

STATE OF MICHIGAN  
COURT OF CLAIMS

MACKINAC CENTER  
FOR PUBLIC POLICY,  
a Michigan nonprofit corporation,

Case Number: 16 - - CZ

Plaintiff,

Hon.

v

DEPARTMENT OF ENVIRONMENTAL QUALITY,  
a Michigan state public body,

Defendant.

---

Patrick J. Wright (P54052)  
Derk A. Wilcox (P66177)  
MACKINAC CENTER LEGAL FOUNDATION  
Attorneys for Plaintiff  
140 West Main Street  
Midland, MI 48640  
(989) 631-0900

---

**COMPLAINT**

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

Now comes Plaintiff, MACKINAC CENTER FOR PUBLIC POLICY, and for its Complaint, states the following:

**BACKGROUND**

The Plaintiff, MACKINAC CENTER FOR PUBLIC POLICY (“MCP”), is a 501(c)(3) corporation and public policy think tank that also operates a news source – Michigan Capitol Confidential. As part of its investigation into the matters surrounding the Flint water crisis, via

the Freedom of Information Act (“FOIA”), the MCPP sought the e-mails of two employees of Defendant, Department of Environmental Quality (“DEQ”). DEQ sought a “good faith deposit” for the documents in the relatively low amount of \$114.35. That amount was sent on April 6, 2016, and cashed by DEQ on May 6, 2016. The low amount of the estimate indicates that there will not be much work in providing the requested material. DEQ has not provided the material to date and stated that it is not planning on responding until July 29, 2016. Given the low amount of work necessary to provide the information, there is no justification for the delay that has occurred to date and further there is no justification for extending the delay until the end of July.

#### **THE PARTIES, VENUE AND JURISDICTION**

1. The Plaintiff, MACKINAC CENTER FOR PUBLIC POLICY, is a Michigan-based nonprofit 501(c)(3) corporation.
2. The Defendant, DEPARTMENT OF ENVIRONMENTAL QUALITY, is a state agency.
3. Venue is proper pursuant to MCL 15.240(1)(b).
4. Pursuant to MCL 15.240(5), this action should be “assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.”
5. Pursuant to MCL 600.6419(1)(a), the Court of Claims has jurisdiction over this claim.

#### **VIOLATION OF FREEDOM OF INFORMATION ACT**

6. On March 30, 2016, the MCPP emailed the DEQ FOIA coordinator a request for all emails from two DEQ employees (Liane Shekter-Smith and Stephen Busch) that occurred during 2013, 2014 and 2015 and contained the word “Flint.” Also requested were the names of “any employees transferred, reassigned, or suspended as a result of the Flint water issues.” Finally, the request sought the current job titles of Smith and Busch.  
Exhibit 1.

7. On April 4, 2016, DEQ sent a 10-business-day extension letter. Exhibit 2.
8. Pursuant to MCL 15.234(4), DEQ has established procedures and guidelines to implement the FOIA. The procedures and guidelines are online at: [http://www.michigan.gov/documents/deq/deq-fbsd-policies-01-006\\_204527\\_7.pdf](http://www.michigan.gov/documents/deq/deq-fbsd-policies-01-006_204527_7.pdf) A copy is attached as Exhibit 3.
9. Step 18 of the DEQ guidelines indicates that after the good faith deposit is received that DEQ “FOIA Liaisons” will:
  - a. Within a reasonable time for response after the good faith deposit is received, duplicates [sic] requested records. It is expected that most of the responses will be done in less than 10 business days.
    1. If the duplication of requested records takes more than 10 business days, staff must notify requestor of expected time frame to duplicate all requested records.
    2. Notifies the Central FOIA Liaison of the final cost.
    3. The Central FOIA Liaison will prepare final invoice, . . . .
  - b. Upon receipt of notification of final payment:
    1. Central FOIA Liaison will notify FOIA Liaisons to mail all responsive records within 10 business days.

*Id.*

10. Step 19 of the DEQ guidelines state that “FOIA Liaisons” will “Upon receipt of notification of final payment for all FOIA requests, send records within 10 business days in the most economical manner.” *Id.*
11. On April 21, 2016, DEQ sent MCPP a cost estimate for the amount of \$114.35. The estimated staff time to respond to the FOIA request was 2.5 hours of “Technical Staff Time,” which was to be charged at \$27.50/hour and 2 hours of “Administrative Staff time,” which was to be charged at \$22.80/hour. No estimate from the number of pages copied was made although the DEQ indicated that each page would be \$0.05. Exhibit 4.
12. An accompanying letter stated:

Section 4(2) of the FOIA, MCL 15.234(2), provides that a public body may require a good-faith deposit of one-half of the estimated FOIA processing fee. Upon receipt of a deposit check for \$57.17, made payable to the “**State of Michigan**” and sent to the Michigan Department of Environmental Quality, Cashier’s Office-FDEQ FOIA P.O. Box 30657, Lansing, Michigan 48909-8157, the DEQ will complete the processing of the request within an estimated 60 business days. . . .

Upon completing the processing of the request, the DEQ will send notice of the balance due, the statutory basis for exemptions, if any, and the statutory remedial rights, if applicable. After receipt of the fee balance, copies of the records will be provided to you.

*Id.*

13. On April 26, 2016, the full amount of the estimate (not merely the 50% required by MCL 15.234(8)) was sent via check to DEQ.

14. On May 6, 2016, DEQ cashed the check. Exhibit 5.

15. On May 20, 2016, MCPP and DEQ exchanged emails on the FOIA request. In response to an email from MCPP, DEQ stated:

[W]e processed your good faith deposit for FOIA 3064-16 on May 4, 2016. I show that records are due to you on or before July 29, 2016. We are on track with that timeframe, the appropriate program area has been notified of payment and we are processing requests in the order that good faith deposits are coming in.

Exhibit 6.

16. That same day, an employee at the MCPP responded via email “My main concern is that I filed a FOIA on March 30 but am not going to get the information perhaps until July 29.” *Id.*

17. On May 20, 2016, DEQ responded “We are working expeditiously to fill all FOIA requests and are hopeful that we can provide responsive records to you in advance of July 29.” *Id.*

18. On June 21, 2016, the DEQ released a batch of emails publically.  
[http://www.michigan.gov/snyder/0,4668,7-277-57577\\_57657-387125--,00.html](http://www.michigan.gov/snyder/0,4668,7-277-57577_57657-387125--,00.html)

19. In response to that release, on June 21, 2016, the MCPP sent an email to the DEQ asking if that general public release constituted a response to the MCPP's FOIA. Exhibit 7.

20. On June 22, 2016, DEQ responded via email and stated: "We are still intending to fill your request." DEQ also offered to return the MCPP good-faith deposit if the MCPP felt "your questions have been answered." *Id.*

21. On June 28, 2016, it was reported that Attorney General Bill Schuette indicated his office was having difficulties obtaining documents related to the Flint water crisis.

22. On June 30, 2016, a telephone call occurred between the DEQ FOIA coordinator and an employee of the MCPP. The DEQ employee indicated that she believed the general public email release might address the first matter sought by the MCPP, but that DEQ was still working on the latter two matters.

23. MCL 15.231(2) 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.

24. MCL 15.234(8) indicates that a public body may respond to a FOIA request with a good faith estimate as to the cost of the FOIA request. The statute further states:

The response shall also contain a best efforts estimate by the public body regarding the time frame it will take the public body to comply with the law in

providing the public records to the requestor. The time frame estimate is nonbinding upon the public body, but the public body shall provide the estimate in good faith and strive to be reasonably accurate and to provide the public records in a manner based on this state's policy under [MCL 15.231] and the nature of the request in the particular instance.

25. An unreasonable delay in providing FOIA documents is a denial under MCL 15.235, MCL 15.240(1) and MCL 15.240(7).

26. DEQ's actions regarding this delay are arbitrary and capricious under MCL 15.240(7) thereby subjecting DEQ to a civil fine of \$1,000 payable to the general treasury and a separate \$1,000 to Plaintiff.<sup>1</sup>

27. DEQ's actions regarding this delay constitute willful and intentional failure to comply under MCL 15.240b, thereby subjecting it to a civil fine of \$2,500 to \$7,500 payable to the state treasury.<sup>2</sup>

### **RELIEF REQUESTED**

Plaintiff respectfully requests that Defendant be ordered to immediately provide the requested documents. Further, it seeks the full penalties available under MCL 15.240(7) and MCL 15.240b, attorney fees, costs, and another other relief this Court determines is just and equitable.

Dated: July 13, 2016

---

Patrick Wright (P54052)  
Attorney for Plaintiff Mackinac Center  
For Public Policy

---

<sup>1</sup> As DEQ is a state public body, the \$1,000 payable to the general treasury is largely symbolic.

<sup>2</sup> Again, given the Defendant's status as a state public body, this would largely be symbolic.