p> <p>7 A No, there is not.</p> <p>8 Q Okay. And when it says, Shall review the policy, as you</p> <p>9 understand it to mean, is it saying each, on each request,</p> <p>10 individually?</p> <p>11 A Yes.</p> <p>12 Q Okay. Like if you had 20 requests --</p> <p>13 A You review the documents for each request.</p> <p>14 Q Thank you.</p> <p>15 A Yes.</p> <p>16 Q Okay. Can you turn to the front page.</p> <p>17 A Are you still on the 3/31/16 version?</p> <p>18 Q I am.</p> <p>19 A Okay.</p> <p>20 Q How do you know -- how does the Assistant FOIA Coordinator or</p> <p>21 a FOIA Coordinator know if something is exempt?</p> <p>22 A According to the list of exemptions that are noted in the</p> <p>23 Statute, that we have put in our policy, and that we have in</p> <p>24 the documented Handbook from the Attorney General's Office.</p> <p>25 Q What do they have to do in order -- so it's kind of like a</p>	<p style="text-align: right;">Page 49</p> <p>1 A I did not.</p> <p>2 Q -- prior to coming here today? Have you ever seen this</p> <p>3 before?</p> <p>4 A I have not. I was not in that position at this time.</p> <p>5 Q Okay. Based on your prior experience, would it be -- I'll</p> <p>6 rephrase that.</p> <p>7 For this request, only Section 13(1)(c) is cited for</p> <p>8 Reason to Deny?</p> <p>9 A Yes, it is.</p> <p>10 Q And you stated that it's the policy, MDOC policy for FOIA</p> <p>11 Coordinators to provide all applicable exemptions?</p> <p>12 A Correct.</p> <p>13 Q And the only one cited on here is C?</p> <p>14 A Yes, it.</p> <p>15 Q Okay. I will ask you the same question with reference to</p> <p>16 Mr. Woodman's request, as well.</p> <p>17 A Okay.</p> <p>18 Q Do you recall what exemptions were listed on that original</p> <p>19 response?</p> <p>20 A 13(1)(c).</p> <p>21 Q Okay. No other ones?</p> <p>22 A No.</p> <p>23 Q Okay. In your capacity as representative for the MDOC, did</p> <p>24 anyone review the video prior to denying Mr., any of the</p> <p>25 seven videos, prior to denying Mr. Joseph's request?</p>

<p style="text-align: right;">Page 50</p> <p>1 MR. DE BEAR: Can you rephrase. By him, do you</p> <p>2 mean by anybody, in particular, differentiating between the</p> <p>3 Central Facilities and the Ionia Bellamy Creek Facility?</p> <p>4 Q (BY MS. VIZACHERO) Anybody within the Central Facility,</p> <p>5 since they're the one responding to --</p> <p>6 A And I don't know that, because I wasn't in that office.</p> <p>7 Q But they wouldn't have been required to, is that your</p> <p>8 understanding?</p> <p>9 A Would the Manager have been required to review the video</p> <p>10 before responding?</p> <p>11 Q Yes.</p> <p>12 A No.</p> <p>13 Q Okay. I might just have one last thing.</p> <p>14 (Deposition Exhibit T marked for identification.)</p> <p>15 Q (BY MS. VIZACHERO) I want to hand you, Ms. Groves, a</p> <p>16 document titled, MDOC's Responses to Mr. Joseph's Request for</p> <p>17 Production of Documents.</p> <p>18 A Okay.</p> <p>19 Q And I want to point your attention to the very end, which is</p> <p>20 documents provided in response to that, and referencing,</p> <p>21 start at Bates stamp SOM 002524.</p> <p>22 A Okay.</p> <p>23 Q And this is the same request we were just looking at, is that</p> <p>24 correct?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 52</p> <p>1 Q Okay. On the next page, can you describe to me what you see?</p> <p>2 A An E-mail between Brianna Newton, who works in the FOIA</p> <p>3 Section with Mike Walczak, who works at the Bellamy Creek</p> <p>4 Correctional Facility.</p> <p>5 Q And underneath the initial E-mail, did she -- did Brianna</p> <p>6 Newton send an E-mail contacting Mike Walczak, as you</p> <p>7 explained is typically done?</p> <p>8 A Yes, that is correct.</p> <p>9 Q Okay. So the time stamp on the E-mail from Brianna Newton to</p> <p>10 Mike Walczak is 8:25, or 8:27 a.m.?</p> <p>11 A 8:29 a.m.</p> <p>12 Q The one underneath.</p> <p>13 A Oh, I'm sorry.</p> <p>14 Q No, you're fine.</p> <p>15 A 8:27 a.m., yes, from Brianna to Mike Walczak is 8:27 a.m.</p> <p>16 Q Perfect. On June 29, '17?</p> <p>17 A Correct.</p> <p>18 Q Okay. And when was Mr. Joseph's request received by the</p> <p>19 Michigan Department of Corrections?</p> <p>20 A Was received on June 29, 2017.</p> <p>21 Q Okay. So the first thing in the morning she sends an E-mail</p> <p>22 right after this comes in --</p> <p>23 A Uh-huh.</p> <p>24 Q -- essentially? Is that a fair representation?</p> <p>25 A I would assume so.</p>
<p style="text-align: right;">Page 51</p> <p>1 Q Okay. And this next page, can you tell me what that is?</p> <p>2 A It's a FOIA Request addressed to MDOC-OLAFOIA, which appears</p> <p>3 to be a new mailbox that they've set up since I have been</p> <p>4 there.</p> <p>5 Q You're not familiar with that --</p> <p>6 A I am not.</p> <p>7 Q -- while you were there?</p> <p>8 A No, we did not have that.</p> <p>9 Q Okay. People only received FOIA Requests via -- people</p> <p>10 within the Central Facility only received FOIA Requests</p> <p>11 within their individual MDOC E-mail addresses --</p> <p>12 A Correct.</p> <p>13 Q -- if it was being received by E-mail?</p> <p>14 A Correct.</p> <p>15 Q Okay. And this is, is it fair to say, just Mr. Joseph's</p> <p>16 initial request with some notes on it? Would those be MDOC</p> <p>17 FOIA unit notes that are on --</p> <p>18 A Yes. This would be the prisoner number.</p> <p>19 Q Okay.</p> <p>20 A This would be our FOIA number at the top. I'm not sure what</p> <p>21 the plus 16 means.</p> <p>22 Q And do you see the note down at the bottom, 13(1)(c)?</p> <p>23 A Correct.</p> <p>24 Q Okay. Do you recognize whose handwriting this is?</p> <p>25 A I do not.</p>	<p style="text-align: right;">Page 53</p> <p>1 Q Okay. The E-mail reads, Can you please tell me if the</p> <p>2 following request exists. This is Brianna E-mailing Mike</p> <p>3 Walczak. Footage of the September 27, 2016 confrontation</p> <p>4 that led to the death of inmate Dustin Szot, and then has his</p> <p>5 prisoner number?</p> <p>6 A Uh-huh.</p> <p>7 Q O-M-N-I, OMNI, states his last location was IBC. I</p> <p>8 understand that the footage is exempt, but I need to know</p> <p>9 whether or not it exists in order to properly respond to the</p> <p>10 requester. Thank you.</p> <p>11 A Okay.</p> <p>12 Q What information would Brianna Newton have had at her</p> <p>13 disposal, at this point, to make the exemption determination?</p> <p>14 A Because she knows I'm -- obviously, she's been trained and</p> <p>15 she knows we do not release video footage. And she's looking</p> <p>16 to see if there was video footage because that makes a</p> <p>17 difference in how you respond; either the document does not</p> <p>18 exist, or it's exempt. So if it doesn't exist, then she</p> <p>19 would say that in the response, as opposed to your document</p> <p>20 exists, but it's not being released --</p> <p>21 Q Okay.</p> <p>22 A -- under FOIA.</p> <p>23 Q Okay. And, again, she didn't have to -- she hadn't seen them</p> <p>24 based on her E-mail, because she doesn't even know if they</p> <p>25 exist yet, right?</p>

<p style="text-align: right;">Page 54</p> <p>1 A Correct.</p> <p>2 Q So she hasn't seen anything?</p> <p>3 A Correct.</p> <p>4 Q But she knows it's exempt?</p> <p>5 A Correct, if it exists.</p> <p>6 Q If it exists?</p> <p>7 A Correct.</p> <p>8 Q And he says it does?</p> <p>9 A Right.</p> <p>10 Q Is that correct?</p> <p>11 A Yes.</p> <p>12 MS. VIZACHERO: Okay. Give me one second, but I</p> <p>13 might be all set.</p> <p>14 MR. DE BEAR: Okay.</p> <p>15 (Off the record discussion.)</p> <p>16 Q (BY MS. VIZACHERO) Were there any other authorities that</p> <p>17 bind determinations for FOIA, how to process and respond to</p> <p>18 FOIA Requests outside of the Policy Directive, Attorney</p> <p>19 General opinions, for instance?</p> <p>20 A Statute.</p> <p>21 Q Statute? What about case opinions, like legal cases from,</p> <p>22 like, the Michigan Supreme Court?</p> <p>23 MR. DE BEAR: Object to the extent that you're</p> <p>24 calling for a legal conclusion.</p> <p>25 THE WITNESS: And I don't know how to answer that.</p>	<p style="text-align: right;">Page 56</p> <p>1 So incidents that happen over the years, things that</p> <p>2 have happened to the Department of Corrections, or things</p> <p>3 that we've been involved in help guide our decision, such as</p> <p>4 in this case, to not release video footage. Does that answer</p> <p>5 your question?</p> <p>6 Q Kind of. Is there, like, a test that you train people,</p> <p>7 that's part of your training that you say, you look at this</p> <p>8 and you list all of the -- you look at a request and you say,</p> <p>9 should I or shouldn't I release; it's up to me, I have</p> <p>10 discretion. I can choose to release it, even if it falls</p> <p>11 within an exemption, or I can choose not to?</p> <p>12 A Right. The discretion is there, but if they are unsure, we</p> <p>13 encourage them to call us to help them make that decision.</p> <p>14 Q Are you -- when you say they, are you referencing --</p> <p>15 A FOIA Coordinators that are outside of Central Office.</p> <p>16 Q Okay. How about people within Central Office making, using</p> <p>17 their discretion?</p> <p>18 A So if I was unsure, I would go to my Administrator, who was</p> <p>19 an attorney, and if we had any question, therefore, we would</p> <p>20 contact Tom Quasarano in the Attorney General's office.</p> <p>21 Q Is the discretion just a go with your gut thing, though? I</p> <p>22 guess that's what I'm trying to get at.</p> <p>23 MR. DE BEAR: Object to the extent that it calls</p> <p>24 for a legal conclusion.</p> <p>25 THE WITNESS: I don't know how to answer that. I</p>
<p style="text-align: right;">Page 55</p> <p>1 Are you -- I'm not sure what you're asking.</p> <p>2 Q (BY MS. VIZACHERO) So the FOIA guide --</p> <p>3 A Uh-huh.</p> <p>4 Q -- that's used as a reference?</p> <p>5 A Uh-huh.</p> <p>6 Q Cites two cases that have been decided on whether an</p> <p>7 exemption was proper or not proper. Are those decisions, do</p> <p>8 they control FOIA determinations at the Central Office?</p> <p>9 A Ultimately, no. It gets you information reference to how</p> <p>10 that has been used in the past, or been accepted in the past,</p> <p>11 but you still have to look at each case on a case-by-case</p> <p>12 basis.</p> <p>13 Q Okay. This is going to be my last area of inquiry. How are</p> <p>14 people trained in terms of balancing disclosure versus</p> <p>15 nondisclosure, because it's discretionary, correct?</p> <p>16 A Uh-huh.</p> <p>17 Q How does MDOC train people to exercise their discretion in</p> <p>18 conformity with the FOIA Statute?</p> <p>19 MR. DE BEAR: I object to the extent that you're</p> <p>20 asking for a legal conclusion.</p> <p>21 THE WITNESS: They are trained in alignment with</p> <p>22 our policy, from what we have gathered over the 100 years</p> <p>23 that Corrections has been around, what we know to believe is</p> <p>24 something that we need to keep undisclosed, or to keep</p> <p>25 disclosed, if that makes sense.</p>	<p style="text-align: right;">Page 57</p> <p>1 guess because I've been around Corrections so long, I know</p> <p>2 what kind of things are sensitive, what kinds of things we</p> <p>3 need to protect from a custody and security standpoint. So I</p> <p>4 don't know -- I don't know how else to answer your question.</p> <p>5 Q (BY MS. VIZACHERO) Okay. There's no formal balancing test</p> <p>6 that check off --</p> <p>7 A No --</p> <p>8 Q -- pros and cons?</p> <p>9 A -- there's not. There's not.</p> <p>10 Q Okay. And no guide that's published through the Department</p> <p>11 that says you have to review, and then determine what's in</p> <p>12 the public's best interest?</p> <p>13 A Well, we -- the only -- they can review the documents that we</p> <p>14 have available for them as a guide: The policy, the</p> <p>15 Reference Manual, the Attorney General's Guide. They should</p> <p>16 be using that information to guide their decision.</p> <p>17 Q But nothing that specifically references use of discretion?</p> <p>18 A No, not that I'm aware of.</p> <p>19 MS. VIZACHERO: I'm all set.</p> <p>20 MR. DE BEAR: Thanks.</p> <p>21 (Whereupon, Deposition concluded at 2:39 p.m.)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

EXHIBIT I

1 STATE OF MICHIGAN
2 IN THE COURT OF CLAIMS

3 SPENCER WOODMAN,

4 Plaintiff,

5 -vs-

Case No. 17-000082
Hon. Cynthia D. Stephens

6 MICHIGAN DEPARTMENT OF CORRECTIONS,

7 Defendant.
8 _____/

9 DEPOSITION OF CORPORATE REPRESENTATIVE FOR

10 MICHIGAN DEPARTMENT OF CORRECTIONS

11 CHRISTINE WAKEFIELD

12 Taken by the Plaintiff on Thursday, the 30th day of
13 November, 2017 at the office of Michigan Department of
14 Attorney General, 525 West Ottawa Street, Lansing, Michigan
15 at 3:00 p.m.
16

17 APPEARANCES:

18 For the Plaintiff: OLIVIA K. VIZACHERO (P81699)
19 Honigman Miller Schwartz and Cohn, LLP
20 Cooperating Attorneys, American
21 Civil Liberties Union Fund of Michigan
22 2290 First National Building
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24 Detroit, Michigan 48226
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Page 2		Page 4	
1	For the Defendant: ADAM R. DE BEAR (P80242)	1	Thursday, November 30, 2017
2	ERIC M. JAMISON (P75721)	2	Lansing, Michigan
3	Michigan Department of Attorney General	3	3:00 p.m.
4	525 West Ottawa Street	4	* * *
5	2nd Floor G. Mennen Williams Building	5	CORPORATE REPRESENTATIVE FOR
6	Lansing, Michigan 48909	6	MICHIGAN DEPARTMENT OF CORRECTIONS
7	(517) 373-1162	7	CHRISTINE WAKEFIELD,
8	debeara@michigan.gov	8	having been first duly sworn, testified as follows:
9		9	EXAMINATION
10		10	BY MS. VIZACHERO:
11	Reported By: Heidi A. Cook, CSR 4827	11 Q	Good afternoon. How are you today?
12		12 A	I am fine. How are you.
13		13 Q	Wonderful. Thank you. Would you please state your first and
14		14	last name for the record, and spell your last name?
15		15 A	Christine, with a C-h-r-i-s-t-i-n-e, and Wakefield,
16		16	W-a-k-e-f-i-e-l-d.
17		17 Q	And your current title and name of employer?
18		18 A	My current title is Inspector, and my employer is the
19		19	Michigan Department of Corrections, Bellamy Creek
20		20	Correctional Facility.
21		21 Q	Inspector Wakefield, if I refer to MDOC instead of saying
22		22	Michigan Department of Corrections, you know what I'm talking
23		23	about, right?
24		24 A	(Witness nodding head.)
25		25	MR. DE BEAR: You want to verbalize your answers.
Page 3		Page 5	
1	EXAMINATION INDEX	1	THE WITNESS: Yes.
2	-----	2	MS. VIZACHERO: I'm going to get to that in two
3	ATTORNEY'S NAME EXAMINATION RE-EXAMINATION	3	seconds.
4	-----	4	THE WITNESS: Yes, I know what you mean.
5		5 Q	(BY MS. VIZACHERO) Okay. As I explained before we went on
6	BY MS. VIZACHERO: 4	6	the record, my name is Olivia Vizachero. I am representing
7		7	Spencer Woodman and George Joseph in relation to their FOIA
8	* * *	8	Request that they submitted to the Michigan Department of
9		9	Corrections, which were denied, and have now been filed as
10	EXHIBIT INDEX	10	FOIA Complaints.
11	-----	11	You're being deposed today in connection with that, and
12	EXHIBIT MARKED IDENTIFIED	12	you've been designated by the Michigan Department of
13	-----	13	Corrections, you understand, to respond to two items,
14	There were no exhibits marked.	14	specifically. Did you have an opportunity to look at the
15		15	Notice of Deposition?
16	* * *	16 A	Yes.
17		17 Q	Okay.
18		18 A	Yeah.
19		19 Q	So you understand the scope of the items that you're
20		20	testifying on behalf of the Michigan Department of
21		21	Corrections, for all video recordings that are responsive to
22		22	Mr. Woodman's FOIA Request, and all cameras that captured
23		23	video and audio footage that's responsive to Mr. Woodman's
24		24	FOIA Request?
25		25 A	Yes.

<p style="text-align: right;">Page 22</p> <p>1 A Is a room typically surveilled by more than one --</p> <p>2 MR. DE BEAR: I'm going to go ahead, and I'm not</p> <p>3 sure that the Inspector knows, but again, I'll place an</p> <p>4 objection on the record. The MDOC objects to the extent that</p> <p>5 you're seeking answers as to camera placements, locations of</p> <p>6 those cameras.</p> <p>7 THE WITNESS: I don't know if there's -- yeah, I do</p> <p>8 not know.</p> <p>9 Q (BY MS. VIZACHERO) Okay. Are cameras visible to</p> <p>10 incarcerated persons within the facility?</p> <p>11 A Yes.</p> <p>12 Q Do the persons incarcerated within Bellamy Creek know they're</p> <p>13 being video recorded?</p> <p>14 A Absolutely.</p> <p>15 Q Do the MDOC employees know they're being recorded?</p> <p>16 A Absolutely.</p> <p>17 Q I'm going to try and phrase this in a way that it's vague</p> <p>18 enough, because I understand Mr. De Bear's objection,</p> <p>19 although I'm not conceding to it, but I understand the point</p> <p>20 he's trying to make, and I want to try and hit it down the</p> <p>21 middle.</p> <p>22 So as part of -- can you explain to me -- we'll start</p> <p>23 with the one in this case, and we'll go from there. That</p> <p>24 makes more sense.</p> <p>25 Have you seen a list of all responsive video requests to</p>	<p style="text-align: right;">Page 24</p> <p>1 Q Do you know who pulled video footage --</p> <p>2 A I do not.</p> <p>3 Q -- in response? Does your FOIA Coordinator at Bellamy</p> <p>4 typically do that, or would someone underneath?</p> <p>5 A I have no idea.</p> <p>6 Q When a serious incident occurs, who's responsible for pulling</p> <p>7 video footage?</p> <p>8 A I don't believe there's -- I don't believe there's any one</p> <p>9 person.</p> <p>10 Q Okay.</p> <p>11 A And if there is one person, I'm not exactly sure who that is.</p> <p>12 Q Would it be -- do you ever do that in the course of an</p> <p>13 investigation?</p> <p>14 A Pull video evidence?</p> <p>15 Q Yes.</p> <p>16 A Yes.</p> <p>17 Q And review it and save it, right?</p> <p>18 A Absolutely. It's part of my job.</p> <p>19 Q All right. Did you do that in this case?</p> <p>20 A I can't affirmatively tell you I did.</p> <p>21 Q Okay. You know that it was done, is that fair?</p> <p>22 A Oh, absolutely. Yes.</p> <p>23 Q Because you've seen it?</p> <p>24 A Yes.</p> <p>25 Q Okay.</p>
<p style="text-align: right;">Page 23</p> <p>1 Mr. Woodman's FOIA Request?</p> <p>2 A I can't say that I have. I'm not exactly sure what you mean</p> <p>3 by that.</p> <p>4 Q Have you seen Mr. Woodman's FOIA Request?</p> <p>5 A Is that it right there?</p> <p>6 Q I'm going to grab it for you.</p> <p>7 A Okay.</p> <p>8 Q It's not this one. I am handing you what has been marked as</p> <p>9 Exhibit E, which is Mr. Woodman's Complaint, and in it is his</p> <p>10 FOIA Request and the MDOC's Response, just so you have an</p> <p>11 idea --</p> <p>12 A I have not seen that.</p> <p>13 Q Okay.</p> <p>14 A To my knowledge, I have not seen that.</p> <p>15 Q Okay. In it he requests a digital copy of video footage of</p> <p>16 the confrontation that led to the fatality of inmate Dustin</p> <p>17 Szot on September 27, 2016 at the Muskegon Correctional</p> <p>18 Facility?</p> <p>19 A At what facility?</p> <p>20 Q And I was just going to ask you. You know that to not be the</p> <p>21 correct facility; you know it to be Bellamy Creek is the</p> <p>22 proper one?</p> <p>23 A Yes.</p> <p>24 Q That's a misstatement in the document?</p> <p>25 A Right.</p>	<p style="text-align: right;">Page 25</p> <p>1 A Yes. And I apologize, it's been so long.</p> <p>2 Q Do you have anyone that works under your supervision that</p> <p>3 would be responsible for doing that?</p> <p>4 A No, I do not.</p> <p>5 Q Okay. Is it something that Doug Welton might also do?</p> <p>6 A No.</p> <p>7 Q Okay. Do you know, off the top of your head, the videos that</p> <p>8 recorded information responsive to that request, the</p> <p>9 confrontation and ultimate death of Dustin Szot?</p> <p>10 A I don't understand the question.</p> <p>11 Q Okay. Mr. Woodman requested videos and then separately audio</p> <p>12 recordings of any recording from within Bellamy Creek</p> <p>13 involving the confrontation that led to the death of Dustin</p> <p>14 Szot?</p> <p>15 A (Witness nodding head.)</p> <p>16 Q Do you, off the top of your head, know how many videos were</p> <p>17 recorded that respond to that?</p> <p>18 A I do not.</p> <p>19 Q If I showed you a list, would that help refresh your</p> <p>20 recollection?</p> <p>21 A Yeah, it could.</p> <p>22 Q I am handing you what has been marked by our lovely court</p> <p>23 reporter as Exhibit R, and I'm turning your attention to the</p> <p>24 back page. Exhibit R is the Michigan Department of</p> <p>25 Corrections' Response To Plaintiff's Document Request.</p>

<p style="text-align: right;">Page 26</p> <p>1 A So what is it that you -- so are you asking -- what is it 2 that you're asking me about these? 3 Q Does that represent a full list of the videos that you have 4 reviewed? 5 A To the best of my recollection, yes. 6 Q Okay. Do you know of any other videos outside of that list 7 that exist? 8 A No, I do not. 9 Q Okay. You believe that's an exhaustive list, to the best of 10 your knowledge? 11 A Yes. 12 Q Okay. 13 A Yes, to the best of my knowledge. 14 Q Can you read the first one for the record? 15 A Video description depicts MDOC officers responding to the 16 confrontation that led to the death of inmate Dustin Szot. 17 And then it says, Recording device, facility camera. 18 Q What's a facility camera? 19 A What is a facility camera? 20 Q Yes. 21 A I believe this, the way they're depicting this, it would be 22 our fixed cameras within the facility. 23 Q Is that what you understand to be the surveillance system? 24 A Yes. 25 Q Okay. All right. What's the second one?</p>	<p style="text-align: right;">Page 28</p> <p>1 A Yes, I do believe so. To the best of my recollection it was. 2 Q Okay. And what's the fourth one? 3 A The fourth one is a third, exact, Depicts the confrontation 4 that led to the death of inmate Dustin Szot and, again, an 5 Electronic Control Device, ECD camera. 6 Q And number five? 7 A Number five, Depicts the confrontation that led to the death 8 of Dustin Szot. MDOC officers responding to that 9 confrontation, and the attempted resuscitation of inmate 10 Dustin Szot, and recording device is facility camera. 11 Q And number six? 12 A Depicts the attempted resuscitation of inmate Dustin Szot; 13 recording device, hand-held camera. 14 Q And number seven? 15 A Depicts the attempted resuscitation of inmate Dustin Szot; 16 iPhone camera. 17 Q Is there an eighth on the list? 18 A Yes, and that's the exact same thing. 19 Q Okay. 20 A Which is the iPhone camera. 21 Q And you would take that to mean two different iPhone camera 22 videos? 23 A If I had to guess, that's what I would take that to mean. 24 Q Do you know if two separate iPhones were used, or if that 25 came from the same one?</p>
<p style="text-align: right;">Page 27</p> <p>1 A The second one, it depicts the confrontation that led to the 2 death of inmate Dustin Szot, and recording device would be 3 electronic controlled device, in parentheses, ECD camera. 4 Q Do you know what that means? 5 A Yes, I do. 6 Q Can you tell me? 7 A It would be -- a better name for it would be a taser; the 8 public would know it as taser. 9 Q Okay. And Corrections Officers have tasers on their duty 10 belt, correct? 11 A Yes, they do. 12 Q And they're not walking around with it recording at all 13 times, are they? Does it have to be deployed in order for it 14 to record? 15 A Yes. 16 MS. VIZACHERO: Can we go off the record for a 17 second. 18 (Off the record discussion.) 19 MS. VIZACHERO: Okay. We'll go back on the record. 20 Q (BY MS. VIZACHERO) So video number two was recorded by a 21 taser? 22 A Yes, according to this list. 23 Q Okay. And what's video number three? 24 A The exact same thing as number two. 25 Q Would that have been from a separate device?</p>	<p style="text-align: right;">Page 29</p> <p>1 A I'm not -- I'm not positively sure on that. 2 Q How do you define surveillance system; what do you take that 3 to mean? 4 A How do I define surveillance system? 5 Q Like the facility's surveillance system. 6 A A body of cameras that overlooks our entire facility. 7 Q Okay. Would those be cameras that are recording every day? 8 A Yes. 9 Q Right? 10 A Yes. 11 Q Okay. So fixed cameras, is that -- 12 A They're stationary cameras. 13 Q Okay. 14 A I don't know that fixed is the right word. 15 Q Stationary works for me. 16 A Okay. 17 Q Do you consider videos from tasers part of the facility's 18 surveillance system? 19 A Yes. 20 Q What about a hand-held camera? 21 A You're asking if the hand-held -- would I consider the 22 hand-held camera part of the facility's surveillance? 23 Q Yes. 24 A Yes, I would. 25 Q And what about an iPhone camera?</p>

<p style="text-align: right;">Page 30</p> <p>1 A Yes.</p> <p>2 Q Are iPhone camera videos reviewed in the Control Center?</p> <p>3 A No, they're not.</p> <p>4 Q How about videos recorded on a taser, that doesn't feed</p> <p>5 into --</p> <p>6 A Right, no, it does not feed into the Control Center.</p> <p>7 Q Nor does a hand-held camera?</p> <p>8 A Like, feed into --</p> <p>9 Q The fixed stationary cameras, someone is in the Control</p> <p>10 Center --</p> <p>11 A Yeah.</p> <p>12 Q -- I'm assuming, all hours of the day --</p> <p>13 A (Witness nodding head.)</p> <p>14 Q -- watching cameras?</p> <p>15 A Right.</p> <p>16 Q Right?</p> <p>17 A Yes.</p> <p>18 Q Okay. Those feeds show up on a screen?</p> <p>19 A Okay.</p> <p>20 Q Right, do you know what I'm saying?</p> <p>21 A Yes, I gotcha. So your question was, do the hand-helds feed</p> <p>22 into the Control Center, and that would be no.</p> <p>23 Q Okay. What are, as you understand it, the purposes of having</p> <p>24 video footage from those three items: iPhones, hand-held</p> <p>25 camera, taser video; why would the Correctional Facility want</p>	<p style="text-align: right;">Page 32</p> <p>1 videos after something happens?</p> <p>2 A That is correct.</p> <p>3 Q Okay. So reviewing -- those videos aren't done to prevent --</p> <p>4 those videos aren't made to prevent an altercation from</p> <p>5 happening, or to respond to an altercation?</p> <p>6 A For the most part, yes.</p> <p>7 Q Okay. Are there people present in any of the one through</p> <p>8 eight, the videos that were made, one through eight, aside</p> <p>9 from Mr. Szot?</p> <p>10 A Yes.</p> <p>11 Q Okay. In all videos?</p> <p>12 A To the best of my knowledge, yes.</p> <p>13 Q Okay. In all videos, both, other prisoners and employees?</p> <p>14 A Ask me -- ask that again.</p> <p>15 Q In all videos, were there -- was there a combination of both</p> <p>16 MDOC employees and other incarcerated persons, other</p> <p>17 prisoners?</p> <p>18 A Yes, if you include Mr. Szot.</p> <p>19 Q Not including Mr. Szot?</p> <p>20 A Then staff, yes.</p> <p>21 Q Okay. But not in every video was there other prisoners?</p> <p>22 A To the best of my knowledge --</p> <p>23 Q We can go through them one-by-one.</p> <p>24 A Okay.</p> <p>25 Q The first one, facility camera?</p>
<p style="text-align: right;">Page 31</p> <p>1 those videos?</p> <p>2 A Why would we want the -- besides -- ask me the question</p> <p>3 again.</p> <p>4 Q Why would the Facility want to have those recordings made?</p> <p>5 A For our own safety.</p> <p>6 Q How does that relate to your safety, if it's -- so the</p> <p>7 recordings are being done in real time, right?</p> <p>8 A Uh-huh.</p> <p>9 Q No one is monitoring them while the recording is being made,</p> <p>10 correct?</p> <p>11 A Uh-huh, uh-huh.</p> <p>12 Q So --</p> <p>13 A And you're talking about -- you're talking about the other --</p> <p>14 Q Hand-helds, iPhones --</p> <p>15 A All right.</p> <p>16 Q -- and the ECD.</p> <p>17 A Uh-huh.</p> <p>18 Q So those three. No one is watching people up to trouble on</p> <p>19 those?</p> <p>20 A Right.</p> <p>21 Q Trouble happens, and then those get turned on?</p> <p>22 A Yes.</p> <p>23 Q Is that a fair way to say it?</p> <p>24 A Yes.</p> <p>25 Q I like it. So there's no -- you're only reviewing those</p>	<p style="text-align: right;">Page 33</p> <p>1 A So to make it easy, I mean, besides probably six, seven and</p> <p>2 eight -- one through five, you're going to have both staff</p> <p>3 and prisoners, and I mean plural. And then six, seven and</p> <p>4 eight, you're going to have to staff, many staff, and</p> <p>5 probably just Dustin Szot.</p> <p>6 Q Okay. Which of the recordings, one through eight, have</p> <p>7 sound?</p> <p>8 A Okay. I would say two, three, four, six, seven, eight.</p> <p>9 Q Are MDOC employees allowed to have their iPhones with them in</p> <p>10 the facility?</p> <p>11 A There are select people that can have an iPhone.</p> <p>12 Q Did this phone come from a person who was authorized to have</p> <p>13 an iPhone?</p> <p>14 A Yes.</p> <p>15 Q Okay. Can you identify that person for me?</p> <p>16 MR. DE BEAR: I'm going to object to the extent</p> <p>17 that you're asking for names involved of the MDOC</p> <p>18 Correctional Officers, and I'll instruct my witness not to</p> <p>19 answer.</p> <p>20 Q (BY MS. VIZACHERO) Are you going to answer, or listen to</p> <p>21 advice of your counsel?</p> <p>22 A I'm going to listen to my counsel.</p> <p>23 Q Okay. Going from there, is there a way to -- okay. So</p> <p>24 there's no sound on facility cameras?</p> <p>25 A No.</p>

<p style="text-align: right;">Page 46</p> <p>1 videos would show that, movement plans.</p> <p>2 Q Would show or are movement plans?</p> <p>3 A I would say they are movement plans.</p> <p>4 Q All of the videos?</p> <p>5 A With the exception of six, seven and eight; to the best of my</p> <p>6 knowledge, I believe one through five would show movement</p> <p>7 plans.</p> <p>8 Q Okay. Would someone need to review the videos in order to</p> <p>9 make that determination?</p> <p>10 A I don't understand, like, where you're coming from.</p> <p>11 Q What if the taser video didn't capture anything?</p> <p>12 A Okay.</p> <p>13 Q Right? What if, for whatever reason, it didn't capture any</p> <p>14 physical person; you'd have to know whether -- you'd have to</p> <p>15 review the video to know whether or not it captured movement,</p> <p>16 right?</p> <p>17 A Yes.</p> <p>18 Q Right?</p> <p>19 A Yes.</p> <p>20 Q All right. Videos one through eight, Security Threat Group</p> <p>21 designations and related documentation, do they constitute</p> <p>22 any of that?</p> <p>23 A They don't capture Security Threat Group information.</p> <p>24 Q Okay.</p> <p>25 A No.</p>	<p style="text-align: right;">Page 48</p> <p>1 A Right.</p> <p>2 Q Okay. Post Orders and security sensitive assignment?</p> <p>3 A And I would say the same thing about that.</p> <p>4 Q What is a sallyport?</p> <p>5 A The sallyport is one of a couple entryways into the prison.</p> <p>6 So have you ever seen on TV where a vehicle will drive into a</p> <p>7 fence, and then you'll have a guy walk underneath the</p> <p>8 vehicle, looking?</p> <p>9 Q Oh, okay.</p> <p>10 A Looking up, like, underneath.</p> <p>11 Q Okay.</p> <p>12 A That's a sallyport.</p> <p>13 Q Got it. What is a Post Order?</p> <p>14 A The best way to describe a Post Order would be, it's the</p> <p>15 instructions on how to do your job, of the job that you are</p> <p>16 assigned.</p> <p>17 MR. DE BEAR: I hate to do this, but I'd like to</p> <p>18 ask to take a quick break. There's something I have to check</p> <p>19 into.</p> <p>20 MS. VIZACHERO: That's fine.</p> <p>21 MR. DE BEAR: Can we go off the record?</p> <p>22 MS. VIZACHERO: Yeah.</p> <p>23 (Off the record discussion.)</p> <p>24 (Whereupon, Mr. Jamison entering deposition.)</p> <p>25 MS. VIZACHERO: Back on the record. Do you want to</p>
<p style="text-align: right;">Page 47</p> <p>1 Q Exempt Policy Directives and Operating Procedures?</p> <p>2 A They do capture Operating Procedures that are exempt.</p> <p>3 Q The exempt policy, or Policy Directives and Procedures, are</p> <p>4 those paper documents?</p> <p>5 A Yes.</p> <p>6 Q Okay. So if I wanted to get my hands on those through FOIA,</p> <p>7 it's not going to happen?</p> <p>8 A To the best of my knowledge, no.</p> <p>9 Q They're exempt?</p> <p>10 A They're exempt.</p> <p>11 Q I don't get it?</p> <p>12 A Right.</p> <p>13 Q Okay. Is your point that saying -- I don't want to put words</p> <p>14 in your mouth. Policies and procedures are tangible paper</p> <p>15 documents, right?</p> <p>16 A Yes, yes.</p> <p>17 Q Okay. And videos aren't those, the tangible paper documents;</p> <p>18 they're not recording -- it's not video footage of the paper</p> <p>19 documents?</p> <p>20 A It's a depiction of the paper document.</p> <p>21 Q And --</p> <p>22 A Is that the right word, depiction of the -- yeah. It shows</p> <p>23 our processes.</p> <p>24 Q But it's not the tangible documents, themselves, if someone</p> <p>25 took that to mean the documents?</p>	<p style="text-align: right;">Page 49</p> <p>1 put a statement of the record?</p> <p>2 MR. JAMISON: Yes.</p> <p>3 MS. VIZACHERO: Okay.</p> <p>4 MR. JAMISON: Eric Jamison, appearing on behalf of</p> <p>5 the Department of Corrections.</p> <p>6 MS. VIZACHERO: Thank you.</p> <p>7 Q (BY MS. VIZACHERO) Inspector, can you define, tell me what a</p> <p>8 monitoring device is?</p> <p>9 A Can I tell you what a monitoring device is?</p> <p>10 Q Yes.</p> <p>11 A I would say it could be a lot of different things.</p> <p>12 Q Okay. In the context of videos recorded within the Michigan</p> <p>13 Department of Corrections --</p> <p>14 A Okay.</p> <p>15 Q -- Bellamy Creek Facility?</p> <p>16 A A monitoring device that could be used within prison would be</p> <p>17 our phone system, JPay.</p> <p>18 Q Okay. What about with videos?</p> <p>19 A Fixed video, the tasers, you know, record number one through</p> <p>20 eight, everything in that, basically; a hand-held camera, I</p> <p>21 mean, it's a device we could use, potentially, within prison</p> <p>22 to monitor.</p> <p>23 Q So we talked about this earlier, and you described a</p> <p>24 difference between videos that go to the Control Center</p> <p>25 versus videos that don't?</p>

<p style="text-align: right;">Page 50</p> <p>1 A Right.</p> <p>2 Q Is someone monitoring the videos in the Control Center?</p> <p>3 A Well, the facility cameras, yes.</p> <p>4 Q Yes.</p> <p>5 A Yes.</p> <p>6 Q Is someone monitoring, in the Control Center, two, three --</p> <p>7 what was it. Two, three, five, seven, eight, I believe,</p> <p>8 those videos? Those aren't streaming, right, in the Control</p> <p>9 Center, we discussed that?</p> <p>10 A No. Two, three, four, six, seven and eight are not</p> <p>11 streaming.</p> <p>12 Q Okay. So someone is not monitoring them while the recording</p> <p>13 is taking place?</p> <p>14 A Correct.</p> <p>15 Q Okay. Just a few minor last things. You mentioned earlier</p> <p>16 that a few of the items, one through eight, could constitute</p> <p>17 movement plans. Do you remember that?</p> <p>18 A Yes.</p> <p>19 Q Okay. If the audio from all of the recordings that don't</p> <p>20 include the facility videos, because you informed me that</p> <p>21 those don't have audio --</p> <p>22 A The facility cameras, yep. I mean, yes.</p> <p>23 Q So just the taser recordings, the iPhone recordings, and the</p> <p>24 hand-held camera --</p> <p>25 A Have audio.</p>	<p style="text-align: right;">Page 52</p> <p>1 Q (BY MS. VIZACHERO) Okay. Do you know of any instrument</p> <p>2 used, or possessed by MDOC personnel that's considered a</p> <p>3 personal protection device?</p> <p>4 A Okay. I'm thinking personal protection. So I think what</p> <p>5 you're referring to -- I believe what you're referring to is,</p> <p>6 like, a PAL, a Personal Alarm Locator, and I would --</p> <p>7 MR. JAMISON: I'll just say this on the record.</p> <p>8 You don't have to try to guess what she's asking.</p> <p>9 THE WITNESS: Okay.</p> <p>10 MR. JAMISON: If you don't understand what she's</p> <p>11 asking, just tell her you don't understand and she can</p> <p>12 rephrase the question.</p> <p>13 THE WITNESS: Okay. Yeah, I'm not sure that I'm</p> <p>14 completely understanding you.</p> <p>15 Q (BY MS. VIZACHERO) Okay. Have any of the videos, one</p> <p>16 through eight, been determined to be confidential by a</p> <p>17 Hearing Officer?</p> <p>18 A I have no idea.</p> <p>19 Q Conducted at a hearing pursuant to 791.252?</p> <p>20 A Yeah, I'm not familiar.</p> <p>21 Q Okay. Would any of the audio or video recordings one through</p> <p>22 eight constitute passwords?</p> <p>23 A Would they need a password?</p> <p>24 Q Nope, are the videos passwords?</p> <p>25 A No.</p>
<p style="text-align: right;">Page 51</p> <p>1 Q -- have audio. Would just the audio recordings constitute</p> <p>2 movement plans?</p> <p>3 A If you took away the pictures?</p> <p>4 Q Yeah.</p> <p>5 A Would audio recordings -- yes, they could. I'll leave it at</p> <p>6 that.</p> <p>7 Q They could also not?</p> <p>8 A No, I was going to elaborate, but then I decided not to.</p> <p>9 Q Do the audio recordings here constitute movement plans?</p> <p>10 A Yes, they do. The audio recordings that are within the two,</p> <p>11 three and four could constitute how we move, yes, our</p> <p>12 movement plans.</p> <p>13 Q You're saying could?</p> <p>14 A Yeah. No, they do, they constitute -- so when, like in the</p> <p>15 event of an incident, we have, you know, protocols, and those</p> <p>16 protocols are heard on the ECDs, you know, how we move.</p> <p>17 Q What constitutes a personal protection device?</p> <p>18 A What constitutes a personal protection device?</p> <p>19 Q Yes.</p> <p>20 A I'm not sure that I'm understanding your question, like, a</p> <p>21 personal protection device?</p> <p>22 MR. JAMISON: If you can't answer, you can't</p> <p>23 answer.</p> <p>24 THE WITNESS: I'm not sure -- I don't understand</p> <p>25 exactly what you're asking me.</p>	<p style="text-align: right;">Page 53</p> <p>1 Q Perfect. Are they passes?</p> <p>2 A Are they passes?</p> <p>3 Q Yeah. Do you have passes within Bellamy Creek, or keys? You</p> <p>4 said you have control over the key and tool room?</p> <p>5 A Uh-huh. Are the -- I'm not understanding you. I am so</p> <p>6 sorry.</p> <p>7 Q I have a whole long list of things that trigger not being</p> <p>8 able to release video under certain exemptions, and I'm just</p> <p>9 trying to cross off the ones that totally don't apply. So if</p> <p>10 you think I sound crazy, it's because it's completely</p> <p>11 opposite from videos, so you don't have to try and make sense</p> <p>12 of it.</p> <p>13 A Okay.</p> <p>14 Q You can be like, No, clearly videos aren't keys. Perfect.</p> <p>15 A No, videos are not keys.</p> <p>16 Q Great.</p> <p>17 A Sorry.</p> <p>18 Q Not passes?</p> <p>19 A They're not passes.</p> <p>20 Q Not passwords, we discussed that?</p> <p>21 A Right.</p> <p>22 Q Okay. Codes and combinations?</p> <p>23 A No, they are not, specifically, codes and combinations.</p> <p>24 Q Perfect. I like it.</p> <p>25 A Okay.</p>

EXHIBIT J

MICHIGAN DEPARTMENT OF CORRECTIONS POLICY DIRECTIVE		EFFECTIVE DATE 03/31/2016	NUMBER 01.06.110
SUBJECT FREEDOM OF INFORMATION ACT - ACCESS TO DEPARTMENT PUBLIC RECORDS		SUPERSEDES 01.06.110 (07/01/2015)	
		AUTHORITY 442 PA 1976, MCL 15.231 et seq., MCL 4.359, 28.730, 423.504, 762.14, 771.14, 780.623, 791.229, 791.230a; Administrative Rule 28.5208, Booth v MDOC, Court of Claims, No. 324319, June 9, 2015	
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POLICY STATEMENT:

All written requests for public records in the Department's possession shall be processed under the Michigan Freedom of Information Act (FOIA) as set forth in this policy.

RELATED POLICY:

02.01.140 Human Resource Files

POLICY:

DEFINITIONS

- A. Public Record - A writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created. This includes but is not limited to photographs, photocopies, drawings, video and audio tapes, computer data or documents retained on a computer, CD, DVD, and any other means of recording or retaining information. It does not include computer software.

GENERAL INFORMATION

- B. The FOIA requires full disclosure of public records unless those records are exempted under the Act. All public records in the Department's possession are subject to FOIA but may be exempt from disclosure. This includes public records in the Department's possession that are created by another agency (e.g., Department of Community Health, Federal Bureau of Prisons, jails) or by an entity under contract with the Department. However, public records that are possessed only by another agency or an entity under contract with the Department are not subject to a FOIA request received by the Department.
- C. Except if the request is from a prisoner and as set forth in Paragraph D, any written request for a public record is considered to be a FOIA request unless the requestor specifically states in writing that the request is not being made under FOIA. A written request for information also is considered to be a FOIA request if the request indicates it is being submitted under FOIA. A written request includes a writing transmitted by facsimile machine, e-mail, or any other electronic means.
- D. The following are generally not considered to be FOIA requests unless the requestor specifically states in writing that the request is being made under FOIA:
1. A request from a federal, state, or local governmental agency, including a court or law enforcement agency. A request from the Department of Attorney General shall be referred to the appropriate Litigation Coordinator.
 2. A discovery request pertaining to a lawsuit (e.g., Request for Production of Documents). All discovery requests shall be referred to the appropriate Litigation Coordinator as set forth in PD 02.01.102 "Litigation - Department and Employee Responsibilities."
 3. A request for employee personnel information which the employee has authorized to be released (e.g., employment verification to a lending institution or prospective employer). Such requests shall be referred to the appropriate Human Resource office for processing. Employees may have access to their personal records in accordance with Civil Service rules.

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4. A request from a collective bargaining unit made pursuant to its contract. Such requests shall be referred to the appropriate Human Resource office for processing.
 5. Documents required to be produced by a subpoena or other court order. Such requests shall be referred to the appropriate Litigation Coordinator.
 6. A request from an educational institution for a transcript of a prisoner's education record.
 7. A request from a news media representative unless the request is for copies of several Department documents or unless the request states that it is a FOIA request. The Public Information Officer or designee, through the Department's FOIA Coordinator, shall be consulted on any questions which may arise in processing a request from a news media representative.
 8. A request from legislative staff unless the request is for copies of several Department documents. The Public Information Officer or designee, through the Department's FOIA Coordinator, shall be consulted on any questions which may arise in processing a request from legislative staff.
- E. Department employees are entitled to make requests under FOIA. However, such requests shall not be made while on Department time or while using Department resources, including its computers and office supplies. Any known misuse of Department time or resources is to be reported to the employee's supervisor.

PRISONER REQUESTS FOR DOCUMENTS

- F. Under MCL 15.231(2) and 15.232(c), prisoners are not entitled to make FOIA requests. Prisoners also have no right to appeal or file suit under FOIA if a request for public records is denied. Therefore, prisoner requests for public records shall not be processed as FOIA requests but instead responded to by staff in the same manner as any other correspondence, with requested documents provided as appropriate.
- G. Prisoners may receive copies of documents about their medical care as set forth in OP 03.04.108-B "Prisoner Access to Medical Records."
- H. Upon request, a prisoner shall be provided with a copy of the hearing investigation compiled for his/her Class I misconduct hearing, except for those documents which have been determined by the hearing officer to be confidential. Such requests shall be made to the hearing investigator at the facility where the hearing occurred.

FOIA COORDINATORS

- I. The Manager of the FOIA Section in the Office of Legal Affairs is the FOIA Coordinator for the Department. The Department's FOIA Coordinator or designee is responsible for responding to requests received in Central Office and requests for documents in prisoner files in storage, except for the prisoner health record. Requests for prisoner health records are to be submitted to Duane L. Waters Health Center Medical Records at 3857 Cooper Street, Jackson, MI 49201.
- J. Local FOIA Coordinators shall be designated to act on behalf of the Department FOIA Coordinator to accept and process FOIA requests received at the following locations:
 1. At each Correctional Facilities Administration (CFA) institution, as identified by the Warden. A separate FOIA Coordinator may be identified for the Record Office and Human Resource Office.
 2. At each CFA Assistant Deputy Director's (ADD'S) office in Jackson and Kinross.
 3. At each Bureau of Health Care Services (BHCS) location, the Jackson Health Care Office, the Kinross Health Care Office and Mental Services Office as identified by the appropriate Assistant Health Services Administrator and at Duane L. Waters Health Center (DWH) as identified by the Warden of the Charles E. Egeler Reception and Guidance Center (RGC). This shall include a local FOIA coordinator for requests for records in prisoner/parolee health records in storage. Other local health care FOIA coordinators may be identified as needed by the BHCS Administrator or designee.
 4. At each Field Operations Administration (FOA) Regional and Area Office, as identified by the appropriate

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Regional Administrator or Area Manager.

5. At any Residential Reentry Program facility, as identified by the CFA Deputy Director or designee.
- K. Each FOIA Coordinator shall maintain monthly statistics of the number of FOIA requests received and processed, including the amount of fees billed and collected. The local FOIA Coordinator shall forward the statistics to the Department FOIA Coordinator or designee at the end of each calendar year. The Department's FOIA Coordinator shall ensure Department-wide statistical reports are compiled at least annually.
- L. Each FOIA Coordinator shall maintain a copy of all FOIA requests received, responses sent and all responsive records. These documents shall be retained in accordance with the Department's Retention and Disposal Schedule, one calendar year from the date of the last action. Thereafter, provided that there is no pending litigation regarding the FOIA request, the records will be destroyed.
- M. A Response to A Request for Public Records - FOIA form (CSH-479) shall be used to respond to all FOIA requests unless otherwise directed by the Department FOIA Coordinator or designee. A written notice responding to the request shall be provided to address issues not covered by the form. Anytime fees are assessed, the fees will be delineated on a separate FOIA Fee Calculation Form (CFJ-564).
- N. The local Litigation Coordinator shall be contacted to determine if there is pending litigation regarding the subject of any FOIA request. If there is pending litigation, the Department FOIA Coordinator shall be contacted for directions regarding how to proceed. A copy of the request and the response shall be forwarded to the local Litigation Coordinator as set forth in PD 02.01.102 "Litigation - Department and Employee Responsibilities."
- O. Questions regarding FOIA requests shall be directed to the Department's FOIA Coordinator or designee.

PROCESSING FOIA REQUESTS

- P. A FOIA request received by an employee shall be referred before the end of the business day to the FOIA Coordinator at the employee's work site. The FOIA Coordinator shall respond to the request within five business days after receipt by the Department. A request received by facsimile machine or e-mail is considered received on the next business day following the date of transmission. In the response, the FOIA Coordinator shall either:
 1. Grant the request;
 2. Deny the request;
 3. Grant the request in part and deny the request in part; or
 4. Take a ten business day extension. In such cases, the requestor shall be notified in writing of the reason for the extension and the expiration date of the extension. The MDOC cannot issue more than one notice of extension.
- Q. The FOIA Coordinator shall review the request and determine which records in the Department's possession are responsive to the FOIA request. The exact name of the record is not required to be provided if it can reasonably be determined by the description provided what is being requested. A document is not required to be created to respond to a FOIA request if the record requested does not exist.
- R. The FOIA Coordinator shall review the documents responsive to the request to ensure information exempt from disclosure is not provided. If only a portion of a document is exempt, the exempt portion is to be redacted and only the non-exempt portion of the document disclosed. The FOIA Coordinator shall ensure redacted portions of a document are not legible on the copy provided.
- S. Only those exemptions authorized under FOIA shall be used. If more than one exemption applies to a particular request, all relevant exemptions should be indicated when responding to a FOIA request unless the document is statutorily exempt from disclosure. An explanation regarding what was exempted and the reason for the exemption shall be provided.
- T. If the MDOC does not respond to a written request in a timely manner, it shall reduce the charges for labor costs by 5% for each day the response is late with a maximum 50% reduction if the late response was willful and

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intentional or if the written request included language that conveyed a request for information within the first 250 words of the written document. For any questions regarding fee calculations, contact the Department's FOIA Coordinator.

REQUESTS FOR EMPLOYEE PERSONNEL RECORDS

- U. Pursuant to MCL 791.230a, the home addresses, home telephone numbers, clock numbers, employee identification numbers and personnel records of Department employees are exempt from disclosure under FOIA. For purposes of this exemption, personnel records include all records maintained regarding an employee as a result of employment with the Department. This includes but is not limited to personnel files, investigatory records relating to an employee, AIPAS records, certain complaints filed by or against an employee, time and attendance records, and work location.

REQUESTS FOR INFORMATION IN FILLING DEPARTMENT POSITIONS

- V. Although most records retained by the Department regarding the filling of Department positions are exempt from disclosure, each request must be reviewed to determine what records and/or information may be disclosed. Job posting information belongs to the Department of Civil Service. Information that may be released under FOIA unless otherwise exempt from disclosure (e.g., telephone numbers, home addresses, Social Security numbers) includes but is not limited to the following:
1. The names of all applicants.
 2. The resume of the requestor, assuming s/he applied for the position (Does not apply if a current MDOC employee).
 3. The names of those applicants interviewed for the position, ensuring they are not presented in the order in which they were ranked (Does not apply if a current MDOC employee).
 4. The job posting.

FOIA EXEMPTIONS

- W. The exemptions allowed under FOIA are expressed in general language which must be applied to the specific public record requested. It is impractical to list all information or documents that may be exempt from disclosure. Therefore, local FOIA Coordinators must be familiar with all FOIA exemptions. Often, more than one exemption may apply. FOIA responses must include all applicable exemptions.

General Exemptions

- X. The following are some of the FOIA exemptions which are most frequently taken and examples of information to which the exemptions may apply:
1. Information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy. Section 13 (1)(a). The purpose of exemptions is to balance the policy of full disclosure with any significant privacy interests favoring nondisclosure.

Examples: Home addresses and home telephone numbers; emergency contact information; driver license numbers; Social Security numbers; victims' requests to receive information pursuant to PD 01.06.120 "Victim Notification" and the Department's response unless the requestor is the victim; fingerprint cards; resumes of unsuccessful job applicants except for the resume of the requestor.
 2. A public record that, if disclosed, would prejudice the ability to maintain the physical security of a correctional facility unless the public interest in disclosure outweighs the public interest in non-disclosure. Section 13(1)(c).

Examples: Blueprints or maps of facility grounds; names of informants; mobilization scenarios and critiques; Special Problem Offender Notice; movement plans; Security Threat Group designations and related documentation; exempt policy directives and operating procedures; post orders for security sensitive assignment (e.g., sallyport); descriptions of security fencing; description of operation of personal

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protection devices; videos that would disclose capability of any monitoring device; document determined to be confidential by a hearing officer at a hearing conducted pursuant to MCL 791.252.

3. Information or records subject to the physician-patient privilege, the psychologist-patient privilege, or other privilege recognized by statute or court rule. Section 13(1)(h).

Examples: Psychiatric and psychological information unless a release is provided; medical records; however, the request shall be forwarded to the Health Unit Manager for processing under the Medical Records Access Act if a release is provided.

4. Communications and notes of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency decision of policy or action. This exemption only applies if the public interest of encouraging frank communications between officials and employees clearly outweighs the public interest in disclosure. Section 13(1)(m).

Examples: A Joint Evaluation Committee (JEC) recommendation before the Department of Technology, Management and Budget award is made.

5. 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. Section 13(1)(u).

Examples: Movement plans; exempt policy directives and operating procedures; post orders for security sensitive assignment (e.g., sallyport); descriptions of security fencing; description of operation of personal protection devices; videos that would disclose capability of any monitoring device.

6. Records or information relating to a civil action in which the requesting party and the Department are parties. Section 13(1)(v). This includes civil court actions in which the Department is representing an employee being sued.

7. Information or records that would disclose the Social Security number of an individual. Sections 13(1)(d), specifically MCL 445.85 and 13 (1)(w). This information shall not be disclosed even if a release is provided.

Statutory Exemptions

- Y. Section 13(1)(d) of FOIA also permits exemption of documents or information specifically exempted from disclosure by another statute. When using this exemption, it is necessary to identify the specific statute authorizing the exemption. The following are examples of information exempt under Section 13(1)(d) and the applicable statute:

1. Records and reports of investigations made by a probation agent, including presentence investigation reports. (MCL 791.229).
2. The address and telephone number of a victim who has requested to receive information pursuant to PD 01.06.120 "Victim Notification." (MCL 780.769).
3. Victim statements submitted for consideration by the Parole Board pursuant to MCL 780.771.
4. Any information of the disposition of criminal charges and assignment as a youthful trainee unless youthful trainee status is revoked and the offender is subsequently convicted of the offense. (MCL 762.14).
5. Any information received through the Law Enforcement Information Network (LEIN), including records of criminal charges which did not result in a conviction. (MCL 28.214).
6. Quality assurance reviews (e.g., "peer reviews") conducted by BHCS. (MCL 331.533).
7. A report prepared and recommendations made by the Office of the Legislative Corrections Ombudsman and submitted to the Legislative Council pursuant to an investigation. (MCL 4.359).

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8. A record ordered to be set aside ("expunged") if the Department has received notice of the set aside. (MCL 780.623).
9. Documents and information pertaining to an offender's registration and change of address notification pursuant to the Sex Offenders Registration Act. (MCL 28.730).
10. Information regarding the diagnosis, prognosis, or treatment of an offender involved in a substance abuse education or treatment program, unless a release is provided by the offender which specifically authorizes release of this information. (48 USC 290dd-3).

FEES

- Z. All FOIA requestors shall be charged 10 cents per page for each written document provided plus the actual cost of postage unless expedited shipping or insurance is stipulated by the requestor. The fee shall be limited to actual mailing costs and to the actual incremental cost of duplication or publication including labor, the cost of the search, examination, review, and the deletion and separation of exempt from non-exempt information. The actual cost of duplication shall be charged for copies of non-written documents, such as computer discs and non-paper physical media. If a portion of a document must be redacted and the document recopied prior to production, the requestor shall be charged only for the copy provided.
- AA. A fee may not be charged for the cost of search, review, examination, and the separation of exempt from non-exempt information unless failure to charge the fee would result in an unreasonably high cost to the Department. If assessed, the fee shall be charged at the hourly wage of the lowest-paid employee capable of searching for, locating and examining the public records in the particular instance regardless of whether that person is available or who actually performs the labor. The hourly wage includes the cost of up to 50% of the base rate paid by the State to cover or partially cover the cost of fringe benefits. Overtime wages shall not be included in the calculation of labor costs unless overtime is specifically stipulated by the requestor. Labor costs are to be estimated and charged in increments of 15 minutes or more, with all partial time rounded down. Such fees are not to be charged without first contacting the Department's FOIA Coordinator or designee for approval and direction on how to proceed.
- BB. The Department may waive or reduce fees if the Department determines it is in the public interest to do so or if providing the requested documents primarily benefits the general public for reasons identified by the requestor. A fee that totals \$10.00 or less, including postage, shall be waived. Other fees shall be waived or reduced pursuant to this paragraph only with approval of the Department FOIA Coordinator or designee.
- CC. A requestor shall not be charged for the first \$20.00 of fees assessed per request, including any fees waived under Paragraph BB for either of the following:
 - (a) Upon submission of a current affidavit verifying that s/he is receiving public assistance or, if not receiving public assistance, sufficiently stating facts showing an inability to pay the cost due to indigency. If the requestor is eligible for a requested discount, the public body shall fully note the discount on the Fee Calculation form. If the requestor is ineligible for the discount, the public body shall inform the requestor specifically of the reason for the ineligibility in the public body's written response. An individual is ineligible for this fee reduction if any of the following apply:
 - The individual requests the information in conjunction with outside parties who are offering or providing payment or other remuneration to the individual to make the request. The MDOC may require a statement by the requestor in the affidavit that the request is not being made in conjunction with outside parties in exchange for payment or other remuneration.
 - The requestor has previously received discounted copies of public records under this subsection from the MDOC twice during the calendar year.
 - (b) A nonprofit organization formally designated by the State to carry out activities and the protection and advocacy for individuals with mental illness if the requestor meets all of the following requirements:
 - Is made directly on behalf of the organization or its clients.
 - Is made for a reason wholly consistent with the mission and provisions of those laws under Section 931 of the Mental Health Code, 1974 PA 258, MCL 330.1931.

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- Is accompanied by documentation of its designation by the State, if requested by the public body.

Questions regarding whether fees should be waived pursuant to this paragraph are to be directed to the Department's FOIA Coordinator or designee.

- DD. Whenever a fee is charged, the FOIA response shall specify the amount owed, the Department's best efforts estimate of how long it will take to provide the records to the requestor and indicate that the records will be provided after payment is received in full. If the amount owed exceeds \$50.00, exclusive of any waived amounts, a 50% good faith deposit may be required before processing begins. Once the good faith deposit is received, the request shall be processed. Upon completion of processing, the requestor shall be billed for the balance owed, which must be paid before the documents are provided to the requestor. A requestor who does not pay the balance owed will not be provided with the documents requested.

INSPECTION

- EE. When inspection of public records is requested in writing under FOIA, a reasonable opportunity for inspection of the non-exempt records must be allowed during normal business hours. The local FOIA Coordinator must ensure that any exempt information is redacted prior to the inspection.
- FF. A fee shall be charged a requestor to inspect public records only as set forth below:
1. For the search, review, examination, and the separation of exempt from non-exempt information as set forth in Paragraph AA.
 2. With approval of the Department FOIA Coordinator or designee, for the time spent by staff monitoring an inspection that is necessary to protect the original record and to prevent excessive and unreasonable interference with the discharge of Department functions. The fee shall be charged at the hourly rate of the lowest-paid employee capable of monitoring the inspection. The hourly wage includes the cost of up to 50% of the base rate paid by the State to cover or partially cover the cost of fringe benefits.
 3. With approval of the Department FOIA Coordinator or designee, for copies necessary to protect the original record as provided for under Section 3(3) of FOIA, MCL 15.233.
 4. For a copy made in order to redact a portion of the original that is exempt.

APPEALS UNDER FOIA

- GG. A requestor whose FOIA request has been denied in full or in part may appeal the denial to the Director. The appeal must be submitted in writing and is to be mailed to attention of the Administrator of the Office of Legal Affairs. The appeal must be specifically identified as a FOIA appeal and state the reasons for reversal of the denial. The Director will respond to the appeal within 10 business days.
- HH. A requestor may appeal the Department's final determination to deny a FOIA request by commencing an action in the Court of Claims within 180 calendar days after that final determination is made.
- II. A requestor may appeal the FOIA fees by submitting a written appeal for a fee reduction that specifically states the word "appeal" and identifies how the required fee exceeds the amount permitted under the public body's available procedures/guidelines. The appeal must be submitted in writing and is to be mailed to attention of the Administrator of the Office of Legal Affairs. The Director will respond to the appeal within 10 business days.
- JJ. A requestor may commence a civil action in the Court of Claims for a fee reduction only after having gone through the Department's fee appeal process. The action must be filed within 45 days after receiving the final determination from the Director.
- KK. For either appeal, the Director may, under unusual circumstances, issue a written notice taking a 10 business day extension in order to respond to the appeal.

PROCEDURES

- LL. Wardens and the FOA Deputy Director shall ensure that procedures are developed as necessary to implement

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requirements set forth in this policy directive within 60 calendar days after the effective.

AUDIT ELEMENTS

MM. A Primary Audit Elements List has been developed and is available on the Department's Document Access System to assist with self-audit of this policy pursuant to PD 01.05.100 "Self-Audits and Performance Audits."

APPROVED: HEW 03/28/2016

EXHIBIT K

2009 WL 1782691

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES
BEFORE CITING.

UNPUBLISHED
Court of Appeals of Michigan.

Frank LAWRENCE, Jr., Plaintiff-Appellant,
v.
CITY OF TROY, Defendant-Appellee.

Docket No. 289509.

|
June 23, 2009.

West KeySummary

1

Records

 [Personal Privacy Considerations in General;](#)
[Personnel Matters](#)

Police department improperly denied the Freedom of Information Act (FOIA) request by the brother of a driver who was issued a traffic citation. Police department claimed that it could permissibly exempt disclosure of information under Michigan statute based on its personal nature and would constitute a clearly unwarranted invasion of the individuals' privacy. Police department failed to provide any evidence, other than perfunctory assertions that brother's FOIA request sought intimate, embarrassing, private or confidential information. [M.C.L.A. § 15.243\(1\)\(a\)](#).

[Cases that cite this headnote](#)

Oakland Circuit Court; LC No.2008-095176-CZ.

Before: [BORRELLO](#), P.J., and [METER](#) and [STEPHENS](#), JJ.

Opinion

PER CURIAM.

*1 Plaintiff appeals as of right from a circuit court order granting summary disposition for defendant in this action under the Freedom of Information Act (FOIA), [MCL 15.231 et seq.](#) For the reasons set forth in this opinion, we reverse and remand for further proceedings.

Plaintiff filed a FOIA request stemming from a traffic citation issued to his brother, Thomas John Lawrence, for failing to provide proof of insurance and failing to change the address on his driver's license. Plaintiff sent a FOIA request to the Troy Police Department requesting the following information:

1. The full name of the officer who issued citation # 733389. Please also include the full name of the second officer who was at the scene;
2. Any and all voice or video recordings of the time directly before, during, and after the citation was issued. This should include, but not be limited to, any voice or video records taken of Thomas Lawrence, as well as any voice or video records depicting one or both of the two officers described in # 1 above, directly before, during, and after the citation was issued;
3. Any and all radio, cellular or text transmissions between the two officers described in # 1 above, directly before, during, and after the citation was issued. This should include, but not limited to [sic], any radio transmissions to the Troy Police Station;
4. Any records indicating that one or both of the officers described in # 1 above, between 6:00pm and 7:00pm, accessed or attempted to access information from a database operated by the Michigan Secretary of State as to whether Thomas Lawrence or his vehicle had valid insurance;
5. Any and all records that indicate whether one or both of the officers described in # 1 above are subject to any guidelines, goals, or expectations as to how many traffic citations they must issue in a given period (i.e., a quota);
6. Any and all records relating to whether one or both of the officers described in # 1 have ever been subject to any discipline or disciplinary proceedings for misconduct, misfeasance and/or malfeasance, including whether the officer(s) has ever been sued for official misconduct (i.e., civil rights claims under [42 U.S.C. §](#)

1983). [FOIA Request.]

Two days later, on October 6, 2008, defendant denied plaintiff's request, stating:

The City of Troy Police Department has recently received your Freedom of Information Act request. Since that request is for reports or information related to a criminal charge or a civil infraction (traffic ticket) pending with the City of Troy, your letter should be directed to either the Troy City Attorney's Office or the Oakland County Prosecutor's Office, depending on which of those offices is prosecuting the matter.

We are denying your FOIA request as exempt under MCLA 15.243(1)(D)....

Shortly thereafter, plaintiff filed this action alleging that defendant improperly denied his FOIA request. Plaintiff filed a motion for summary disposition arguing that he was entitled to disclosure of the requested information. Defendant requested summary disposition in its favor under MCR 2.116(I)(2). On December 1, 2008, the trial court denied summary disposition for plaintiff and granted summary disposition for defendant without hearing oral argument. The trial court opined that plaintiff's request appears to be an attempt to circumvent the discovery preclusion in civil infraction actions set forth in MCR 2.302(A)(3). The trial court further opined that the information sought is otherwise exempt, stating:

*2 MCL 15.243(1)(b) provides an exemption for investigating records compiled for law enforcement purposes, to the extent that disclosure as a public record interferes with law enforcement proceedings and would constitute an unwarranted invasion of personal privacy. Here, the information sought implicates personal information of officers and witnesses, and police investigation techniques and guidelines. Accordingly, Plaintiff is not entitled to damages based on his claim of "arbitrary and capricious" acts.

Therefore, the trial court granted summary disposition for defendant pursuant to MCR 2.116(I)(2).

Plaintiff argues that the trial court erred by granting summary disposition for defendant under MCR 2.116(I)(2). A "trial court properly grants summary

disposition to the opposing party under MCR 2.116(I)(2) if the court determines that the opposing party, rather than the moving party, is entitled to judgment as a matter of law." *Washburn v. Michailoff*, 240 Mich.App. 669, 672, 613 N.W.2d 405 (2000). Further, in FOIA cases, this Court reviews de novo a trial court's legal determinations and reviews for clear error a trial court's factual findings supporting the court's decision. *Herald Co., Inc. v. Eastern Michigan Univ. Bd. of Regents*, 475 Mich. 463, 471-472, 719 N.W.2d 19 (2006). This Court must defer to the trial court's factual findings unless it is left with a definite and firm conviction that a mistake was made. *Id.* at 472, 719 N.W.2d 19. Finally, when reviewing a decision within the trial court's discretion, this Court must affirm unless the decision falls outside the principled range of outcomes. *Id.*

MCL 15.231(2) articulates the purpose of the FOIA. That provision states:

It is the public policy of this state that all persons, except those persons incarcerated in state or local correctional facilities, 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, consistent with this act. The people shall be informed so that they may fully participate in the democratic process.

"Michigan courts have interpreted the policy of the FOIA as one of full disclosure of public records unless a legislatively created exemption expressly allows a state agency to avoid its duty to disclose the information." *Messenger, supra* at 531. Exemptions to disclosure under MCL 15.243 of the FOIA are narrowly construed, and the party seeking to invoke an exemption has the burden of demonstrating its applicability. *Taylor v. Lansing Bd. of Water & Light*, 272 Mich.App. 200, 204-205, 725 N.W.2d 84 (2006); *Messenger, supra* at 532. "Whether requested information fits within an exemption from disclosure under FOIA is a mixed question of fact and law[.]" *Taylor, supra* at 205, 725 N.W.2d 84.

Plaintiff argues that the trial court essentially relied on the exemption under MCL 15.243(1)(v) in granting summary disposition for defendant. He contends that this exemption is inapplicable because plaintiff and defendant are not involved in any other litigation and this Court in *Taylor, supra*, rejected the notion that this provision prohibits a

person from obtaining information by proxy. [MCL 15.243\(1\)\(v\)](#) provides:

*3 (1) A public body may exempt from disclosure as a public record under this act any of the following:

* * *

(v) Records or information relating to a civil action in which the requesting party and the public body are parties.

Plaintiff correctly contends that this exemption is inapplicable because, under the plain language of [MCL 15.243\(1\)\(v\)](#), plaintiff is not seeking information regarding a civil action in which plaintiff and defendant are parties. Plaintiff also correctly argues that *Taylor, supra*, does not preclude him from seeking information regarding a civil action between defendant and plaintiff's brother. In *Taylor, supra* at 206-207, 725 N.W.2d 84, this Court held that a literal interpretation of [MCL 15.243\(1\)\(v\)](#) allows "a party to obtain information by proxy that he or she would otherwise not be entitled to receive through FOIA[.]" Therefore, [MCL 15.243\(1\)\(v\)](#) would not prohibit plaintiff from obtaining information from defendant through a FOIA request that the provision would prohibit plaintiff's brother from obtaining himself.¹

Despite the foregoing, the trial court did not rely on [MCL 15.243\(1\)\(v\)](#) in granting summary disposition for defendant and defendant did not rely on that exemption in denying plaintiff's request. Rather, the trial court relied in part on [MCR 2.302\(A\)\(3\)](#), which pertains to discovery in civil infraction actions. The trial court opined that plaintiff's request was an attempt to circumvent the discovery preclusion in civil infraction actions enunciated in that court rule. [MCR 2.302\(A\)](#) provides:

(A) Availability of Discovery.

(1) After commencement of an action, parties may obtain discovery by any means provided in subchapter 2.300 of these rules.

(2) In actions in the district court, no discovery is permitted before entry of judgment except by leave of the court or on the stipulation of all parties. A motion for discovery may not be filed unless the discovery sought has previously been requested and refused.

(3) Notwithstanding the provisions of this or any other rule, *discovery is not permitted* in actions in the small claims division of the district court or *in civil infraction actions*. [Emphasis added.]

In *Central Michigan Univ. Supervisory-Technical Ass'n MEA/NEA v. Central Michigan Univ. Bd. of Trustees*, 223 Mich.App. 727, 730, 567 N.W.2d 696 (1997), this Court held that the "FOIA does not conflict with the court rules governing discovery, nor does it supplement or displace them." *Taylor, supra* at 205, 725 N.W.2d 84, citing *Central Michigan*. That case involved whether the plaintiff could seek information under the FOIA when it had already filed suit against the defendants.² *Central Michigan, supra* at 729, 567 N.W.2d 696. This Court opined that there existed no conflict between the court rules and the FOIA and the fact that a party may obtain information through discovery does not forfeit that party's right to obtain the same information through the FOIA. *Id.* at 730, 567 N.W.2d 696. In a concurring opinion, Judge Holbrook opined that "the discovery rules and the FOIA represent 'two independent schemes for obtaining information[.]'" *Id.* at 731, 567 N.W.2d 696 (HOLBROOK, JR., J., concurring).

*4 Accordingly, under the above authority, even though [MCR 2.302\(A\)\(3\)](#) precludes discovery in civil infraction actions, a party may nevertheless seek information related to such actions under the FOIA unless the FOIA specifically exempts the information sought from disclosure. The trial court thus erred by determining that plaintiff's FOIA request was properly denied because the information sought was not obtainable through discovery pursuant to [MCR 2.302\(A\)\(3\)](#).

Defendant argues that it relied on [MCL 15.243\(1\)\(d\)](#) in conjunction with [MCL 600.223](#) and [MCR 2.302\(A\)\(3\)](#) to deny plaintiff's FOIA request. [MCL 15.243\(1\)\(d\)](#) provides:

(1) A public body may exempt from disclosure as a public record under this act any of the following:

* * *

(d) Records or information specifically described and exempted from disclosure by statute.

[MCL 600.223](#) grants our Supreme Court "authority to promulgate and amend general rules governing practices and procedure in the supreme court and all other courts of record[.]" Defendant apparently contends that because [MCL 600.223](#) authorized the Supreme Court to create the discovery preclusion articulated in [MCR 2.302\(A\)\(3\)](#), records pertaining to civil infraction actions constitute "[r]ecords or information specifically described and exempted from disclosure by statute" as provided in [MCL 15.243\(1\)\(d\)](#). However, the mere fact that [MCL 600.223](#) grants the Supreme Court authority to promulgate rules does not mean that the discovery preclusion in [MCR](#)

[2.302\(A\)\(3\)](#) “exempt[s] from disclosure by statute” information regarding civil infraction actions. Thus, defendant’s argument, while creative, lacks legal merit.

Plaintiff next argues that the exemption under [MCL 15.243\(1\)\(a\)](#) is inapplicable because the requested information does not threaten any privacy interest.

[MCL 15.243\(1\)\(a\)](#) provides:

(1) A public body may exempt from disclosure as a public record under this act any of the following:

(a) Information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual’s privacy.

According to the language of the statute, the privacy exemption consists of two elements: (1) the information sought must be of a “personal nature,” and (2) the disclosure of the information must amount to “a clearly unwarranted invasion of an individual’s privacy.” [Michigan Federation of Teachers & School Related Personnel, AFT, AFL-CIO v. Univ. of Michigan](#), 481 Mich. 657, 675, 753 N.W.2d 28 (2008).

Information is of a “personal nature” if it involves intimate, embarrassing, private, or confidential details of a person’s life according to the moral standards and customs of the community. *Id.* at 676, 753 N.W.2d 28; [Detroit Free Press, Inc. v. City of Southfield](#), 269 Mich.App. 275, 282, 713 N.W.2d 28 (2005). Further, “[d]etermining whether the disclosure of such information would constitute a clearly unwarranted invasion of privacy requires a court to balance the public interest in disclosure against the interest the Legislature intended the exemption to protect.” *Id.* “The only relevant public interest is the extent to which disclosure would serve the core purpose of the FOIA, which is to facilitate citizens’ ability to be informed about the decisions and priorities of their government.” *Id.* “This interest is best served through information about the workings of government or information concerning whether a public body is performing its core function.” *Id.*

*5 Defendant failed to provide any evidence, other than perfunctory assertions that plaintiff’s FOIA request sought intimate, embarrassing, private, or confidential information. Defendant asserts that the information sought would interfere with law enforcement proceedings and constitute an unwarranted invasion of privacy based on their belief that the information sought pertained to personal information of police officers and witnesses. Review of the request reveals that plaintiff requested information regarding a traffic stop and citation, whether

the police officers involved are subject to a citation “quota,” and whether the officers had ever been subject to any disciplinary proceedings or sued for official misconduct. The information sought regarding the officers pertains to their public employment and the information requested regarding plaintiff’s brother pertains solely to his public traffic stop and civil infraction. The request does not seek intimate, embarrassing, confidential, or private details concerning the lives of plaintiff’s brother or the police officers.

In addition, disclosure of the requested information would not amount to “a clearly unwarranted invasion of an individual’s privacy.” *Univ of Michigan, supra* at 675. Disclosure would serve the core purpose of the FOIA. As this Court has recognized, “[t]his interest is best served through information about the workings of government or information concerning whether a public body is performing its core function.” [Detroit Free Press, supra](#) at 282, 713 N.W.2d 28. Plaintiff seeks information regarding what transpired immediately before, during, and after two Troy police officers stopped plaintiff’s brother’s vehicle and issued him a citation. The officers’ reasons for stopping the vehicle, what occurred during the traffic stop, and any communications amongst the officers and the Troy Police Department shed light on the inner workings of the Troy Police Department and whether the department is fulfilling its duties to the public. Moreover, whether the officers accessed a Michigan Secretary of State database, whether they are subject to a citation “quota,” and whether they have ever been subject to any disciplinary action or sued for official misconduct is indicative of whether Troy Police Department is performing its core function. As stated in [MCL 15.231\(2\)](#), “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[.]” Therefore, disclosure of the information sought would not constitute a clearly unwarranted invasion of an individual’s privacy and is not exempt under [MCL 15.243\(1\)\(a\)](#).

Plaintiff also argues that the trial court erroneously determined that the information sought is exempt under [MCL 15.243\(1\)\(b\)](#). That statute provides:

(1) A public body may exempt from disclosure as a public record under this act any of the following:

* * *

*6 (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.

The information that plaintiff sought cannot fairly be characterized as “[i]nvestigating records compiled for law enforcement purposes,” as stated in [MCL 15.243\(1\)\(b\)](#). For example, plaintiff requested the full names of the police officers, records indicating whether the officers were subject to a citation “quota,” records indicating whether the officers accessed a Michigan Secretary of State database to determine whether the vehicle was insured, records pertaining to whether either of the officers has ever been subject to any discipline, a disciplinary proceeding, or sued for official misconduct, and voice, video, text, radio, or cellular transmissions or recordings that occurred immediately before, during, and after the traffic stop. Narrowly construing the exemption listed under [MCL 15.243\(1\)\(b\)](#), as required pursuant to *Taylor, supra* at 204-205, 725 N.W.2d 84, and *Messenger, supra* at 532, this information simply does not constitute investigating records compiled for law enforcement purposes. Therefore, defendant has not met its burden of demonstrating that the exemption under [MCL 15.243\(1\)\(b\)](#) is applicable, and the trial court erred by relying on this exemption in granting summary disposition for defendant.

Defendant contends that [MCL 15.243\(1\)\(s\)](#) provides an alternative basis for denying plaintiff’s FOIA request. That provision states, in relevant part:

- (1) A public body may exempt from disclosure as a public record under this act any of the following:

* * *

- (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 any of the following:

* * *

- (v) Disclose operational instructions for 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 furnish information to law enforcement departments or agencies.

* * *

- (ix) Disclose personnel records of law enforcement agencies.

***7** Defendant argues that the full names of the police officers are exempt under subsection (vii) because disclosure of the officers’ full names would endanger their safety. Defendant also contends that any records indicating whether the officers are subject to guidelines, goals, or expectations regarding how many traffic citations they must issue within a certain time period is exempt under subsections (v) and (vi). Defendant further asserts that the disciplinary records of the officers are exempt from disclosure under subsection (ix). We note that Michigan courts have recognized that a law enforcement agency’s records regarding internal investigations fall within the personnel records exemption under subsection (ix). *Kent Co. Deputy Sheriffs Ass’n v. Kent Co. Sheriff*, 463 Mich. 353, 365-367, 616 N.W.2d 677 (2000); *Herald Co., Inc. v. Kent Co. Sheriff’s Dep’t*, 261 Mich.App. 32, 37-38, 680 N.W.2d 529 (2004).

The information sought in paragraphs one, five, and six of plaintiff’s FOIA request arguably falls under the exemptions on which defendant relies. “Once particular records qualify under a listed exemption for law enforcement agency records, the remaining inquiry is whether ‘the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance.’” *Kent Co. Deputy Sheriffs Ass’n, supra*, 463 Mich. at 365, 616 N.W.2d 677, quoting *Kent Co. Deputy Sheriffs Ass’n v. Kent Co. Sheriff*, 238 Mich.App. 310, 331-332, 605 N.W.2d 363 (1999). The public body has the burden of proving that a particular record is exempt under the public-interest balancing test. *Landry v. City of Dearborn*, 259 Mich.App. 416, 420, 674 N.W.2d 697 (2003).

In its brief on appeal, defendant fails to advance any

argument regarding why the public interest favors nondisclosure of the records under [MCL 15.243\(1\)\(s\)](#). Defendant simply fails to properly address this issue. Because we conclude that the trial court erroneously granted summary disposition for defendant based on different exemptions, and failed to address defendant's argument regarding the applicability of [MCL 15.243\(1\)\(s\)](#), we remand this case to the trial court to determine whether "the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance" with respect to the information that plaintiff requested in paragraphs one, five, and six of his FOIA request.

Plaintiff next argues that he is entitled to reasonable fees, costs and disbursements pursuant to [MCL 15.240\(6\)](#) and punitive damages pursuant to [MCL 15.240\(7\)](#). We review for an abuse of discretion a trial court's decision regarding an award of attorney fees to a prevailing party under the FOIA. *Messenger v. Ingham Co. Prosecutor*, 232 Mich.App. 633, 647, 591 N.W.2d 393 (1998). Further, we review for clear error a trial court's findings regarding whether a defendant acted arbitrarily and capriciously with respect to [MCL 15.240\(7\)](#). *Meredith Corp. v. City of Flint*, 256 Mich.App. 703, 717, 671 N.W.2d 101 (2003).

*8 [MCL 15.240\(6\)](#) provides:

If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in an action commenced under this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or public body prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages under subsection (7).

Thus, "[t]he first criterion for an award of attorney fees in litigation under the FOIA is that a party 'prevails' in its assertion of the right to inspect, copy, or receive a copy of all or a portion of a public record." *Local Area Watch v. City of Grand Rapids*, 262 Mich.App. 136, 149, 683 N.W.2d 745 (2004). Further, "whether to award plaintiff reasonable attorney fees, costs, and disbursements when a party only partially prevails under the FOIA is entrusted

to the sound discretion of the trial court." *Id.* at 151, 683 N.W.2d 745.

We direct the trial court to address on remand whether plaintiff is entitled to attorney fees, costs, and disbursements. Until the trial court reaches a decision on remand, it cannot be determined whether plaintiff is a prevailing party requiring an award of reasonable attorney fees, costs, and disbursements under [MCL 15.240\(6\)](#). We note that even if the trial court determines on remand that the information sought in paragraphs one, five, and six of plaintiff's FOIA request is exempt from disclosure, plaintiff nevertheless partially prevailed in his FOIA action and an award of reasonable fees, costs, and disbursements would be within the trial court's discretion pursuant to [MCL 15.240\(6\)](#). *Local Area Watch, supra* at 151, 683 N.W.2d 745.

Plaintiff also argues that he is entitled to punitive damages pursuant to [MCL 15.240\(7\)](#) because defendant's denial of his FOIA request was arbitrary and capricious. [MCL 15.240\(7\)](#) provides:

If the circuit court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of \$500.00 to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

Punitive damages in a FOIA case "may be assessed only if the court orders disclosure of a public record." *Michigan Council of Trout Unlimited v. Dep't of Military Affairs*, 213 Mich.App. 203, 221, 539 N.W.2d 745 (1995). Further, "[e]ven if defendant's refusal to disclose or provide the requested materials was a statutory violation, it was not necessarily arbitrary or capricious if defendant's decision to act was based on consideration of principles or circumstances and was reasonable, rather than whimsical." *Meredith Corp, supra* at 717, 671 N.W.2d 101 (quotation marks and citations omitted).

*9 Here, the trial court denied plaintiff's request for punitive damages under [MCL 15.240\(7\)](#) based on its erroneous determination that the information sought by plaintiff is not discoverable pursuant to [MCR 2.302\(A\)\(3\)](#) and its erroneous conclusion that the information is exempt from disclosure under [MCL 15.243\(1\)\(b\)](#). Because we are reversing the trial court's determination with respect to paragraphs two, three, and four of plaintiff's FOIA request and have directed the trial court to determine on remand whether the information sought in paragraphs one, five, and six is exempt, we direct the trial court to address this issue on remand as well.

Plaintiff also argued that defendant waived its right to assert any FOIA exemptions in defense of this action by failing to assert them in its first responsive pleading. Plaintiff further contends that defendant waived its affirmative defenses by failing to "state the facts constituting" such defenses within the meaning of [MCR 2.111\(F\)\(3\)](#). Although plaintiff asserted these arguments below, the trial court failed to address them. Consequently they are not properly before this Court. *Polkton Charter Twp. v. Pellegrum*, 265 Mich.App. 88, 95, 693 N.W.2d

[170 \(2005\)](#). Considering our resolution of plaintiff's other arguments we decline to address this issue. Also in consideration of our resolution of the above issues, we need not address plaintiff's argument that the trial court denied him his right to due process by failing to provide him an opportunity to respond to the arguments that defendant raised in its response to plaintiff's motion for summary disposition. Courts should not address constitutional issues when a case can be decided on nonconstitutional grounds. *J & J Constr. Co. v. Bricklayers & Allied Craftsmen, Local 1*, 468 Mich. 722, 734, 664 N.W.2d 728 (2003), *People v. Riley*, 465 Mich. 442, 447, 636 N.W.2d 514 (2001).

Reversed and remanded for further proceedings. We do not retain jurisdiction.

All Citations

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Footnotes

- 1 We express no opinion regarding whether a civil infraction action constitutes a "civil action" within the meaning of [MCL 15.243\(1\)\(v\)](#).
- 2 The FOIA was amended by 1996 PA 553, effective March 31, 1997, to add the exemption currently listed under [MCL 15.243\(1\)\(v\)](#). This Court decided *Central Michigan* under the preamendment version of the FOIA.

EXHIBIT L



Freedom of Information Act Guide
How to Submit a FOIA Request to the MDOC
And
Other Relevant FOIA Information

(Rev. November 10, 2015, Office of Legal Affairs)
(© State of Michigan)

DISCLAIMER: This Guide on “How to Submit a FOIA Request to the Michigan Department of Corrections” (MDOC) is intended to be a reference guide only for the MDOC. It is not to be construed as legal advice and it is not intended to resolve every situation that may be encountered. If you are an MDOC employee, legal questions should be addressed to the Administrator of the Office of Legal Affairs. If you are the general public, legal questions should be addressed by your attorney and cases cited should be reviewed for accuracy. (Rev. July 1, 2015) For additional information, also see the MDOC’s policy 01.06.110 “Freedom of Information Act – Access to Department Public Records” which can be reviewed at http://www.michigan.gov/corrections/0,1607,7-119-1441_44369---,00.html.

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FREEDOM OF INFORMATION ACT

1. The Freedom of Information Act, also referred to as FOIA (the Act), effective April 13, 1997, is 1976 PA 442 and may be found at MCL 15.231 - 15.246. The current statute can be obtained in full from the Michigan Legislative website at: <http://www.legislature.mi.gov/>. It can be found under the link of "Often Requested Laws," and can be found by common word search or MCL search. See:

[http://www.legislature.mi.gov/\(S\(xihhqsegtkjvfudfmpqm2fcn\)\)/documents/mcl/pdf/mcl-act-442-of-1976.pdf](http://www.legislature.mi.gov/(S(xihhqsegtkjvfudfmpqm2fcn))/documents/mcl/pdf/mcl-act-442-of-1976.pdf).

2. What does FOIA provide?

General Provision – it is an act to provide for public access to certain public records of public bodies in Michigan. The basic intent of the FOIA is that all persons, **except those persons incarcerated in state or local correctional facilities**, 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, consistent with this act.¹ The people shall be informed so that they may fully participate in the democratic process.²

The Supreme Court in *Herald Co*³, stated:

The FOIA starts from a basic premise—the disclosure of public documents is the cornerstone of responsible government. The FOIA provides, "It 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, consistent with this act." MCL 15.231(2) (emphasis added). The FOIA also recognizes that the public has a strong interest in ensuring that it receives information to make sure that those individuals in government who are entrusted with the operation of public institutions do so in a responsible manner. To this end, the FOIA provides, "The people shall be informed so that they may fully participate in the democratic process." *Id.* This Court has consistently held that the FOIA is intended primarily as a prodisclosure statute. *Swickard v Wayne Co Medical Examiner*, 438 Mich 536, 544; 475 NW2d 304 (1991); see also *State Employees Ass'n v Dep't of Mgt & Budget*, 428 Mich 104, 109; 404 NW2d 606 (1987); *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 231-232; 507 NW2d 422 (1993). Accordingly, under the FOIA, unless expressly exempt, a public body must disclose a public record if provided with a written request that sufficiently describes the record. MCL 15.233(1). A person has a right to inspect, copy, or receive a copy of the requested record. *Id.* If a public body denies access to a public record, the public body has the burden to prove that its denial comports with the law. MCL 15.240(4).

¹ *Proctor v White Lake Twp Police*, 248 Mich App 457; 639 NW2d 332 (2001), MCL 15.231(2).

² MCL 15.231(2).

³ *Herald Co, Inc v Eastern Michigan Univ Bd of Regents*, 475 Mich 463; 719 NW2d 19 (2006).

3. Who is not entitled to full and complete information under FOIA?

Those persons incarcerated in state or local correctional facilities. MCL 15.231(2). The FOIA is not unconstitutional simply because it excludes prisoners from obtaining information. Application of the FOIA exclusion does not deprive prisoners of their fundamental right to access the courts or their First Amendment rights.⁴

4. What is a Public record?

Public record is defined in Section 2(e) and:

Means a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created.⁵

There are two classes of Public records:

1. Those that are exempt from disclosure under Section 13.
2. All public records that are not exempt from disclosure under Section 13 and which are subject to disclosure under FOIA.

5. What is not a Public record?

Public record does not include computer software. "Software" is defined as "a set of statements or instructions that when incorporated in a machine usable medium is capable of causing a machine or device having information processing capabilities to indicate, perform, or achieve a particular function, task, or result. Software does not include computer-stored information or data, or a field name if disclosure of that field name does not violate a software license."⁶ Other information that is not considered a public record includes, but is not limited to, disclosing state legislators who applied for concealed weapons permits,⁷ names and addresses of registered handgun owners,⁸ attorney work product.⁹

6. What is a Public body?

A "public body" is broadly defined in section 2(d):

(d) "Public Body" means any of the following:

- (i) A state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of the state government . . .
- (ii) An agency, board, commission, or council in the legislative branch of state government.

⁴ *Proctor v White Lake Twp Police*, 248 Mich App 457; 639 NW2d 332 (2001).

⁵ MCL 15.232(e); *The Detroit News, Inc v Detroit*, 204 Mich App 720; 516 NW2d 151 (1994).

⁶ MCL 15.232(2)(f); see also *Howell Education Association MEA/NEA v Howell Board of Education*, published opinion of the Court of Appeals, issued January 26, 2010 (Docket No 288977); 2010 Mich App LEXIS 143; 30 IER Cas (BNA) 594; 188 LRRM 2054.

⁷ *Detroit Free Press v Dep't of State Police*, 243 Mich App 218; 622 NW2d 313 (2000).

⁸ *Mager v Dep't of State Police*, 460 Mich 134; 595 NW2d 142 (1999).

⁹ *Messenger v Ingham County Prosecutor*, 232 Mich App 633; 591 NW2d 393 (1998).

- (iii) A county, city, township, village, intercounty, intercity, or regional governing body, council, school district, special district, or municipal corporation, or a board, department, commission, council, or agency thereof.
- (iv) Any other body which is created by state or local authority or which is primarily funded by or through state or local authority.¹⁰

Only "public bodies" must comply with FIOA. The MDOC is a public body.

7. What is not a Public Body

Public Bodies do not include:

- The Governor, Lieutenant Governor, Executive Office staff and employees
- The Judiciary, including the office of the county clerk and employees thereof when acting in the capacity of clerk to the circuit court
- Individual Legislators¹¹

The FOIA generally does not apply to private, voluntary unincorporated associations or private, nonprofit corporations.¹²

8. How many Public Bodies are there in Michigan?

There are in excess of 10,000 Public Bodies in Michigan.

9. What records are subject to disclosure?

All records except those specifically cited as exceptions are covered by FOIA.¹³ The records covered include e-mail, minutes of open meetings, officials' voting records, final orders or decisions in contested cases and the records on which they were made, and promulgated rules. Other written documents that implement or interpret laws, rules, or policies, including, but not limited to, guidelines, some manuals, and forms with instructions, adopted or used by the agency in the discharge of its functions, are also covered.

It does not matter what form the record is in. FOIA applies to any handwriting, typewriting, printing, photostating, photographing, photocopying and every other means of recording. It

¹⁰ MCL 15.232(d). See also OAG, 2001 - 2002, No 7087, p 45 (August 21, 2001); OAG, 1999 - 2000, No 7066, p 156 (November 7, 2000); OAG, 1997-1998, No 6942, p 40 (July 3, 1997); *Detroit News, Inc. v Policemen and Firemen Retirement Sys of the City of Detroit*, 252 Mich App 59; 651 NW2d 127 (2002); *Sclafani v Domestic Violence Escape*, 255 Mich App 260; 660 NW2d 97 (2003); *State Defender Union Employees v Legal Aid & Defender Ass'n of Detroit*, 230 Mich App 426; 584 NW2d 359 (1998); *Jackson v Eastern Michigan University*, 215 Mich App 240; 544 NW2d 737 (1996).

¹¹ MCL 15.232(d), OAG, 1985 - 1986, No 6390, p 375 (September 26, 1986).

¹² OAG, 1997-1998, No 6942, p 40 (July 3, 1997); OAG, 1985-1986, No 6386, p 369 (September 16, 1986); OAG, 1997-1998, No 6942, p 40 (July 3, 1997); OAG, 1989 - 1990, No 6563, P 27 (January 26, 1989); *Breighner v Michigan High School Athletic Ass'n, Inc.*, 471 Mich 217; 683 NW2d 639 (2004); *Thomas v State Board of Law Examiners*, 210 Mich App 279; 533 NW2d 3 (1995); *Kubick v Child & Family Services of Michigan*, 171 Mich App 304; 429 NW2d 881 (1988); *Perlongo v Iron River Cooperative TV*, 122 Mich App 433; 332 NW2d 502 (1983).

¹³ *Booth Newspapers, Inc v Kent County Treasurer*, 175 Mich App 523; 438 NW2d 317 (1989); *Hagen v Dep't of Education*, 431 Mich 118; 427 NW2d 879 (1988).

includes letters, words, pictures, sounds, or symbols, or combinations thereof, as well as papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content. It does not include computer software.

10. How to make a FOIA request.

To access public records, a request must be made in writing and provided to the FOIA Coordinator of the public body. A written request means a writing that asks for information, and includes a writing transmitted by facsimile, electronic mail, or other electronic means.¹⁴ A written request must describe a public record sufficiently to enable the public body to find the public record.¹⁵ In other words, it must clearly describe what is wanted, including identifying material such as names, places, the time period covered and other documents describing the subject of the inquiry.

A person may ask to inspect, copy, or receive a copy of a public record.¹⁶ A FOIA Coordinator may designate another individual to act on his or her behalf to accept requests for processing.¹⁷

11. Who do I contact in the MDOC to make a FOIA request?

There is no single office in state government that handles all FOIA requests and there is no standard form to submit. Each FOIA request must be made to the particular agency that has the records that you seek. For example, if you want to know about an investigation of motor vehicle defects, write to the Michigan Department of State. If you want information about a work-related accident at a nearby manufacturing plant, write to the Michigan Department of Licensing & Regulatory Affairs. You may have to do a little research to find the proper agency office to handle your FOIA request, but you will save time in the long run if you send your request directly to the most appropriate office. A list of state agencies can be obtained at: <http://www.michigan.gov/>.

To submit a request to the Michigan Department of Corrections, mail your request to:

MDOC FOIA Coordinator,
P.O. Box 30003
Lansing, MI 48909

Or

E-mail it to: MDOC-OLAFOIA@michigan.gov

Or

Fax it to: (517) 373-2558

¹⁴ MCL 15.232(i).

¹⁵ MCL 15.233(1); *Herald Co v City of Bay City*, 463 Mich 111; 614 NW2d 873 (2000); *Kincaid v Dep't of Corrections*, 180 Mich App 176; 446 NW2d 604 (1989); *Capitol Information Ass'n v Ann Arbor Police Dep't*, 138 Mich App 655; 360 NW2d 262 (1984).

¹⁶ MCL 15.233(1) and 15.235(1).

¹⁷ MCL 15.236(3).

12. Who can make a FOIA Request?

An individual, corporation, limited liability company, partnership, firm, organization, association, governmental entity, or other legal entity may make a FOIA request. There are no qualifications such as residency or age that must be met in order to make a request. **However, prisoners in state, county, or federal correctional facilities are not included among persons who may make requests.**¹⁸

13. What is a FOIA Coordinator?

A FOIA Coordinator is either:

- (i) An individual who is a public body.
- (ii) An individual designated by a public body in accordance with section 6 of the Act to accept and process requests for public records under FOIA.¹⁹

14. What does a FOIA Coordinator do?

A FOIA Coordinator is responsible for accepting and processing FOIA requests for the public body's public records under the Act and is responsible for approving a denial.²⁰

15. Who can be a FOIA Coordinator?

- A public body that is a city, village, township, county, or state department, or under the control of a city, village, township, county, or state department, shall designate an individual as the public body's FOIA Coordinator.
- In a county not having an executive form of government, the chairperson of the county board of commissioners is designated the FOIA Coordinator for that county.
- For all other public bodies, the chief administrative officer of the respective public body is designated the public body's FOIA Coordinator.²¹

16. How does the MDOC process a FOIA request?

The FOIA request must be immediately forwarded to the FOIA Coordinator. Not more than five business days after receiving a request, the public body must respond to a request for a public record by doing one of the following:

- Grant the request.
- Issue a written notice denying the request.
- Issue a written notice granting the request in part and denying the request in part.
- Issue a written notice extending the time, for not more than 10 business days, to answer.²²

¹⁸ MCL 15.231(2) and 15.232(c).

¹⁹ MCL 15.232(b).

²⁰ MCL 15.236(1).

²¹ MCL 15.236.

²² MCL 15.235(2); OAG, 1979 - 1980, No 5500, p 255 (July 23, 1979).

17. How does the MDOC respond to a FOIA request?

If a request for a record is granted or denied in full or in part, written notice must be provided to the requester not more than five business days after the public body receives the request or within 15 business days if an extension is taken. Failure to respond constitutes a denial.

If the MDOC does not respond to a written request in a timely manner, it shall reduce the charges for labor costs by 5% for each day the response is late with a maximum 50% reduction if the late response was willful and intentional or if the written request included language that conveyed a request for information within the first 250 words of the written document.

18. Does the information have to be provided to the requestor within 5 business days?

No, the information that is the subject of the request, if it exists, does not have to be provided to the requester within 5 business days. The public body must respond to the request for a public record within 5 business days after receiving the request, unless an extension is taken.²³

19. When is a FOIA request deemed received?

A written request made by facsimile, electronic mail, or other electronic transmission is not received by a public body's FOIA Coordinator until 1 business day after the electronic transmission is made.²⁴ If a FOIA request is submitted via U.S. mail or is hand-delivered, it is considered received the day of receipt.

20. What must the Response Notice from the MDOC contain?

A written notice denying a request for a public record in whole or in part is a public body's final determination to deny the request or portion of that request. The written notice must contain:

- 1 An explanation of the basis under this Act or other statute for the determination that the public record, or portion of that public record, is exempt from disclosure, if that is the reason for denying all or a portion of the request.
- 2 A certificate that the public record does not exist under the name given by the requestor or by another name reasonably known to the public body, if that is the reason for denying the request or a portion of the request.
- 3 A description of a public record or information on a public record that is separated or deleted pursuant to Section 14, if a separation or deletion is made.

A full explanation of the requesting person's right to submit to the Director of the MDOC a written appeal and/or seek judicial review.²⁵ Sample notice language includes:

As to the denial of your FOIA request, the Department is obligated to inform you that under FOIA, MCL 15.240 and MCL 15.240a, you may do the following, as noted in #22 below:

²³ MCL 15.235(2).

²⁴ MCL 15.235(1).

²⁵ MCL 15.235(5).

21. Appeals

1. **Appeal this decision** in writing to the Director of the MDOC and mail it to:

- Attention: Administrator, Office of Legal Affairs, MDOC – FOIA Appeals, P.O. Box 30003, Lansing, MI 48909.
- The writing must specifically state the word "appeal" and must identify the reason or reasons you believe the denial should be reversed. The Director or his/her designee must respond to your appeal within 10 business days of its receipt. Under unusual circumstances, the time for response to your appeal may be extended by no more than 10 business days.

1a. File a civil action in the Court of Claims within 180 days after the date of the final determination to deny the request.

2. A requestor may **appeal the FOIA fees** by submitting a written appeal for a fee reduction that specifically states the word "appeal" and identifies how the required fee exceeds the amount permitted under the public body's available policy/procedures to the Director.

2a. A requestor may commence a civil action in the Court of Claims for a fee reduction only after having gone through the Department's fee appeal process. The action must be filed within 45 days after receiving the final determination from the Director.

22. Fees for public records.

The MDOC may, but is not required to, charge a fee for the necessary copying of a public record for inspection for providing a copy of a public record to a requester.²⁶

All FOIA requestors shall be charged 10 cents per page for each written document provided, plus, the actual cost of postage unless expedited shipping or insurance is stipulated by the requestor. The fee shall be limited to actual mailing costs and to the actual incremental cost of duplication or publication including labor, the cost of the search, examination, review, and the deletion and separation of exempt from non-exempt information. The actual cost of duplication shall be charged for copies of non-written documents, such as computer discs and non-paper physical media. If a portion of a document must be redacted and the document recopied prior to production, the requestor shall be charged only for the copy provided.

A fee may not be charged for the cost of search, review, examination, and the separation of exempt from non-exempt information unless failure to charge the fee would result in an unreasonably high cost to the Department. If assessed, the fee shall be charged at the hourly wage of the lowest-paid employee capable of searching for, locating and examining the public

²⁶ MCL 15.234. See also OAG, 2001 - 2002, No 7083, p 32 (June 7, 2001); OAG, 1999 - 2000, No 7017, p 27 (May 13, 1999); OAG 1995 - 1996, No 6923, p 224 (October 23, 1996); OAG, 1979 - 1980, No 5500, p 255 (July 23, 1979); *Tallman v Cheboygan Area Schools*, 183 Mich App 123; 454 NW2d 171 (1990); *Kearney v Dep't of Mental Health*, 168 Mich App 406; 425 NW2d 161 (1988); *Alpena Title, Inc v Alpena County*, 84 Mich App 308; 269 NW2d 578 (1978).

records in the particular instance regardless of whether that person is available or who actually performs the labor. The hourly wage includes the cost of up to 50% of the base rate paid by the State to cover or partially the cost of fringe benefits. Overtime wages shall not be included in the calculation of labor costs unless overtime is specifically stipulated by the requestor. Labor costs are to be estimated and charged in increments of 15 minutes or more, with all partial time rounded down. Such fees are not to be charged without first contacting the Department's FOIA Coordinator or designee for approval and direction on how to proceed.

The Department may waive or reduce fees if the Department determines it is in the public interest to do so or if providing the requested documents primarily benefits the general public for reasons identified by the requestor. A fee that totals \$10.00 or less, including postage, shall be waived. Other fees shall be waived or reduced pursuant to this paragraph only with approval of the Department FOIA Coordinator or designee.

The fee must be limited to actual duplication, mailing, and labor costs. The first \$20 of a fee must be waived for a person who is receiving public assistance or presents facts showing inability to pay because of indigency.²⁷

A requestor shall not be charged for the first \$20.00 of fees assessed per request, including any fees waived for either of the following:

(a) Upon submission of a current affidavit verifying that s/he is receiving public assistance or, if not receiving public assistance, sufficiently stating facts showing an inability to pay the cost due to indigency. If the requestor is eligible for a requested discount, the public body shall full note the discount on the detailed itemization. If the requestor is ineligible for the discount, the public body shall inform the requestor specifically of the reason for the ineligibility in the public body's written response. An individual is ineligible for this fee reduction if any of the following apply:

- The individual requests the information in conjunction with outside parties who are offering or providing payment or other remuneration to the individual to make the request. The MDOC may require a statement by the requestor in the affidavit that the request is not being made in conjunction with outside parties in exchange for payment or other remuneration.
- The requestor has previously received discounted copies of public records under this subsection from the MDOC twice during the calendar year.

(b) A nonprofit organization formally designated by the state to carry out activities and the protection and advocacy for individuals with mental illness if the requestor meets all of the following requirements:

- Is made directly on behalf of the organization or its clients.

²⁷ MCL 15.234(1) through (3). See also OAG 1997 - 1998, No 6977, p 131 (April 1, 1998) – A public body may require that its fees be paid in full prior to actual delivery of the copies. A public body may.

- Is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the mental health code, 1974 PA 258, MCL 330.1931.
- Is accompanied by documentation of its designation by the state, if requested by the public body.

A public body may require from the requester, at the time a request is made, a good faith deposit if the fee exceeds \$50.00. The deposit shall not exceed one-half of the total fee.²⁸

23. What if the requester has already asked for and received the records?

A public body may not deny a FOIA request simply because the requester has previously obtained the identical records under the FOIA.²⁹ A public body does not need to provide additional copies of records it has already provided unless the requester can demonstrate why the copy already provided was not sufficient.³⁰

24. What is the form of the records that must be given to the requester?

Public bodies are required to provide public records in the format requested. If there is no explicit statutory language that provides fees for electronic records, the records must be provided using the FOIA fee requirements.³¹

25. Common MDOC Exemptions.

A public body may (but is not required to) withhold from public disclosure certain categories of public records under the FOIA. Certain types of records are exempted from disclosure by other laws, either federal or state.

The exemptions allowed under FOIA are expressed in general language which must be applied to the specific public record requested. It is impractical to list all information or documents that may be exempt from disclosure; therefore, local FOIA coordinators must be familiar with all FOIA exemptions. Often, more than one exemption may apply. FOIA responses must include all applicable exemptions.

General Exemptions

The following are some of the FOIA exemptions which are most frequently taken and examples of information to which the exemptions may apply:

1. Information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy. Section 13 (1)(a). The purpose of exemptions is to balance the policy of full disclosure with any significant privacy interests favoring nondisclosure.

²⁸ MCL 15.234(2).

²⁹ OAG, 1993 - 1994, No 6766, p 52 (August 19, 1993).

³⁰ *Densmore v Dep't of Corrections*, 203 Mich App 363; 512 NW2d 72 (1994).

³¹ *Oakland County Treasurer v Title Office, Inc.*, 245 Mich App 196; 627 NW2d 317 (2001); *Grebner v Clinton Charter Twp*, 216 Mich App 736; 550 NW2d 265 (1996); *Farrell v Detroit*, 209 Mich App 7; 530 NW2d 105 (1995).

Examples: Home addresses and home telephone numbers; emergency contact information; driver license numbers; Social Security numbers; victims' requests to receive information pursuant to PD 01.06.120 "Victim Notification" and the Department's response unless the requestor is the victim; fingerprint cards; resumes of unsuccessful job applicants except for the resume of the requestor.

2. A public record that, if disclosed, would prejudice the ability to maintain the physical security of a correctional facility unless the public interest in disclosure outweighs the public interest in non-disclosure. Section 13(1)(c).

Examples: Blueprints or maps of facility grounds; names of informants; mobilization scenarios and critiques; Special Problem Offender Notice; movement plans; Security Threat Group designations and related documentation; exempt policy directives and operating procedures; post orders for security sensitive assignment (e.g., sallyport); descriptions of security fencing; description of operation of personal protection devices; videos that would disclose capability of any monitoring device; document determined to be confidential by a hearing officer at a hearing conducted pursuant to MCL 791.252.

3. Information or records subject to the physician-patient privilege, the psychologist-patient privilege, or other privilege recognized by statute or court rule. Section 13(1)(h).

Examples: Psychiatric and psychological information unless a release is provided; medical records; however, the request shall be forwarded to the Health Unit Manager for processing under the Medical Records Access Act if a release is provided.

4. Communications and notes of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency decision of policy or action. This exemption only applies if the public interest of encouraging frank communications between officials and employees clearly outweighs the public interest in disclosure. Section 13(1)(m).

Examples: A Joint Evaluation Committee (JEC) recommendation before the Department of Technology, Management and Budget award is made.

5. 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. Section 13(1)(u).

Examples: Movement plans; exempt policy directives and operating procedures; post orders for security sensitive assignment (e.g., sallyport); descriptions of security fencing; description of operation of personal protection devices; videos that would disclose capability of any monitoring device.

6. Records or information relating to a civil action in which the requesting party and the Department are parties. Section 13(1)(v). This includes civil court actions in which the Department is representing an employee being sued.

7. Information or records that would disclose the Social Security number of an individual. Sections 13(1)(d), specifically MCL 445.85 and MCL 13(1)(w). This information shall not be disclosed even if a release is provided.

Statutory Exemptions

Section 13(1)(d) of FOIA also permits exemption of documents or information specifically exempted from disclosure by another statute. When using this exemption, it is necessary to identify the specific statute authorizing the exemption. The following are examples of information exempt under Section 13(1)(d) and the applicable statute:

1. Records and reports of investigations made by a probation agent, including presentence investigation reports. (MCL 791.229).
2. The address and telephone number of a victim who has requested to receive information pursuant to PD 01.06.120 "Victim Notification". (MCL 780.769).
3. Victim statements submitted for consideration by the Parole Board pursuant to MCL 780.771.
4. Any information of the disposition of criminal charges and assignment as a youthful trainee unless youthful trainee status is revoked and the offender is subsequently convicted of the offense. (MCL 762.14).
5. Any information received through the Law Enforcement Information Network (LEIN), including records of criminal charges which did not result in a conviction. (MCL 28.214).
6. Quality assurance reviews (e.g., "peer reviews") conducted by BHCS. (MCL 331.533).
7. A report prepared and recommendations made by the Office of the Legislative Corrections Ombudsman and submitted to the Legislative Council pursuant to an investigation. (MCL 4.359).
8. A record ordered to be set aside ("expunged") if the Department has received notice of the set aside. (MCL 780.623).
9. Documents and information pertaining to an offender's registration and change of address notification pursuant to the Sex Offenders Registration Act. (MCL 28.730).

10. Information regarding the diagnosis, prognosis, or treatment of an offender involved in a substance abuse education or treatment program, unless a release is provided by the offender which specifically authorizes release of this information. (48 USC 290dd-3).

26. What if I just want to inspect the records?

When inspection of public records is requested in writing under FOIA, a reasonable opportunity for inspection of the non-exempt records must be allowed during normal business hours. The local FOIA coordinator must ensure that any exempt information is redacted prior to the inspection.

A fee shall be charged a requestor to inspect public records only as set forth below:

1. For the search, review, examination, and the separation of exempt from non-exempt information.
2. With approval of the Department FOIA Coordinator or designee, for the time spent by staff monitoring an inspection that is necessary to protect the original record and to prevent excessive and unreasonable interference with the discharge of Department functions. The fee shall be charged at the hourly rate of the lowest-paid employee capable of monitoring the inspection. The hourly wage includes the cost of up to 50% of the base rate paid by the State to cover or partially cover the cost of fringe benefits.
3. With approval of the Department FOIA Coordinator or designee, for copies necessary to protect the original record as provided for under Section 3(3) of FOIA, MCL 15.233.
4. For a copy made in order to redact a portion of the original that is exempt.

27. Can I request a subscription?

A person also has the right to subscribe to future issuances of public records that are created, issued, or disseminated on a regular basis. A subscription is valid for up to six months, at the request of the subscriber, and is renewable.³²

28. How does the MDOC respond to an appeal?

The Director of the MDOC, whose power can be delegated, must do one of the following within 10 business days after receiving a written appeal:

- Reverse the disclosure denial.
- Issue a written notice to the requesting person upholding the disclosure denial.
- Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.

³² MCL 15.233(1).

- Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the head of the public body must respond to the written appeal. The head of a public body must not issue more than one notice of extension for a particular written appeal.³³

29. What are the penalties for violation of the FOIA?

If the requesting person prevails in an action commenced under Section 10a by receiving a reduction of 50% or more of the total fee, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages under subsection. MCL 15.240a(6).

If the court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by charging an excessive fee, the court shall order the public body to pay a civil fine of \$500.00, which shall be deposited in the general fund of the state treasury. The court may also award, in addition to any actual or compensatory damages, punitive damages in the amount of \$500.00 to the person seeking the fee reduction. The fine and any damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function. MCL 15.240a(7).

If the court determines, in an action commenced under the Act, that the public body willfully and intentionally failed to comply with the Act or otherwise acted in bad faith, the court shall order the public body to pay, in addition to any other award or sanction, a civil fine of not less than \$2,500.00 or more than \$7,500.00 for each occurrence. In determining the amount of the civil fine, the court shall consider the budget of the public body and whether the public body has been previously assessed penalties for violating the FOIA. The civil fine shall be deposited in the general fund of the state treasury. MCL 15.240b.

30. Federal FOIA.

To submit a FOIA request to federal agencies under 5 USC § 552 (2006), submit the request to the specific agency. For additional information, you may access the federal FOIA at: http://www.justice.gov/oip/right_to_federal_records09.htm#foia. The federal FOIA and Michigan FOIA are different.

31. Attorney General Opinions (not an exhaustive list).

Some opinions of the Attorney General (OAG) which explain various applications of the FOIA, are noted below. While these opinions are binding on state agencies, they are not binding on the courts or on local units of government. Attorney General opinions may be searched at: <http://www.michigan.gov/ag>.

1. Unless exempt from disclosure by law, records of the Brown-McNeeley insurance fund are public records. OAG, 1977–1978, No 5156, p 66 (March 24, 1977).

2. The FOIA's definition of public body includes single member bodies. OAG, 1977–1978, No 5183-A, p 97 (April 18, 1977).

³³ MCL 15.240(2).

3. Records subject to the confidentiality provisions of the Child Protection Law, MCL 722.621 *et seq.*; are exempt from disclosure under the FOIA, §§ 13(1)(a) and 13(1)(d). OAG, 1977–1978, No 5297, p 430 (April 28, 1978).

4. The office of county sheriff is subject to the provisions of the Freedom of Information Act. OAG, 1977–1978, No 5419, p 758 (December 29, 1978).

5. Certain records protected from disclosure by the Social Welfare Act, are exempt from disclosure under section 13(1)(d) of the Freedom of Information Act, which exempts records that are exempt from disclosure by statute. OAG, 1979–1980, No 5436, p 31 (February 1, 1979).

6. The Insurance Commissioner is required to charge a rate for making copies of public records requested in accordance with the FOIA. OAG, 1979–1980, No 5465, p 104 (March 26, 1979).

7. The following responses to specific inquiries are found in OAG, 1979–1980, No 5500 (July 23, 1979):

a. A summary of the FOIA, p. 255.

b. A government agency does not fall within the meaning of "person" for purposes of obtaining information under the Act, p. 261.

c. The Civil Service Commission is subject to the provisions of the Freedom of Information Act, p. 261.

d. Since the President's Council of State Colleges and Universities is wholly funded by state universities and colleges, it is a public body as defined by the Freedom of Information Act, p. 262.

e. A board of trustees of a county hospital may refuse to make available records of its proceedings or reports received and records compiled which would constitute a clearly unwarranted invasion of an individual's privacy under section 13(1)(a), involve disclosure of medical, counseling or psychological facts or evaluations concerning a named individual under section 13(m); or involve disclosure that would violate physician-patient or psychologist-patient privilege under section 13(1)(i), p. 263.

f. Transcripts of depositions taken in the course of an administrative hearing are subject to disclosure to a person who was not a party to the proceeding, as there is no specific exemption in section 13(1) or any other statute which exempts a deposition or a document referring to the deposition from disclosure. These documents may, however, contain statements which are exempt from disclosure and therefore, pursuant to section 14, where a person who is not a party to the proceeding requests a copy, it will be necessary to separate the exempt material and make only the nonexempt records available, p. 263.

g. Stenographer's notes or the tape recordings or dictaphone records of a municipal meeting used to prepare minutes are public records under the Act and must be made available to the public, p. 264.

- h. Computer software developed by and in the possession of a public body is not a public record, p. 264.
 - i. Although a state university must release a report of the performance of its official functions in its files, regardless of who prepared it, if a report prepared by an outside agency is retained only by the private agency, it is not subject to public disclosure, p. 265.
 - j. Copyrighted materials are not subject to the Act, p. 266.
 - k. A request for data which refers only to an extensive period of time and contains no other reference by which the public record may be found does not comply with the requirement of section 3 that the request describe the public record sufficiently to enable the public body to find it, p. 268.
 - l. If a public body maintains a file of the names of employees which it has fired or suspended over a certain designated period of time, it must disclose the list if requested, p. 268.
 - m. A public body may charge a fee for providing a copy of a public record, p. 268.
 - n. The five-day response provision begins the day after the public body has received the request sufficiently describing the public record. If the request does not contain sufficient information describing the public record, it may be denied for that reason. Subsequently, if additional information is provided that sufficiently describes the public record, the period within which the response must be made dates from the time that the additional information is received, p. 269.
 - o. A school board may meet in closed session pursuant to the Open Meetings Act to consider matters which are exempt from disclosure under the FOIA, p. 270.
 - p. The names and addresses of students may be released unless the parent of the student or the student has informed the institution in writing that such information should not be released, p. 282.
 - q. A law enforcement agency may refuse to release the name of a person who has been arrested but not charged, in a complaint or information, with the commission of a crime, p. 282.
 - r. Since motor vehicle registration lists have not been declared to be confidential, they are required to be open to public inspection, p. 300.
8. File photographs routinely taken of criminal suspects by law enforcement agencies are public records as defined by the FOIA. To the extent that the release of a person's photograph is clearly unwarranted invasion of personal privacy, a public body may refuse to permit a person to inspect or make copies of the photograph. OAG, 1979–1980, No 5593, p 468 (November 14, 1979).
9. The exemption contained in section 13(1)(n) of the FOIA for communications and notes within a public body or between public bodies of an advisory nature does not constitute an exemption for the purposes of the Open Meetings Act in view of a specific statutory provision

which states that this exemption does not constitute an exemption for the purposes of section 8(h) of the Open Meetings Act. OAG, 1979–1980, No 5608, p 496 (December 17, 1979).

10. The meetings of a board of education expelling a student from school must list a student's name. Unedited minutes must be furnished to the public on request in accordance with law. OAG, 1979–1980, No 5632, p 563 (January 24, 1980).

11. The confidentiality mandated by the Banking Code of 1969 is not limited to facts and information furnished by state chartered banks, but applies to all facts and information received by the Financial Institutions Bureau. Such facts and information are not subject to disclosure pursuant to the FOIA. OAG, 1979–1980, No 5725, p 842 (June 23, 1980).

12. Rules promulgated by the State Ethics Board require that records and files concerning dismissed complaints or terminated investigations be suppressed or expunged. This rule is consistent with the FOIA's privacy exemption since records would be suppressed only if a determination was made that the complaints were unfounded. OAG, 1979–1980, No 5760, p 935 (August 26, 1980).

13. Since the Law Enforcement Information Network Policy Council does not receive and maintain records in the LIEN system, it does not possess copies of records and as a result has no material to furnish persons seeking such records under the FOIA. OAG, 1979–1980, No 5797, p 1038 (October 14, 1980).

14. A public body is not required to disclose both the questions and answers of a sheriff's promotional test unless the public body finds it in the public interest to disclose both the test questions and answers. OAG, 1979–1980, No 5832, p 1125 (December 18, 1980).

15. Employment records disclosing salary history and employment dates are subject to disclosure under the FOIA. OAG, 1981–1982, No 6019, p 507 (December 29, 1981).

16. Copies of receipts maintained by a register of deeds for amounts paid as real estate transfer taxes fall within the mandatory exemption from disclosure established by 1966 PA 134, section 11b, and are exempt from disclosure under the FOIA. OAG, 1981–1982, No 6023, p 518 (January 8, 1982).

17. A township is not required to enact its own Freedom of Information Act in order to comply with the state FOIA. OAG, 1981–1982, No 6042, p 584 (February 25, 1982).

18. A school district must furnish the records of a student upon request of another school district in which the student is enrolled as incidental to the operation of free public elementary and secondary schools required by the Michigan Constitution 1963, art 8, § 2, and is precluded from withholding the records because the student or his or her parents is indebted to the school district possessing the records for fees or other charges. OAG, 1981–1982, No 6064, p 641 (April 30, 1982).

19. Records of a public body showing the number of days a public employee is absent from work are not exempt from disclosure under the FOIA. OAG, 1981–1982, No 6087, p 698 (July 28, 1982).

20. The FOIA does not require a sheriff to furnish jail booking records to a private security firm if the sheriff determines disclosure would constitute a clearly unwarranted invasion of privacy. OAG, 1985–1986, No 6389, p 374 (September 24, 1986).

21. State legislators are exempt from the FOIA. OAG, 1985–1986, No 6390, p 375 (September 26, 1986).

22. Surveys, comments, and other information received by the Qualifications Advisory Committee in its performance evaluation of worker's compensation magistrates are confidential by statute, MCL 418.212(1)(g), and, therefore, are exempt from disclosure under the FOIA. OAG, 1987–1988, No 6504, p 295 (March 4, 1988).

23. The FOIA does not apply to a private nonprofit corporation. OAG, 1989–1990, No 6563, p 27 (January 26, 1989).

24. While the personal files of the Auditor General are exempt from disclosure, the general files, records, and final audit reports prepared by the Auditor General's staff are subject to FOIA disclosure, except where a portion is specifically exempted by statute. OAG, 1989–1990, No 6613, p 299 (March 14, 1990).

25. A public officer's or employee's routine performance evaluation is not exempt from disclosure, even when the evaluation is discussed in a closed meeting held pursuant to the Open Meetings Act. OAG, 1989-1990, No 6668, p 409 (November 28, 1990).

26. A public body may not deny a FOIA request simply because the requester has previously obtained the identical records under that statute. A public body need not provide a waiver of fees to an indigent person requesting additional copies of identical documents previously provided with a waiver of fees pursuant to a prior request under the FOIA. OAG, 1993–1994, No 6766, p 52 (August 19, 1993).

27. The records maintained by the Department of State Police on the STATIS computer system meet the definition of a "public record" set forth in section 2(c) of the FOIA. Therefore, that Department must search the STATIS computer system when it responds to a FOIA request. It must also allow the examination of or produce copies of all documents it finds, unless the records sought fall within one or more of the specific exemptions set forth in section 13 of the FOIA. Although participating law enforcement agencies other than the Department of State Police have remote computer terminals, which allow them access to the STATIS computer, those records are not writings in the possession of those agencies within the meaning of the FOIA, section 2(c) and (e), unless those records are saved to a computer storage device or printed by the participating agency. Thus, law enforcement agencies other than the Department of State Police are not obligated under the FOIA to search the STATIS system for records except for those records which they contributed to that system. OAG, 1993–1994, No 6820, p 196 (October 11, 1994).

28. Section 4(2) of the FOIA permits a public body to charge a deposit of not more than one-half of the projected total fee if that fee exceeds \$50.00. A public body may establish a fee in advance of compiling the records responsive to a request under the FOIA so long as the fee represents the actual cost of responding to the request based on prior experience and it is

calculated in accordance with section 4 of the FOIA. OAG, 1995–1996, No 6923, p 224 (October 23, 1996).

29. A private, voluntary unincorporated association of lake property owners is not a public body subject to the FOIA.

A corporation formed under the Summer Resort Owners Corporation Act, 1929 PA 137, MCL 455.201 et seq., is a public body subject to the provisions of the FOIA. OAG, 1997–1998, No 6942, p 40 (July 3, 1997).

30. The state Insurance Bureau, in response to a request made under the FOIA, 1976 PA 442, must provide copies of copyrighted manuals of rules and rates which are in its possession and are required by law to be filed by insurers with the bureau, without first obtaining the permission of the copyright holder. OAG, 1997–1998, No 6965, p 91 (January 16, 1998).

31. Under the FOIA, the Auditor General may, in the discharge of his duties to audit the state and its departments, access nonexempt public records of local units of government under the FOIA. OAG, 1997–1998, No 6970, p 106 (January 28, 1998).

32. A public body may require that its fees be paid in full prior to actual delivery of the copies. However, a public body may not refuse to process a subsequent FOIA request on the ground that the requester failed to pay fees charged for a prior FOIA request.

A public body may refuse to process a FOIA request if the requester fails to pay a good faith deposit properly requested by the public body pursuant to section 4(2) of the FOIA.

Although the FOIA does not specify a limitations period within which a public body must commence a lawsuit to collect fees charged for complying with a records request, the 6-year limitations period applicable to contract claims governs such a cause of action. OAG, 1997 – 1998, No 6977, p 131 (April 1, 1998).

33. When establishing fees chargeable under the FOIA, a public body may include in the calculation of labor costs and fringe benefits paid to employees. OAG 1999 - 2000, No 7017, p 27 (May 13, 1999).

34. An urban redevelopment corporation organized under the Urban Redevelopment Corporations Law is a public body subject to the Open Meetings Act and FOIA. OAG, 1999 – 2000, No 7066, p 156 (November 7, 2000).

35. The FOIA permits a public body to charge a fee for the actual incremental cost of duplicating or publishing a record, including labor directly attributable to those tasks, even when the labor is performed by a public employee during business hours and does not add extra costs to the public body's normal budget.

Under section 4(3) of the FOIA, a public body may not charge a fee for the cost of its search, examination, review, and the deletion and separation of exempt from nonexempt information, unless failure to charge a fee would result in unreasonably high costs to the public body. This fee limitation, however, does not apply to a public body's costs incurred in the necessary copying

or publication of a public record for inspection, or for providing a copy of a public record and mailing the copy.

The phrase "unreasonably high costs," as used in section 4(3) of the FOIA, prohibits a public body from charging a fee for the costs of search, examination, review, and deletion and separation of exempt from nonexempt information unless the costs incurred by a public body for those activities in the particular instance would be excessive and beyond the normal or usual amount for those services. OAG, 2001–2002, No 7083, p 32 (June 7, 2001).

36. The board of trustees of a retirement system established and administered by a home rule city charter is a public body subject to the Open Meetings Act and the FOIA. OAG 2001 – 2002, No 7087, p 45 (August 21, 2001).

37. Under the FOIA, a public body may not impose a more restrictive schedule for access to its public records for certain persons than it does for the public generally, based solely upon the purpose for which the records are sought. OAG, 2001–2002, No 7095, p 64 (December 6, 2001).

38. Under section 5 of the FOIA, the five business days within which a public body must respond to a request for public records means five consecutive weekdays, other than Saturdays, Sundays, or legal holidays, regardless of when the particular public body is open for public business. OAG, 2005–2006, No 7172, p 20 (March 17, 2005).

39. In complying with its obligations under the OMA to provide the public access to meeting minutes, the public body must also discharge its other public functions and duties. To that end, a rule of reasonableness is applicable in providing a public body an adequate opportunity to meet the request to inspect minutes. A public body must make at least a copy of its minutes available for inspection as provided in MCL 15.269(1) of OMA. A public body must also avoid undue delay in meeting a request, and is obligated to comply with the response periods of the FOIA, and the specific provisions of the OMA, such as section 9(3) for the proposed and approved minutes. But to protect the integrity of its official records, and to allow sufficient time to retrieve such records, if necessary, it may be reasonable for a public body to require advance notice of, and supervision of, the inspection of a record copy of meeting minutes. OAG, 2010, p (March 3, 2010).

40. Photographs or video recordings of students participating in school activities will qualify as education records for purposes of the Family Educational Rights and Privacy Act, 20 USC 1232g, and that Act's prohibition on the release of such records, if they contain information directly related to a student, and are maintained by the school district.

A school or district may designate photographs and video recordings of students engaged in school activities as a category of "directory information" that may be disclosed without written consent under the Family Educational Rights and Privacy Act, 20 USC 1232g, as long as the school or district provides the required notice to parents that such media will be considered directory information, and further provides parents with a reasonable opportunity to opt out or deny consent to the release of such information.

A school or district has no legal responsibility under the Family Educational Rights and Privacy Act, 20 USC 1232g, with respect to photographs or video recordings of students participating in school activities taken by a person not acting on behalf of the school or district, unless the

photographs and video recordings are "maintained" by the school or district under 20 USC 1232g(a)(4)(A)(ii). OAG, 2010, No 7245, p (March 29, 2010).

32. Court Cases (this is not an exhaustive list)

Alpena Title, Inc v Alpena County, 84 Mich App 308; 269 NW2d 578 (1978). A county board of commissioners may charge a reasonable fee for access to and the copying of county tract index information in accordance with the statute regarding fees for the inspection of such records. However, the Insurance commissioner is required to charge a rate for making copies of public records requested in accordance with the FOIA.

Baker, PC v City of Westland, 425 Mich App 90; 627 NW2d 27 (2001). Accident reports containing the names, addresses, injury codes, and accident dates for injured and deceased accident victims do not have to be released when requested under the FOIA. Involvement in an automobile accident is an intimate detail of a person's private life. Disclosure of the information would not constitute significantly to the public's understanding of the operations or activities of the government and, therefore, would be a clearly unwarranted invasion of privacy.

The FOIA's privacy exemption may be applied to deceased private citizens and their families where there is no public interest in disclosure.

Ballard v Dep't of Corrections, 122 Mich App 123; 332 NW2d 435 (1982). A film made by the Department of Corrections (DOC) showing a prisoner being forcibly removed from his or her prison cell is a public record and must be disclosed. Exemption asserted by the DOC did not outweigh the public interest in disclosure.

Bechtel Power Corp v Dep't of Treasury, 128 Mich App 324; 340 NW2d 297 (1983). Tax information may be protected against disclosure under 13(1)(a) and 13(1)(d) of the FOIA.

Blue Cross/Blue Shield v Insurance Bureau, 104 Mich App 113; 304 NW2d 499 (1981). Information may be revealed under the FOIA despite claim of exemption. A decision to deny disclosure of exempt records is committed to discretion of agency and should not be disturbed unless abuse of discretion is found. Trade secret exemption does not apply to information required by law or as a condition of receiving a government contract, license or benefit.

Booth Newspapers, Inc v Kalamazoo School District, 181 Mich App 752; 450 NW2d 286 (1989). The trial court appropriately ordered the release of tenure charges and a settlement agreement concerning allegations of sexual misconduct against an unmarried teacher in redacted form. The records were redacted to prevent the identity of the teacher and the students involved from being disclosed in order to protect their privacy. The FOIA confers discretion upon a court to award an appropriate portion of the reasonable attorney fees incurred by a party that has prevailed in part. When a plaintiff prevails only as to a portion of the request, the award of fees should be fairly allocable to that portion.

Booth Newspapers, Inc v Kent County Treasurer, 175 Mich App 523; 438 NW2d 317 (1989). Tax records indicating the monthly or quarterly tax payments made by individual hotels and motels under a county hotel/motel tax do not fall within the FOIA's privacy exemption.

Booth Newspapers, Inc v Regents of University of Michigan, 93 Mich App 100; 286 NW2d 55 (1979). The written opinion of a public body's attorney is exempt from disclosure under the FOIA and may serve as a basis for closing a meeting under the Open Meetings Act.

Booth Newspapers, Inc v University of Michigan Board of Regents, 444 Mich 211; 507 NW2d 422 (1993). To exempt information under the FOIA, section 13(1)(a), information must be of a "personal nature," and disclosure of that information must constitute "clearly unwarranted" invasion of privacy. Travel expense records of members of a public body do not constitute "records of a personal nature." The privacy exemption does not permit the withholding of information that conceivably could lead to the revelation of personal information. Therefore, a public body may not withhold travel expense records because their disclosure might lead to information concerning the candidates interviewed by board members.

Bradley v Saranac Community Schools Board of Education, Lansing Ass'n of School Admr's v Lansing School District, 455 Mich 285; 565 NW2d 650 (1997). The Michigan FOIA does not have a specific exemption for personnel records. Thus, the personnel records of non-law enforcement public employees generally are available to the public. Information that falls within one of the exemptions of the FOIA may be redacted.

The privacy exemption under section 13(1)(a) of the FOIA consists of two elements, both of which must be met in order for an exemption to apply. First, the information must be of a "personal nature." Second, the disclosure must be a "clearly unwarranted invasion of privacy."

Performance appraisals, disciplinary actions, and complaints relating to employees' accomplishments in their public jobs do not reveal intimate or embarrassing details of their private lives and, therefore, they are not records of a "personal nature."

Performance evaluations of public employees are not counseling evaluations protected from disclosure by the FIOA, section 13(1)(l).

Section 13(1)(m) of the FOIA provides an exemption for communications passing within or between public bodies. Documents in the possession of a school district prepared by parents are not within the scope of this exemption. Further, the exemption must be asserted by a public body rather than by a private individual.

Bredemeier v Kentwood Board of Education, 95 Mich App 767; 291 NW2d 199 (1980). The FOIA does not require the information be recorded by a public body, but if it is, it must be disclosed. Attorney fees, costs, and disbursements are awarded to prevailing party under the FOIA. However, to prevail, a party must show at a minimum that bringing a court action was necessary and had a causative effect on delivery of the information. Lack of court-ordered disclosure precludes an award of punitive damages under the FOIA.

Breighner v Michigan High School Athletic Ass'n, Inc, 471 Mich 217; 683 NW2d 639 (2004). The Michigan High School Athletic Association, Inc. (MHSAA) is not a "public body" within the meaning of FOIA that is funded "by or through" a governmental authority, rather it is an independent, nonprofit corporation primarily funded through its own activities. Therefore, the MHSAA is not subject to the FOIA's provisions.

Capitol Information Ass'n v Ann Arbor Police Dep't, 138 Mich App 655; 360 NW2d 262 (1984). Plaintiff's request, seeking "all correspondence" between local police department and "all federal

law enforcement/investigative" agencies, was "absurdly overbroad" and failed to sufficiently identify specific records as required by the FOIA, 3(1).

Cashel v Regents of the University of Michigan, 141 Mich App 541; 367 NW2d 841 (1985). Where a person seeking to inspect records will take more than two weeks to complete inspection, he or she may be assessed labor costs incurred by a public body to supervise his or her inspection.

Cashel v Smith, 117 Mich App 405; 324 NW2d 336 (1982). Depositions may sometimes be appropriate in FOIA cases, but they must be justified. The Legislature intended that the flow of information from public bodies and persons should not be impeded by long court process.

City of Warren v City of Detroit, 261 Mich App 165; 680 Nw2d 57 (2004). The computer software formula used to set water rates is merely computer-stored information or data and, thus, is a public record under the FOIA. The FOIA's exception of "software" would allow for nondisclosure of the set of computer statements or instructions that are used to utilize the formula and data; however, the formula itself is distinct information separate from the software.

Clerical-Technical Union of MSU v MSU Board of Trustees, 190 Mich app 300; 475 NW2d 373 (1991). The home addresses of donors to Michigan state University are information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of privacy.

CMU Supervisory-Technical Ass'n MEA/NEA v CMU Board of Trustees, A party to a lawsuit does not lose his or her right under the FOIA simply because the party may be able to obtain the records from a public body through the discovery phase of pending civil litigation. [But see section 13(1)(v) of the FOIA, which now exempts records or information relating to a civil action in which the requesting party and the public body are parties.]

Coblentz v City of Novi, 475 Mich 558; 719 NW2d 73 (2006). Defendant was not required to produce certain records described in plaintiff's FOIA request where defendant's uncontroverted affidavit stated that records did not exist. Plaintiff was entitled to the non-disclosed exhibits that accompanied a settlement agreement between defendant and a third party, where plaintiff's FOIA request described the records sufficiently to enable the defendant to find the records and where no exemption from disclosure applied. Plaintiff also was entitled to records exempted by defendant under section 13(1)(f) of the FOIA where defendant did not record a description of the records in a central place within a reasonable time after the records came into defendant's possession. Fees to recoup the labor costs incurred in processing FOIA requests do not include the cost of independent contractors.

Connoisseur Communication of Flint v University of Michigan, 230 Mich App 732; 584 NW2d 647 (1998). The University of Michigan properly denied a FOIA request for the vehicle records of a student athlete. The information was protected pursuant to the Family Education Rights and Privacy Act (FERPA) and, therefore, exempt from disclosure under the FOIA, section 13(2).

Curry v Jackson Circuit Court, 151 Mich App 854; 391 NW2d 476 (1986). The term "resides" as used in the FOIA, when applied to a prisoner, refers to the prisoner's intended domicile. Such a place may be the county where the prisoner last lived before being sent to prison or the county where the prison is located. Factors such as the possibility of parole and how the prisoner has ordered his or her personal business transactions will be considered relevant to corroboration of a prisoner's states intention relative to domicile.

Dawkins v Dep't of Civil Service, 130 Mich App 669; 344 NW2d 43 (1983). If a plaintiff in a FOIA case prevails only in part, she may be awarded either all of her court costs and attorney fees or only that portion fairly allocable to the successful portion of her case. The fact that the defendant's refusal to disclose the records was made in good faith and was not arbitrary or capricious has no bearing whatever on the plaintiff's right to recover these costs.

DeMaria Building Co, Inc, v Dep't of Management & Budget, 159 Mich App 729; 407 NW2d 72 (1987). The exemption found in 13(1)(m) of the FOIA, for communications and notes within a public body or between public bodies, does not apply to an outside consultant's report to a public body.

Detroit Free Press v Dep't of Consumer & Industry Services, 246 Mich App 311; 631 NW2d 769 (2001). Consumer complaints filed with the Department of Consumer and Industry Services against property insurers and health insurers contain information of a personal nature. Disclosure of the names and addresses of the complainants may be withheld, when requested pursuant to FOIA, because disclosure of the information would constitute a clearly unwarranted invasion of the individual's privacy. Other information in the complaints should, however, be disclosed of how the agency is complying with its statutory function.

Densmore v Dep't of Corrections, 203 Mich App 363; 512 NW2d 72 (1994). A public body does not need to provide additional copies of records it has already provided unless the requestor can demonstrate why the copy already provided was not sufficient.

Detroit Free Press v City of Southfield, 269 Mich App 275; 713 NW2d 28 (2005). The pension income amounts of police and firefighter pension recipients reflect specific governmental decisions regarding retirees' continuing compensation for public service. Therefore, the pension amounts are more comparable to public salaries than to private assets and do not constitute private information exempt from disclosure under the FOIA, and the public interest in disclosure outweighs a public interest in nondisclosure.

Detroit Free Press v City of Warren, 250 Mich App 164; 645 NW2d 71 (2002). The names of public officials and employees associated with information concerning grand jury proceedings constitute information concerning matters of legitimate public concern. It is not information of a personal nature that is exempt from disclosure under section 13 of the FOIA.

Detroit Free Press v Dep't of State Police, 243 Mich App 218; 622 NW2d 313 (2000). The State Police is not required to disclose information regarding state legislators who applied for concealed weapons permits. Legislators who apply for a concealed weapons permit are exercising a right guaranteed to all. The fact that a person has requested and/or secured

permission to carry a concealed weapon is an intimate and potentially embarrassing detail of one's private life. Disclosure of the information would not contribute significantly to the public's understanding of the operations or activities of the government and, therefore, would be a clearly unwarranted invasion of privacy.

Detroit Free Press, Inc v Dept's of Attorney General, 271 Mich App 418; 722 NW2d 277 (2006). Plaintiff was not a "prevailing party" as that term is defined under the FOIA where the trial court did not order disclosure of any public records and the dispute centered entirely on the FOIA processing fee charged for copies of records. Therefore, plaintiff was not entitled to the attorney fees and costs awarded by the trial court under section 10(6) of the FOIA.

Detroit Free Press, Inc v Oakland County Sheriff, 164 Mich App 656; 418 NW2d 124 (1987). Booking photographs of persons arrested, charged with felonies, and awaiting trial are not protected from release as an unwarranted invasion of personal privacy.

Detroit News, Inc v Detroit, 185 Mich App 296; 460 NW2d 312 (1990). The minutes of a closed city council meeting held in violation of the Open Meetings Act, are public records and are available upon request under the FOIA.

Detroit News, Inc v Policeman and Firemen Retirement Sys of the City of Detroit, 252 Mich App 59; 651 NW2d 127 (2002). The words of the FOIA state "a public body means any of the following." Thus, any of the entities listed in the statute are included as public bodies under the Act. The Policemen and Firemen Retirement System is a public body because it is a body which is "created by state or local authority or which is primarily funded by or through state or local authority."

Eastly v University of Michigan, 178 Mich App 723; 444 NW2d 820 (1989). A public body must have in its possession or control a copy of the requested document before it can be produced or before a court can order its production.

Evening News Ass'n v City of Troy, 417 Mich 481; 339 NW2d 421 (1983). A general claim that records are involved in an ongoing criminal investigation and that their disclosure would "interfere with law enforcement proceedings" is not sufficient to sustain an exemption under the FOIA, section 13(1)(b). A public body must indicate factually and in detail how a particular document or category of documents satisfies the exemption; mere conclusory allegations are not sufficient.

Farrell v Detroit, 209 Mich App 7; 530 NW2d 105 (1995). Computer records are public records that are subject to disclosure pursuant to the FOIA. A public body is required to provide public records in the form requested, not just the information they contain. The providing of a computer printout of the information contained on a computer tape does not satisfy a request for the computer tape itself.

Favors v Dep't of Corrections, 192 Mich App 131; 480 NW2d 604 (1991). The form used in determining whether a prisoner should be awarded disciplinary credits was exempt from disclosure under section 13(1)(m) of the FOIA in that it covered other than purely factual

materials, was advisory in nature and preliminary to final agency determination of policy or action. The public interest in encouraging frank communications within the Department of Corrections (DOC) clearly outweighed the public interest in disclosure of worksheet forms. The trial court failed to comply with the technical requirements of the FOIA because it did not require the DOC to bear the burden of proving that a public record was exempt. However, that failure did not require reversal of a grant of summary disposition for the DOC in the inmate's action where the Doc clearly reached the correct result.

Grebner v Clinton Charter Twp, 216 Mich App 736; 550 NW2d 265 (1996). Section 522(1) of the Michigan Election Law, 1954 PA 116, MCL 168.1 *et seq.*, which provides for the making, certifying, and delivery of a computer tape to any person upon the payment to the clerk of the court of the cost of making, certifying, and delivering the tape, disk, or listening is not a statute "specifically authorizing the sale" of the computer tape. Therefore, the determination of the fee to be charged for obtaining the computer tape is made pursuant to section 4 of the FOIA.

Grebner v Oakland County Clerk, 220 Mich App 513; 560 NW2d 351 (1996). Section 10(1) of the FOIA is a combined jurisdiction and venue provision. This provision makes it clear that circuit courts have jurisdiction to hear FOIA cases and specifies the counties in which the action may be brought.

Hagen v Dep't of Education, 431 Mich 118; 427 NW2d 879 (1988). The decisions of the State Tenure Commission are matters of public record. When a private hearing is requested by a teacher as provided under the Teacher Tenure Act, the decision may be withheld during the administrative stage of the teacher's appeal. Once a final administrative decision is reached, the decision may not be withheld from disclosure.

Hartzell v Mayville Community School District, 183 Mich App 782; 455 NW2d 411 (1990). The FOIA requires disclosure of the fact that a requested document does not exist. A plaintiff in a FOIA action that is forced to file a lawsuit to ascertain that a document does not exist is a prevailing party entitled to an award of costs and reasonable attorney fees.

Haskins v Oronoko Twp Supervisor, 172 Mich App 73; 431 NW2d 210 (1988). A trial court complies with the holding in *The Evening News Ass'n v City of Troy*, 417 Mich 481; 339 NW2d 421 (1983), where it conducts an *in camera* inspection of the records sought and determines that certain records are exempt from disclosures under the narrowly drawn statutory exemptions designed to protect the identity of confidential informants.

Health Central v Comm'r of Insurance, 152 Mich App 336; 393 NW2d 625 (1986). HMOs have no standing to raise common-law right of privacy claims. Such claims can only be asserted by individuals whose privacy has been invaded. The right of privacy does not protect artificial entities.

Herald Co v Ann Arbor Public Schools, 224 Mich App 266; 568 NW2d 411 (1997). Once documentation that is the subject of a FOIA lawsuit has been disclosed, the subject of the controversy disappears. The privacy exemption of the FOIA allows a public body to withhold from disclosure public records of a personal nature where the information would constitute a

clearly unwarranted invasion of an individual's privacy. Information is considered personal if it concerns a particular person and his or her intimate affairs, interests, or activities. While the records sought in this case were personal in nature in that they contained information about a teacher's family and observations about his or her conduct, the disclosure did not constitute a "clearly unwarranted" invasion of privacy because the records discussed the professional performance of a teacher in the classroom that is an issue of legitimate concern to the public.

A public body may exempt from disclosure, pursuant to section 13(1)(m), advisory communications within a public body or between public bodies to the extent that they are not nonfactual and are preliminary to a final agency determination. However, if records meet these substantive tests, the public body must also establish that the public interest in encouraging frank communications within the public body or between public bodies clearly outweighs the public interest in disclosure. In this case the public interest in disclosing records that contain public observations of a teacher who has been convicted or carrying a concealed weapon is not clearly outweighed by the public interest in encouraging frank communications within the public body.

A class of documents may be exempt from the FOIA, so long as, the exempt categories are clearly described and drawn with precision so that all documents within a category are similar in nature. Exempt material must be segregated from nonexempt material to the extent practicable.

The FOIA exempts, in section 13(1)(h), information subject to the physician-patient privilege. The purpose of the privilege is to protect the physician-patient relationship and ensure that communications between the two are confidential. Attendance records that do not contain any information that a physician acquired while treating an employee are not covered by this exemption.

The fact that an employee waives the physician-patient privilege by submitting to his or her employer attendance records that contain medical records does not mean that the privilege was waived with regard to third parties who request disclosure of the records under the FOIA.

The FOIA excludes from disclosure information protected by the attorney-client privilege. The scope of the privilege is narrow, including only those communications by the client to its advisor that are made for the purpose of obtaining legal advice. A tape recording of an interview of the teacher by the school district is not within the attorney-client privilege.

Herald Co v City of Bay City, 463 Mich 111; 614 NW2d 873 (2000). The FOIA does not establish detailed requirements for a valid request. If a citizen submits a request for the names, current job titles, and cities of residence for job candidates, and the city possesses records containing the information, the city is obligated to provide the records even though they were not specifically described in the request.

The fact of application for a public job, or the typical background information that may be contained in an application, is not information of a personal nature protected under section 13(1)(a) of the FOIA. If embarrassing or intimate personal information is contained in an application, the public body is under a duty to separate the exempt material and make the nonexempt material available to the public.

Herald Co, Inc v Eastern Michigan Univ Bd of Regents, 475 Mich 463; 719 NW2d 19 (2006). The advisory, non-factual portions of a letter written by defendant's vice president of finance to a member of the Board of Regents were exempt as frank communications under section 13(1)(m) of the FOIA, where the balance of competing interests favored nondisclosure.

Herald Co v Kalamazoo, 229 Mich App 376; 581 NW2d 295 (1998). Law enforcement exemptions of the Michigan FOIA are more restrictive than parallel provisions of the federal FOIA. The correct standard under the Michigan FOIA is whether a document "would" interfere with law enforcement proceedings or disclose investigative techniques or procedures.

An investigation will not be considered "on-going" for the purposes of the FOIA without an active, on-going, law enforcement investigation. In the absence of such activities, the investigation cannot be considered open although the period of limitations may still be running.

Hoffman v Bay City School District, 137 Mich App 333; 357 NW2d 686 (1984). Where an attorney conducted an investigation into the business and finance practices of a school district and orally reported his or her opinion regarding the investigation to the school board but did not share the actual documents, the investigative file itself is not a public record of the board.

Howell Education Association MEA/NEA v Howell Board of Education, published opinion of the Court of Appeals, issued January 26, 2010 (Docket No 288977); 2010 Mich App LEXIS 143; 30 IER Cas (BNA) 594; 188 LRRM 2054. This matter has been appealed to the Supreme Court of Michigan, SC 140929, lv den 2011.

Hubka v Pennfield Twp, 197 Mich App 117; 494 NW2d 800 (1992). Letters sent by a township attorney to a township board that contain information obtained by the attorney from township employees under compulsion and promises of confidentiality are protected from disclosure under the FOIA by the attorney-client privilege. Likewise, the opinions, conclusions, and recommendations of the attorney, based on the information, are protected.

Hyson v Dep't of Corrections, 205 Mich App 422; 521 NW2d 841 (1994). Statements made by confidential witnesses relating to a major misconduct charge against a prison inmate may be withheld when requested pursuant to the FOIA because disclosure of the documents, even with the names of witnesses deleted, would reveal their identities and jeopardize their personal safety within the prison. In addition, the release would preclude the public body's ability to maintain the physical security of the penal institution.

In re Buchanan, 152 Mich App 706; 394 NW2d 78 (1986). The common-law right of access to court records is not without limitation.

In re Subpoena Duces Tecum, on remand from the MI Supreme Court, 205 Mich App 700; 518 NW2d 522 (1994). Section 13(1)(m) of the FOIA protects from disclosure communications within or between public bodies of an advisory nature that are other than purely factual and are preliminary to a final agency determination of policy or action. The burden is on the public body to show, in each particular instance, that the public interest in encouraging frank communications between officials and employees of the public body clearly outweighs the public interest in disclosure. It is not adequate to show that the requested document falls within a general category of documents that may be protected.

International Union, UPGWA v Dep't of State Police, 118 Mich App 292; 324 NW2d 611 (1982), aff'd by equally divided court, 422 Mich 432 (1985). The exemption of a list of names

and home addresses of private security guards from disclosure to a union seeking that list for collective bargaining purposes is not justified. The public purpose of collective bargaining outweighs the employees' interest in the privacy of this information. However, the union is ordered not to engage in further disclosure of the list for other unrelated purposes.

Jackson v Eastern Michigan University, 215 Mich App 240; 544 NW2d 737 (1996). Eastern Michigan University Foundation is primarily funded by Eastern Michigan University and, therefore, is a public body subject to the FOIA.

Jordan v Martimucci, 101 Mich App 212; 300 NW2d 325 (1980). A plaintiff who brings an action under the FOIA for punitive damages for delay in disclosure of requested information must demonstrate that he or she has received the requested information as a result of court-ordered disclosure and that the defendant acted arbitrarily and capriciously in failing to comply with the disclosure request in a timely manner.

Kearney v Dep't of Mental Health, 168 Mich App 406; 425 NW2d 161 (1988). The FOIA exempts from disclosure records exempted from disclosure by other statutory authority. Mental Health treatment records are exempt under the Mental Health Code. However, treatment records may be disclosed where the holder of the record and the patient consent. Persons requesting records under the FOIA are not entitled to free copies of the records. The holder of a public record may charge a fee for providing copies. There is, however, a waiver of the first \$20.00 for those who, by affidavit, can show an inability to pay because of indigency.

Kent County Sheriff's Ass'n v Sheriff, 463 Mich 353; 616 NW2d 677 (2000). The FOIA provides citizens with broad rights to obtain public records limited only by the coverage of the statute and its exemptions. The fact that another body of law potentially gives an additional basis for access to records, in this case the Public Employment Relations Act, does not limit the applicability of the FOIA or the jurisdiction of the circuit court to consider relief under the FOIA.

Kestenbaum v Michigan State University, 414 Mich 510; 327 NW2d 783 (1982). An equally divided Supreme Court affirmed the lower court in holding that a list of names and addresses of students on a computer tape would appear to be a public record, but the nature of the information is personal and falls within an enumerated exception. Public disclosure of the tape would constitute a clearly unwarranted invasion of a person's privacy.

Key v Township of Paw Paw, 254 Mich App 508; 657 NW2d 546 (2002). The public body complied with the FOIA when the FOIA coordinator denied a request for information because the information sought could not be located.

When a public body timely claims the additional 10 business days for a response as provided in section 5(2)(d) of the FOIA, the new response deadline is 15 business days after the receipt of the request, regardless of when the notice of extension is issued.

Kincaid v Dep't of Corrections, 180 Mich App 176; 446 NW2d 604 (1989) – a request for disclosure of information under the FOIA must describe the requested records sufficiently to enable the public body to find them; when a request is denied because of an insufficient description, the requesting person may (1) rewrite the request with additional information, or (2)

file suit in circuit court where the sole issue would be the sufficiency of information to describe the records desired.

Kincaid v Dep't of Corrections, 180 Mich app 176; 446 NW2d 604 (1989). A public body bears the burden of proof on demonstrating a proper justification for the denial of a FOIA request. A request for disclosure of information under the FOIA must describe the requested records sufficiently to enable the public body to find them; when a request is denied because of an insufficient description, the requesting person may (1) rewrite the request with additional information, or (2) file suit in circuit court where the sole issue would be the sufficiency of information to describe the records desired. A FOIA request by an inmate, which erroneously states the date of a guilty determination on a misconduct or the hearing date with respect to which records are sought, reasonably and sufficiently describes the records sought. A public body acts in an arbitrary and capricious manner by repeatedly refusing to look for a record so described.

Kocher v Dep't of Treasury, 241 Mich App 378; 615 NW2d 767 (2000). The addresses of unclaimed property holders maintained by the Michigan Department of Treasury fall within the definition of personal information, and their release would constitute a clearly unwarranted invasion of privacy. Disclosure of the information would not enhance the public's understanding of the operations or activities of the government.

Krug v Ingham County Sheriff's Office, 264 Mich App 475; 691 NW2d 50 (2004). Defendant was not entitled to issue blanket denials of all FOIA requests relating to open case files without actually reviewing the case first to determine what information is exempt. A defendant should treat a lawsuit objecting to a FOIA request denial as a continuing request for information and release the records if the defendant determines that the information has become nonexempt during the course of the FOIA litigation.

Kubick v Child & Family Services of Michigan, 171 Mich App 304; 429 NW2d 881 (1988). While there is no bright-line rule to determine what constitutes "primarily funded" to determine if a body is a "public body" as defined at section 2(d) of the FOIA, a private nonprofit corporation which receives less than half of its funding from government sources is not a public body which is primarily funded by or through state or local authority. Accordingly, such corporation is not subject to the requirements of the FOIA regarding the disclosure of information by public bodies.

Landry v City of Dearborn, 259 Mich App 416; 674 NW2d 697 (2003). Section 13(1)s)(ix) of the FOIA permits nondisclosure of law enforcement personnel records. The meaning of the term "personal records" in that section includes all records used by law enforcement agencies in the selection or hiring of officers, as well as the applications received by the city from unsuccessful applicants. The public interest in disclosing the information did not outweigh the public interest in not disclosing the information.

Laracey v financial Institutions Bureau, 163 Mich App 437; 414 NW2d 909 (1987). Attorney who filed pro se action is not entitled to recover attorney fees in a FOIA lawsuit.

Lapeer County Abstract & Title Co v Lapeer County Register of Deeds, 264 Mich App 167; 691 NW2d 11 (2004). While the FOIA grants a general right to receive copies of public records, nothing in the FOIA requires a public body to provide copies in a microfilm format rather than in the form of a paper copy. Furthermore, the Inspection of Records Act specifically provides that, in response to a request for a reproduction of a record of a register of deeds, the register of deeds may select the medium used to reproduce the record.

Lepp v Cheboygan Area Schools, 190 Mich App 726; 476 NW2d 506 (1991). Where the requested information pertains to the party making the request, it is unreasonable to refuse disclosure on the grounds of invasion of privacy.

Local Area Watch v City of Grand Rapids, 262 Mich App 136; 683 NW2d 745 (2004). Under the Open Meetings Act, minutes of closed session meetings may only be disclosed by court order under the Act. Further, under the FOIA, a public body is not required to disclose records protected from disclosure to the public by other statutes. Where the plaintiff sought disclosure of closed meeting minutes, the defendant did not violate the FOIA for withholding then where there was not a judicial determination that the minutes were subject to disclosure under the Open Meetings Act.

Local 79, Service Employees Intern'l Union v Lapeer County General Hospital, 111 Mich App 441; 314 NW2d 648 (1981). The proper forum in which to seek relief from a violation of the FOIA is the circuit court and not the Michigan Employment Relations Commission, notwithstanding labor-related issues.

Local 312 of the AFSCME, AFL-CIO v Detroit, 207 Mich App 472; 525 NW2d 487 (1994). The Public Employment Relations Act (PERA), 1947 PA 336, MCL 423.201 *et seq.*, and the FOIA are not conflicting statutes such that the PERA would prevail over the FOIA with the result that a person involved in a labor dispute would be precluded from obtaining public records under the FOIA. The Legislature has clearly defined the class of persons entitled to seek disclosure of public records pursuant to the FIOA. There is no sound policy reason for distinguishing between persons who are involved in litigation-type proceedings and those who are not.

MacKenzie v Wales Twp, 247 Mich App 124; 635 NW2d 335 (2001). A township must grant access to computer tapes used to prepare property tax notices for the township even though the tapes were created by, and in the possession of, another entity. Because the township used the tapes, albeit indirectly, in performing an official function, the tapes fall within the statutory definition of public records.

Mackey v Dep't of Corrections, 205 Mich App 330; 517 NW2d 303 (1994). A prison record about a prison inmate is exempt from disclosure under the prison security exemption of the FOIA where the record is requested by an inmate other than the one to whom the record pertains.

Mager v Dep't of State Police, 460 Mich 134; 595 NW2d 142 (1999). State Police is not required to provide the names and addresses of registered handgun owners. Gun ownership is information that meets both elements of the FOIA privacy exemption, section 13(1)(a). Gun

registration information is of a "personal nature," and the disclosure of such information would constitute a "clearly unwarranted" invasion of the individual's privacy.

Manning v City of East Tawas, 234 Mich App 244; 593 NW2d 649 (1999). When making an in camera determination whether to compel disclosure under the FOIA, a trial court may order disclosure of nonexempt information and may provide for the redaction of exempt information.

Meredith Corp v City of Flint, 256 Mich App 703; 671 NW2d 101 (2003). Where an action for disclosure of public records is initiated pursuant to the FOIA, the prevailing party's entitlement to an award of reasonable attorney fees, costs, and disbursements includes all such fees, costs, and disbursements related to achieving production of the public records.

Messenger v Dep't of Consumer & Industry Services, 238 Mich App 524; 606 NW2d 38 (1999). Investigation undertaken by the state public body did not fit the definition of investigation found in the Public Health Code as referenced in section 13(1)(t) of the FOIA.

Messenger v Ingham County Prosecutor, 232 Mich App 633; 591 NW2d 393 (1998). The privilege for attorney work product is recognized by court rule, MCR 2.302(B)(3)(a), and incorporated into the FOIA through section 13(1)(h). When information sought pursuant to the FOIA is identified as attorney work product, it is not subject to disclosure.

McCartney v Attorney General, 231 Mich App 722; 587 NW2d 824 (1998). Letters forwarded by the Governor to the Attorney General for the purpose of seeking legal advice were protected by the attorney-client privilege, and thus, by section 13(1)(g) of the FOIA. Internal memoranda within the Attorney General's office containing recommendations, opinions, and strategies with regard to legal advice requested by the Governor are exempted from disclosure by section 13(1)(m) of the FOIA to the extent that they are preliminary, nonfactual, and part of the deliberative process.

Michigan Council of Trout Unlimited v Michigan Dep't of Military Affairs, 213 Mich App 203; 539 NW2d 745 (1995). Notwithstanding the unique relationship between the Michigan National Guard and the federal government, which is explicitly recognized by Michigan statutes, the circuit court had jurisdiction to consider plaintiff's actions under the Michigan FOIA seeking to obtain documents in possession of the Michigan National Guard. While the state courts have jurisdiction, application of section 13(1)(d) of the Michigan FOIA encompasses federal regulations and the federal FOIA, both of which prohibit the release of the documents sought by plaintiff. Accordingly, plaintiff could not obtain the documents at issue.

Michigan Federation of Teachers and School Related Personnel, AFT, AFL-CIO v University of Michigan, 481 Mich 657; 753 NW2d 28 (2008). The Court held that employees' home addresses and telephone numbers meet both prongs of FOIA's privacy exemption because that information is "of a personal nature" and its disclosure would constitute a "clearly unwarranted invasion of an individual's privacy." The Court reexamined the definition of "information of a personal nature" set forth in *Bradley v Saranac Community Schools Bd of Ed*, 455 Mich 285; 565 NW2d 650 (1997), and conclude that it unnecessarily limited the intended scope of that phrase. The Court cured the deficiency and revised the definition to encompass information of an embarrassing,

intimate, *private*, or *confidential* nature. Accordingly, the University of Michigan employees' home addresses and telephone numbers are exempt from disclosure.

Michigan Tax Management Services Co v City of Warren, 437 Mich 506; 473 NW2d 263 (1991). When a prevailing party in a FOIA action is awarded "reasonable" attorney fees, the trial court is obligated to make an independent determination with regard to the amount of the fees. The standard utilized by an appellate court to review such a determination is abuse of discretion.

Milford v Gilb, 148 Mich App 778; 384 NW2d 786 (1985). Under the FOIA, a public body may be exempt from disclosure 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 matters. The public body bears the burden of proof that a statutory exception applies to the item requested.

Mithrandir v Dep't of Corrections, 164 Mich App 143; 416 NW2d 352 (1987). Because of the special circumstances surrounding prison security and the confinement of prisoners, the Department of Corrections may set limits on a prisoner's right to examine nonexempt records.

Mullin v Detroit Police Dep't, 133 Mich App 46; 348 NW2d 708 (1984). Defendant properly exempted a computer tape containing personal information on persons involved in traffic accidents. Disclosure of the tape would have been a clearly unwarranted invasion of privacy.

Nabkey v Kent Community Action Program, Inc, 99 Mich App 480; 298 NW2d 11 (1980). No award of attorney fees is possible where a prevailing plaintiff under the FOIA is not represented by an attorney.

Newark Morning Ledger Co v Saginaw County Sheriff, 204 Mich App 215; 514 NW2d 213 (1994). Internal affairs investigation records of a law enforcement agency constitute personnel records, which are exempt from disclosure unless the public interest in disclosure outweighs the public interest in nondisclosure. The mere location of a public record in a personnel file is not determinative as to its status in a personnel record. In determining what is a "personal record" under the FOIA, the court looked to the definition of that term in the Bullard-Plawecki Employee Right to Know Act (ERKA), 1978 PA 397, MCL 423.501 *et seq.* While the purpose of the FOIA and the ERKA are different, the Legislature's clearly expressed intent in the ERKA to prohibit access by an employee to any internal investigations relating to that employee indicates an intent to not allow public access to such records.

Nicita v Detroit, 194 Mich App 657; 487 NW2d 814 (1992). Section 13(1)(i) of the FOIA does not exempt bids with respect to development projects from disclosure once a developer has been chosen.

Nicita v Detroit, 216 Mich App 746; 550 NW2d 269 (1996). Business records pertaining to a real estate development company are not exempt from disclosure pursuant to section 13(1)(a) of the FOIA where there is no indication that the records contain information of a personal nature. This section does not protect information that could conceivably lead to the revelation of personal information. Section 13(1)(m) of the FOIA protects communications within or between a public body that are other than purely factual and are preliminary to a final agency

determination of policy or action. A public agency must also show that the need for nondisclosure clearly outweighs the public interest in disclosure.

Oakland Press v Pontiac Stadium Building Authority, 173 Mich App 41; 433 NW2d 317 (1988). The release of names and addresses of licensees doing business with a public body is not an unwarranted invasion of privacy.

Oakland County Prosecutor v Dep't of Corrections, 222 Mich App 654; 564 NW2d 922 (1997). A prisoner's mental health records submitted to the parole board when seeking parole must be provided to a county prosecutor when requested pursuant to the FOIA so that the prosecutor may determine whether the board's decision to grant parole should be appealed.

Oakland County Treasurer v Title Office, Inc, 245 Mich App 196; 627 NW2d 317 (2001). Electronic records are writings as defined by the FOIA. Public bodies are required to provide public records in the format requested. If there is no explicit statutory language that provides fees for electronic records, the records must be provided using the FOIA fee requirements.

Palladium Publishing Co v River Valley School District, 115 Mich App 490; 321 NW2d 705 (1982). The name of a student suspended by the action of a board of education will appear in the meeting minutes and is not information exempt from disclosure under the FOIA.

Paprocki v Jackson County Clerk, 142 Mich App 785; 371 NW2d 450 (1985). Under the 10(1) of the FOIA, the term "resides," when applied to a prisoner, refers to the place where the prisoner last lived before being sent to prison; "resides" must be interpreted to mean a person's legal residence or domicile at the time of his or her incarceration.

Patterson v Allegan County Sheriff, A booking photograph of a county jail inmate kept in the files of a county sheriff is a public record under the FOIA; such photographs may not be withheld from disclosure on the basis of the privacy exemption found in 13(1)(a).

Payne v Grand Rapids Police Chief, 178 Mich App 193; 443 NW2d 481 (1989). A record of law enforcement investigation may be exempt from disclosure under the FOIA where disclosure would interfere with law enforcement proceedings. However, the agency must demonstrate how disclosure of particular records or kinds of records would amount to interference on the basis of facts and not merely conclusory statements that recite the language of the FOIA.

Pennington v Washtenaw County Sheriff, 125 Mich App 556; 336 NW2d 828 (1983). Failure to respond to a request is treated as a final decision to deny the request. A plaintiff need only make a showing in circuit court that the request was made and denied. The burden is on the defendant to show a viable defense. Nondisclosure based upon the privacy exemption of 13(1)(b)(iii) is limited to intimate details of a highly personal nature.

Penokie v Michigan Technological University, 93 Mich App 650; 287 NW2d 304 (1979). Disclosures of the names and salaries of employees of the defendant university is not a "clearly unwarranted" invasion of personal privacy under the FOIA.

Perlongo v Iron River Cooperative TV, 122 Mich App 433; 332 NW2d 502 (1983). A private nonstock, nonprofit cable television corporation is not a "public body" for purposes of either the Open Meetings Act or the FOIA, even though it is licensed, franchised, or otherwise regulated by the government.

Post-Newsweek Stations, Michigan, Inc v Detroit, 179 Mich App 331; 445 NW2d 529 (1989). In claiming an exemption under the FOIA, for interference with law enforcement proceedings, the burden of proof is on the public body claiming the exemption. The exemption must be interpreted narrowly and the public body must separate exempt material from nonexempt and make nonexempt information available. Exempt information must be described with particularity indicating how the information would interfere with law enforcement proceedings. When analyzing claims of exemption under the FOIA, a trial court must make sure it receives a complete particularized justification for a denial of a request, or hold *in camera* hearings to determine whether this justification exists. The court may allow counsel for the requesting party to examine, in camera, under special agreement, the contested material.

Practical Political Consulting, Inc v Terry Lynn Land, published opinion of the Court of Appeals, issued March 9, 2010 (Docket No 291176). The issue is whether the disclosure, or concealment, of public records (a copy of all vote history of the January 15, 2008 presidential primary including which ballots each voter selected) will lead to, or detract from, the public's ability to hold its elected and appointed public officials accountable for carrying out the law.

Proctor v White Lake Twp Police, 248 Mich App 457; 639 NW2d 332 (2001). The FOIA is not unconstitutional simply because it excludes prisoners from obtaining information. Application of the FOIA exclusion does not deprive prisoners of their fundamental right to access the courts or their First Amendment rights. The principles involving access to the court do not support a right to inspect police department records.

Quatrine v Mackinaw City Public Schools, 204 Mich App 342; 514 NW2d 254 (1994). Public schools were not required to release records under the FOIA where written parental consent for release of records was not provided.

Residential Ratepayer Consortium v Public Service Commission, 168 Mich App 476; 425 NW2d 98 (1987). An administrative agency does not waive its defenses in a circuit court action to compel disclosure of documents under the FOIA because they were not raised at the administrative level.

Ridenour v Dearborn Board of Education, 111 Mich App 798; 314 NW2d 760 (1981). Public disclosure of performance evaluation of school administrators is not an intrusion of privacy as defined by the FOIA because people have a strong interest in public education and because taxpayers are increasingly holding administrators accountable for expenditures of tax money.

Scharret v City of Berkley, 249 Mich App 405; 642 NW2d 685 (2002). According to section 5 of the FOIA, a public body is required to respond to a request for information within five business days after receiving the request, and its failure to timely respond constitutes its final determination to deny the request and is a violation of the FOIA.

In addition, nothing in the FOIA states that the resubmission of a request denied by virtue of the public body's failure to respond divests the requesting person of the ability to exercise the options granted under section 10 of the FOIA.

To get an award of attorney fees and costs under the FOIA, the action must be reasonably necessary to compel disclosure, and the action must have substantial causative effect on the delivery of the information to the requestor.

Schinzal v Wilkerson, 110 Mich App 600; 313 NW2d 167 (1981). A plaintiff appearing in propria persona who prevails in an action commenced pursuant to the FOIA is entitled to an award of his or her actual expenditures but is not entitled to an award of attorney fees.

Sclafani v Domestic Violence Escape, 255 Mich App 260; 660 NW2d 97 (2003). Section 2(d)(iv) of the FOIA states that a public body is "any other body which is created by state or local authority or which is primarily funded by or through state or local authority." The court found that Domestic Violence Escape (DOVE), a non-profit group that educates citizens about domestic violence and provides several services to victims, was a public body and therefore was subject to FOIA because a state or local government authority provided 50% or more of its funding. "Primary funding," as required under the statute, can be provided by multiple sources.

Shellum v MESC, 194 Mich App 474; 487 NW2d 490 (1992). Information held by MESC concerning the calculated unemployment insurance tax contribution rate of an employer is exempt from disclosure under 13(1)(d) of the FOIA because it utilizes information obtained from the employer, which is protected by statute and administrative rule.

Schroeder v Detroit, 221 Mich App 364; 561 NW2d 497 (1997). A person denied employment by a police department was not entitled to receive a copy of his or her psychological evaluation under the FOIA. In cases involving testing instruments as defined by section 13(1)(k) of the FOIA, release of the information is not required unless the public interest in disclosure outweighs the public interest in nondisclosure. Here, the public interest ensuring the integrity of the hiring process outweighed the public interest in disclosing the information to a candidate attempting to investigate the fairness of the test.

Soave v Michigan Dep't of Education, 139 Mich App 99; 360 NW2d 194 (1984). Because federal agency regulations have the force and effect of federal statutory law, a state agency may properly withhold a record under FOIA, 13(1)(d), if that record is exempt from disclosure under a federal agency regulation.

State Defender Union Employees v Legal Aid & Defender Ass'n of Detroit, 230 Mich App 426; 584 NW2d 359 (1998). An organization "primarily funded by or through state or local authority" is a public body pursuant to the FOIA. Primarily funded means the receipt of government grants or subsidies. An otherwise private organization is not a public body merely because public monies paid in exchange for goods or services comprise a majority of the organization's revenues.

State Employees Ass'n v Dep't of Management & Budget, 428 Mich 104; 404 NW2d 606 (1987). The disclosure of the home addresses of state employees to a recognized employee organization does not constitute a clearly unwarranted invasion of privacy.

Stone Street Capital, Inc v Michigan bureau of State Lottery, 236 Mich App 683; 689 NW2d 541 (2004). The names, addresses, and other personal information of persons who have received lottery winnings directly, by assignment, or by other judgment are exempt from disclosure under the FOIA as the information is entirely unrelated to any inquiry regarding the inner working of government and would constitute a clearly unwarranted invasion of an individual's privacy. Public disclosure of such personal information has the potential to endanger individuals.

Sutton v City of Oak Park, 251 Mich App 345; 650 NW2d 404 (2002). Internal investigation records may be exempt as personnel records of a law enforcement agency if the public interest favors nondisclosure over disclosure.

Swickard v Wayne County Medical Examiner, 438 Mich 536; 475 NW2d 304 (1991). In making a determination whether a disclosure of requested information would constitute an invasion of privacy one looks to constitutional law and common-law as well as customs, mores, or ordinary views of the community. The release of autopsy reports and toxicology test results are not unwarranted infringements on the right to privacy of either the deceased or the deceased's family. The autopsy reports and toxicology test results are not within the doctor-patient privilege.

Swickard v Wayne County Medical Examiner, 196 Mich App 98; 492 NW2d 497 (1992). A party who prevails completely in an action asserting the right to inspect or receive a copy of a public record under the FOIA is entitled to reasonable attorney fees, costs, and disbursements. No time limit is imposed upon a prevailing party for requesting attorney fees.

Tallman v Cheboygan Area Schools, 183 Mich App 123; 454 NW2d 171 (1990). A public body may charge a fee for providing a copy of a public record. Section 4 of the Act provides a method for determining the charge for records, and a public body is obligated to arrive at its fees pursuant to that section.

The Detroit News, Inc v Detroit, 204 Mich App 720; 516 NW2d 151 (1994). Telephone bills paid by a public body constitute expense records of public officials and employees and are "public records" under the FOIA.

Thomas v City of New Baltimore, 254 Mich App 196; 657 NW2d 530 (2002). Where a person sues under the FOIA and prevails in an action to compel disclosure, the person must be awarded costs and fees, "even though the action has been rendered moot by acts of the public body in disposing of the documents."

Thomas v State Board of Law Examiners, 210 Mich App 279; 533 NW2d 3 (1995). The State Board of Law Examiners is an agent of the judiciary and, therefore, not a public body subject to the disclosure requirements of the FOIA.

Title Office, Inc v Van Buren Co Treasurer, 469 Mich 516; 676 NW2d 207 (2004). Fees for electronic copies of property tax records requested from a county treasurer are computed according to the Transcripts and Abstracts of Records Act (TARA), as an exception under the FIOA, section 4(1). "Transcripts," as used in the TARA, is intended to apply to any reproduction of a record on file in the treasurer's office, including electronic copies.

Tobin v Michigan Civil Service Comm'n, 416 Mich 661; 331 NW2d 184 (1982). The FOIA does not compel a public body to conceal information at the insistence of one who opposes its release.

Traverse City Record Eagle v Traverse City Area Public Schools, 184 Mich App 609; 459 NW2d 28 (1990). A tentative bargaining agreement between a school district and the union which represents its employees was held to be exempt from disclosure pursuant to section 13(1)(m) of the FOIA, which exempts communication and notes within a public body or between public bodies which are advisory, nonfactual, and preliminary to a final decision. The public interest in encouraging frank communications between the employer and its employees, which leads to effective negotiations, in this case outweighs the public interest in disclosure.

Walen v Dep't of Corrections, 443 Mich 240; 505 NW2d 519 (1993). A prison disciplinary hearing falls within the definition of "contested case" and, therefore, pursuant to the FOIA, section 11(1), must be published and made available to the public. The Department of Corrections satisfied the publication requirement by retaining the final orders and decisions from disciplinary hearings in prisoners' files.

Walloon Lake Water System, Inc v Melrose Twp, 163 Mich App 726; 415 NW2d 292 (1987). A public body does not escape liability under the FOIA merely because a capricious act on its part rendered the lawsuit moot. This is particularly true when actions of the public body include direct violation of the FOIA, i.e., not giving a written explanation of the refusal as required and willfully disposing of the material knowing that a suit is pending under the FOIA for disclosure.

Wayne County Prosecutor v Detroit, 185 Mich App 265; 460 NW2d 298 (1990). For purposes of the FOIA, a county prosecutor is a person as defined in the Act. This allows him or her, in his or her official capacity, to request documents from public bodies under the FOIA.

Williams v Martinucci, 88 Mich App 198; 276 NW2d 876 (1979). Action of the manager of general office services at a state prison in denying inmate's request for copies of certain documents in inmate's file because inmate did not pay the \$3.00 fee for the cost of processing the request was not arbitrary and capricious, since the manager checked the institutional indigency list for the month and found that the inmate's name was not on it.

Wilson v Eaton Rapids, 196 Mich App 671; 493 NW2d 433 (1992). A public body's attempt to reconcile a contractual obligation to maintain the confidentiality of a resignation agreement with its statutory obligation under the FOIA does not constitute arbitrary and capricious behavior.

Yarbrough v Dep't of Corrections, 199 Mich App 180; 501 NW2d 207 (1993). Records compiled in the course of an internal investigation into a sexual harassment are "investigating

records compiled for law enforcement purposes" within the meaning of said terms at section 13(1)(b) of the FOIA.