

MACKINAC CENTER  
LEGAL FOUNDATION

December 15, 2020

Clerk of the Court of Claims  
Hall of Justice  
925 W. Ottawa St.  
Lansing, MI 48909

RE: Written Claim per MCL 600.6431 against Michigan State University.

Dear Clerk:

This verified letter is to fulfill the requirements of MCL 600.6431(1) as a written notice against Michigan State University by the Mackinac Center, by and through its employee, Jarrett Skorup. The nature of the claim is for delays and denials of a Freedom of Information Act ("FOIA") request which was filed by the Mackinac Center on June 26, 2020.

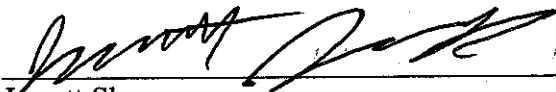
The Mackinac Center seeks complete fulfillment of this request, along with penalties, attorney fees, and other costs.

Sincerely,

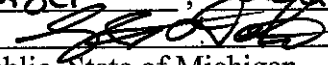
Jarrett Skorup

**I declare that the statements above are true to the best of my information, knowledge, and belief.**

Dated: December 15, 2020

  
Jarrett Skorup

Subscribed and sworn to by Jarrett Skorup before me on the 15th day of

December, 2020  
Signature 

Notary Public, State of Michigan

County of Ingham

My Commission Expires 07-29-2025

Acting in the County of Midland

STATE OF MICHIGAN  
COURT OF CLAIMS

THE MACKINAC CENTER FOR PUBLIC  
POLICY, a nonprofit Michigan Corporation

Case No.: 20-\_\_\_\_\_ -MZ

Plaintiff,

v.

Hon.

MICHIGAN STATE UNIVERSITY, a state  
public body.

Complaint

Defendant.

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Patrick J. Wright (P54052)  
Derk A. Wilcox (P66177)  
Stephen A. Delie (P80209)  
Mackinac Center for Public Policy  
Attorneys for Plaintiff  
140 West Main Street  
Midland, MI 48640  
(989) 631-0900 – voice  
(989) 631-0964 – fax

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COMPLAINT

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

**NOW COMES** Plaintiff, The Mackinac Center for Public Policy, and for its Complaint alleges and states as follows:

INTRODUCTION

The plaintiff, Mackinac Center for Public Policy (the “Mackinac Center”) is a nonprofit organization “dedicated to improving the quality of life for all Michigan residents by promoting

sound solutions to state and local policy questions.” To that end, the Mackinac Center routinely uses the Freedom of Information Act (“FOIA”) to obtain relevant documents from state and local governments.

On June 26<sup>th</sup>, 2020, the Mackinac Center made a routine request to Michigan State University (“MSU”), seeking e-mail correspondence relating to Dr. Stephen Hsu. MSU responded on July 7, 2020, with a fee estimate of \$230.00. The Mackinac Center paid the required 50% deposit of \$115.00, which MSU received on July 20<sup>th</sup>, 2020. In its July 7<sup>th</sup> request, MSU estimated it would take six (6) weeks to process the Mackinac Center’s request, despite estimating only six (6) hours of labor would be necessary.

On August 31<sup>st</sup>, 2020, MSU wrote the Mackinac Center, informing the Center that the records it had requested had been located and gathered, but that the volume of the records were greater than anticipated. MSU, without legal authority, then revised its cost estimate to reflect an additional 11 hours of labor and additional costs of \$250.00. MSU also extended the date it anticipated being able to respond to the Mackinac Centers request by an additional eight (8) weeks.

On November 4<sup>th</sup>, MSU again wrote the Mackinac Center, partially granting and partially denying its request. MSU then, once again unilaterally extended its deadline to respond to December 4, 2020. Finally, on December 4<sup>th</sup>, MSU then once again issued a delay to December 23, 2020.

Despite all requested deposits being paid, MSU has produced no records. The Mackinac Center has now waited over five (5) months for records that, by MSU’s most-recent admission, should have taken no longer than seventeen (17) hours to produce.

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

1. Plaintiff, the Mackinac Center for Public Policy (the “Mackinac Center”), is a Michigan nonprofit corporation headquartered in Midland County, Michigan.

2. Defendant, Michigan State University (“MSU”), is a state university and public body which, upon information and belief, is headquartered in East Lansing, Ingham County, Michigan.
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.

#### **VIOLATIONS OF THE FREEDOM OF INFORMATION ACT**

6. The Plaintiff hereby incorporates the preceding paragraphs as if fully restated herein.
7. On June 26, 2020, Mackinac Center employee Jarrett Skorup submitted a FOIA request to LARA for the following records:

"Pursuant to the Michigan Compiled Laws Section 15.231 et seq., and any other relevant statutes or provisions of your agency's regulations I am making the following Freedom of Information Act request.

Any emails to or from the president of Michigan State University that mention "Hsu" from Feb. 1, 2020 to June 26, 2020.

#### **Exhibit A, Mackinac Center FOIA Request.**

8. On July 7, 2020, MSU responded to the Mackinac Center's FOIA request by providing an estimate of the costs necessary to fulfill the request. **Exhibit B, MSU July Letter.** The requested estimate of total costs was \$230.00. MSU also estimated that it would take six (6) hours to fulfill the request.
9. The Mackinac Center paid 50% of the estimated fee as required by MCL 15.234(8).
10. On August 31, 2020, MSU sent correspondence indicating that the request was more burdensome to fulfill than initially anticipated. **Exhibit C, MSU August Letter.** MSU then proceeded to request an additional \$350.00 to fulfill the request. *Id.*
11. MSU also indicated that it would require an additional 8 weeks to complete the estimated additional 11 hours of work. *Id.*

12. The FOIA does not provide a process by which a public body may amend its original good-faith request for a deposit, nor does it permit a public body to extend the time it estimates will be necessary to fulfill the request. See generally, MCL 15.231 *et seq.* Instead, a public body would be permitted to charge any additional expenses as part of its final billing before releasing records. See generally, MCL 15.234.
13. MSU's August 31, 2020 letter was therefore an illegal extension and increase in fees.
14. Despite this, the Mackinac Center paid the requested deposit.
15. On November 4<sup>th</sup>, 2020, MSU sent the Mackinac Center correspondence indicating that it was granting the Center's request with respect to non-exempt information. **Exhibit D, MSU November Letter.** This partial-grant-partial denial was not accompanied by any records, and was sent a full ninety-three (93) business days after receipt of the Center's FOIA request. MSU also unilaterally extended its date to provide records to December 4<sup>th</sup>, 2020.
16. On December 4<sup>th</sup>, 2020, MSU again sent correspondence extending its estimated date of production. This new date is December 23<sup>rd</sup>, 2020, almost 6 months after the date the initial request was filed. **Exhibit E, MSU December Letter.**
17. To date, MSU has not provided the requested information.
18. 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 fully 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 participate in the democratic process.
19. 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. However, 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.

20. Our Attorney General, on December 12, 2017, issued Opinion No. 7300 interpreting the requirements of MCL 15.234(8):

It is my opinion, therefore, that a public body's "best efforts estimate" under subsection 4(8) of FOIA, as to the time it will take to fulfill a request for public records, must be a calculation that contemplates the public body working diligently to fulfill its obligation to produce records to the requestor. The estimate must be comparable to what a reasonable person in the same circumstances as the public body would provide for fulfilling a similar public records request. In addition, under subsection 4(8), the best efforts estimate must be made in "good faith," that is, it must be made honestly and without the intention to defraud or delay the requestor.

21. The requested materials were simply e-mails, and should have been easily reviewed and provided, even remotely.
22. MSU has now failed to provide the requested records for approximately 5 months, despite estimating the time required to process this request being originally 6 hours, and now 17 hours.
23. Had MSU devoted as little as 11 minutes of each business day from June 26<sup>th</sup> to November 13<sup>th</sup>, the Center would have received the requested records. MSU's continuing failure to do so constitutes an unreasonable delay, and demonstrates that MSU is not working diligently to fulfill the Center's request.
24. An unreasonable delay in providing FOIA documents is a denial under MCL 15.235, MCL 15.240(1), and MCL 15.240(7).
25. MCL 15.234(9) indicates a public body that does not timely respond to a FOIA request under MCL 15.235(2) shall reduce the charges for any labor rate at a rate of 5% a day with a maximum of 50% if the late response was willful or if the request was clearly identified as a FOIA request.

26. The FOIA request was clearly identified and should have been provided in a reasonable time. To date, approximately 5 months later, no records have been provided. Under MCL 15.234(9), Plaintiff is entitled to the statutory maximum 50% reduction in labor costs.
27. MSU's actions regarding this delay in providing the records responsive to the Mackinac Center's request are arbitrary and capricious under MCL 15.240(7), thereby subjecting MSU to a civil fine of \$1,000.00 payable to the general treasury and a separate \$1,000.00 to the Mackinac Center.
28. MSU's actions regarding this delay in providing the records responsive to the Mackinac Center's request 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.
29. Pursuant to MCL 15.240(6), the Center, if it prevails, is entitled to attorneys' fees and costs:

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).

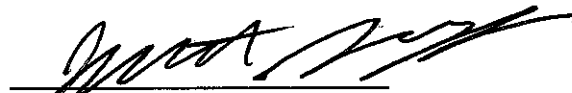
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**RELIEF REQUESTED**

Plaintiff, Mackinac Center for Public Policy, respectfully requests that this Court order Defendant, Michigan State University, to provide all documents sought in the FOIA request; apply the full penalties available under MCL 15.234(9), MCL 15.240(7), and MCL 15.240b; award attorneys' fees and costs under MCL 15.240(6); and award any other relief this Court determines to be just and equitable to remedy MSU's delays in providing the requested information and causing the need to bring this suit.

**I declare that the statements above are true to the best of my information, knowledge, and belief.**

Dated: Dec. 15, 2020

  
Jarett Skorup  
Director of Marketing and Communications  
Mackinac Center for Public Policy

Subscribed and sworn to by Jarett Skorup before me on the 15 day of December, 2020.

STEPHEN DELIE  
Notary Public, State of Michigan  
County of Ingham  
My Commission Expires 07-29-2025  
Acting in the County of Midland



# Exhibit A

## Delie, Steve

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**From:** Skorup, Jarrett  
**Sent:** Thursday, November 5, 2020 11:10 AM  
**To:** Delie, Steve  
**Subject:** Fw: Your FOIA Request to MSU

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**From:** FOIA <foia@msu.edu>  
**Sent:** Monday, July 27, 2020 5:38 PM  
**To:** Skorup, Jarrett  
**Subject:** Your FOIA Request to MSU

Communications  
Policy

Dear Jarrett Skorup:

This is written in reply to the voicemail message that you left today at the MSU FOIA Office, as well as your July 20<sup>th</sup> email below.

Please be advised that check #39535 in the amount of \$115.00 from the Mackinac Center for Public Policy was received in this Office on July 20, 2020, for the processing of your FOIA request MSUF035320. Pursuant to the best efforts estimate provided to you in our July 7, 2020, FOIA Fee and Deposit Notice, we anticipate responding to your request on or before six weeks from the date the fee deposit was received, that being Monday, August 31, 2020.

Pursuant to Section 4(4) of the Michigan Freedom of Information Act (MIFOIA), the University's procedures and guidelines for processing MIFOIA requests can be found at <http://foia.msu.edu>.

Michigan State University  
Freedom of Information Act Office  
408 W. Circle Drive  
Room 1 Olds Hall  
East Lansing, MI 48824  
517-353-3929/telephone  
517-353-1794/fax  
foia@msu.edu

MSUF035320

**From:** Skorup, Jarrett <Skorup@mackinac.org>  
**Sent:** Monday, July 20, 2020 11:03 AM  
**To:** FOIA <foia@msu.edu>  
**Subject:** RE: FOIA - Stephen Hsu

I am following up on this request.

**From:** Skorup, Jarrett  
**Sent:** Friday, June 26, 2020 2:50 PM  
**To:** 'foia@msu.edu' <foia@msu.edu>  
**Subject:** FOIA - Stephen Hsu

FOIA: Michigan State University

June 26, 2020

FOIA REQUEST FOR EMAILS ABOUT STEPHEN HSU

To Whom It May Concern:

Pursuant to the Michigan compiled Laws Section 15.231 et seq., and any other relevant statutes or provisions of your agency's regulations I am making the following Freedom of Information Act request.

- Any emails to or from the president of Michigan State University that mention "Hsu" from Feb. 1, 2020 to June 26, 2020.

Please send the materials requested to the attention of Jarrett Skorup at the following address, fax number, or via e-mail at [skorup@mackinac.org](mailto:skorup@mackinac.org)<<mailto:skorup@mackinac.org>>.

Mackinac Center for Public Policy  
P.O. Box 568  
Midland, MI 48640  
Fax: 989-631-0964  
Phone: 989-631-0900  
Jarrett Skorup  
Mackinac Center

Jarrett Skorup  
Director of Marketing and Communications  
Mackinac Center for Public Policy  
[www.mackinac.org](http://www.mackinac.org)  
989-631-0900

# Exhibit B

**MICHIGAN STATE**  
**U N I V E R S I T Y**

DATE: July 7, 2020

TO: Jarrett Skorup  
Director of Marketing and Communications  
Mackinac Center for Public Policy  
skorup@mackinac.org

FROM: Rebecca Nelson, Director and Freedom of Information Act (FOIA) Officer  
Michigan State University FOIA Office *Rebecca Nelson*

SUBJECT: FOIA Fee and Deposit Notice

This is written with regard to the FOIA request that you emailed to this Office on June 26, 2020.

The processing of your request thus far has involved significant labor. We estimate that searching for, gathering, and reviewing records responsive to your request to determine if information exempt from public disclosure under the Michigan Freedom of Information Act (MIFOIA), must be separated from that which is not exempt, will require upwards of six (6) hours, incurring fees likely to exceed \$230.00. Fees will not be waived since failure to charge same would result in unreasonably high costs to the University. An itemization of this estimate accompanies this letter. This serves as an approximation only, and does not guarantee or limit the final, total fees which may be incurred and assessed. Therefore, pursuant to Section 4(2) of the MIFOIA, we require that you remit a deposit prior to our further processing your request. Should you remit the required deposit, we anticipate responding to your request on or before six (6) weeks from the date the deposit is received.



**FREEDOM OF  
INFORMATION ACT  
OFFICE**

**Michigan State  
University**

408 West Circle Drive  
Room 1 Olds Hall  
East Lansing, MI 48824  
517-353-3929  
Fax: 517-353-1794  
foia@msu.edu  
<http://foia.msu.edu>

If you wish to pursue the processing of your request, and pay the fees incurred, please send a check made payable to "Michigan State University" in the amount of \$115.00 to the Freedom of Information Act Office, 408 West Circle Drive, Room 1 Olds Hall, or notify us in writing if you wish to modify or withdraw your request. The University will not process your request until a deposit is received by our Office. Moreover, Section 4(14) of the MIFOIA requires that the deposit be received no later than Monday, August 24, 2020, or your request will be considered abandoned, and processing of it no longer required. Should you have any questions regarding fees, please contact us. Pursuant to Section 4(4) of the MIFOIA, the University's procedures and guidelines for processing MIFOIA requests can be found at <http://foia.msu.edu>.

Attachment  
MSUF035320

MSU FOIA FEE ESTIMATE ITEMIZATION FORM -- July 7, 2020 -- Skorup FOIA Request MSUF035320

Category of Costs/Description	Hourly Wage	Benefits % Multiplier Used	Hourly Wage with Benefits	Estimated Time (Hours)	Amount
4 (1) (a) Searching for, locating and examining responsive records [Shall not charge more than the hourly wage of 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; labor costs shall be estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down.]	\$28.95	40%	\$40.53	3	\$121.59
4 (1) (b) Review directly associated with the separating and deleting of exempt from nonexempt information [For services performed by an employee of the public body, the public body shall not charge more than the hourly wage of its lowest-paid employee capable of separating and deleting exempt information from nonexempt information in the particular instance as provided in section 14, regardless of whether that person is available or who actually performs the labor. If a public body does not employ a person capable of separating and deleting exempt information from nonexempt information as determined by the public body's FOIA coordinator, it may treat necessary contracted labor costs used for the separating and deleting of exempt information from nonexempt information in the same manner as employee labor costs if it clearly notes the name of the contracted person or firm on this itemization. Total labor costs calculated under this subdivision for contracted labor costs shall not exceed an amount equal to 6 times the state minimum hourly wage rate. Labor costs under this subdivision shall be estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down.]	\$21.29	40%	\$29.81	3.75	\$111.79
4 (1) (c) Nonpaper physical media costs [The actual and most reasonably economical cost of the computer discs, computer tapes, or other digital or similar media. The requestor may stipulate that public records be provided on nonpaper physical media, electronically mailed, or otherwise electronically provided in lieu of paper copies. This subdivision does not apply if public body lacks the technological capability necessary to provide records on the particular nonpaper physical media stipulated in the particular instance.]					
4 (1) (d) Cost of paper copies [Actual total incremental cost of necessary duplication or publication, not including labor. The cost of paper copies shall be calculated as a total cost per sheet of paper, itemized to show both cost per sheet and number of sheets provided. The fee shall not exceed 10 cents per sheet of paper for copies of public records made on 8-1/2- by 11-inch paper or 8-1/2- by 14-inch paper. A public body shall utilize the most economical means available, including double-sided printing, if cost saving and available.]					
4 (1) (e) Duplication or publication, including making paper copies, making digital copies, or transferring digital public records to be given to the requestor on nonpaper physical media or through the internet or other electronic means as stipulated by the requestor [Shall not charge more than the hourly wage of lowest-paid employee capable of necessary duplication or publication in the particular instance, regardless of whether that person is available or who actually performs the labor.; labor costs under this subdivision shall be estimated and charged in time increments of the public body's choosing, with all partial time increments rounded down.]					
4 (1) (f) Cost of mailing [Actual cost of mailing, for sending the public records in a reasonably economical and justifiable manner; shall not charge more for expedited shipping or insurance unless stipulated by requestor, but may charge for the least expensive form of postal delivery confirmation when mailing public records.]					

**ESTIMATE TOTAL** **\$233.38**

**FEE DEPOSIT REQUIRED** **\$115.00**

*When calculating labor costs under (1) (a), (b) or (e), fee components shall be itemized in a manner that expresses both the hourly wage and the number of hours charged. The public body may also add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits if it clearly notes the percentage multiplier used. Subject to the 50% limitation, the public body shall not charge more than the actual cost of fringe benefits, and overtime wages shall not be used in calculating 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 and clearly noted in this detailed itemization.*

# Exhibit C

**MICHIGAN STATE  
UNIVERSITY**

DATE: August 31, 2020

TO: Jarrett Skorup  
Director of Marketing and Communications  
Mackinac Center for Public Policy  
skorup@mackinac.org

FROM: Rebecca Nelson, Director and Freedom of Information Act (FOIA) Officer  
Michigan State University FOIA Office

*Rebecca Nelson*

SUBJECT: FOIA Fee and Deposit Notice Follow-up -- Record Volume Update

On June 26, 2020, you emailed a FOIA request to this Office for "Any emails to or from the president of Michigan State University that mention 'Hsu' from Feb. 1, 2020 to June 26, 2020." On July 20<sup>th</sup>, in response to our July 7<sup>th</sup> \$230.00 fee estimate, this Office received a \$115.00 fee deposit for the processing of your request.

The searching for and gathering of records responsive to your request has concluded, and the volume of those records is significantly greater than estimated. Record review to separate information exempt from public disclosure under the Michigan Freedom of Information Act (MIFOIA), from that which is not exempt, has begun. The foregoing processing has reached the initial six hour estimate, and hundreds of pages of emails have yet to be reviewed. Given that fees incurred have reached the initial \$230.00 estimate, we write to ask if you wish to proceed with the processing of your request, or halt the processing and receive only the records reviewed thus far. If you wish to halt the processing of your request, please advise us in writing, and we will finalize the records reviewed to date, and send them to you along with an invoice billing you for the balance of fees owed.



**FREEDOM OF  
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**Michigan State  
University**

408 West Circle Drive  
Room 1 Olds Hall  
East Lansing, MI 48824  
517-353-3929  
Fax: 517-353-1794  
foia@msu.edu  
<http://foia.msu.edu>

If, instead, you wish to pursue the processing of all of the remaining records you seek, the following estimate is provided. Completing the processing of your request will involve significant labor; we estimate upwards of eleven (11) hours will be required, incurring fees likely to exceed \$350.00; this is in addition to the initial \$230.00 fee estimate, and the fees incurred to date. In completing the processing of your request, fees will not be waived since failure to charge same would result in unreasonably high costs to the University. An itemization of this estimate accompanies this letter. This serves as an approximation only, and does not guarantee or limit the final, total fees which may be incurred and assessed. Therefore, pursuant to Section 4(2) of the MIFOIA, we require that you remit an additional deposit prior to our completing the processing of your request. Should you remit the required deposit, we anticipate responding on or before eight weeks (8) from the date the deposit is received.

If you wish to pursue the processing of all records responsive to your request, and pay the fees incurred, please send a check made payable to "Michigan State University" in the amount of \$175.00 to the Freedom of Information Act Office, 408 West Circle Drive, Room 1 Olds Hall. The University will not complete the processing of the remaining records you seek until a deposit is received by our Office. Moreover, Section 4(14) of the MIFOIA requires that the deposit be received no later than Monday, October 19, 2020, or your request pertaining to the remaining records will be considered abandoned, and processing of it no longer required. Should you have any questions regarding fees, please contact us. Pursuant to Section 4(4) of the MIFOIA, the University's procedures and guidelines for processing MIFOIA requests can be found at <http://foia.msu.edu>.

Attachment  
MSUF035320



MSU FOIA FEE ESTIMATE ITEMIZATION FORM -- August 31, 2020 -- Skorup FOIA Request MSUF035320 -- follow-up; additional fee estimate

Category of Costs/Description	Hourly Wage	Benefits % Multiplier Used	Hourly Wage with Benefits	Estimated Time (Hours)	Amount
4 (1) (a) Searching for, locating and examining responsive records [Shall not charge more than the hourly wage of 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; labor costs shall be estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down.]					
4 (1) (b) Review directly associated with the separating and deleting of exempt from nonexempt information [For services performed by an employee of the public body, the public body shall not charge more than the hourly wage of its lowest-paid employee capable of separating and deleting exempt information from nonexempt information in the particular instance as provided in section 14, regardless of whether that person is available or who actually performs the labor. If a public body does not employ a person capable of separating and deleting exempt information from nonexempt information as determined by the public body's FOIA coordinator, it may treat necessary contracted labor costs used for the separating and deleting of exempt information from nonexempt information in the same manner as employee labor costs if it clearly notes the name of the contracted person or firm on this itemization. Total labor costs calculated under this subdivision for contracted labor costs shall not exceed an amount equal to 6 times the state minimum hourly wage rate. Labor costs under this subdivision shall be estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down.]	\$21.29	40%	\$29.81	11.75	\$350.27
4 (1) (c) Nonpaper physical media costs [The actual and most reasonably economical cost of the computer discs, computer tapes, or other digital or similar media. The requestor may stipulate that public records be provided on nonpaper physical media, electronically mailed, or otherwise electronically provided in lieu of paper copies. This subdivision does not apply if public body lacks the technological capability necessary to provide records on the particular nonpaper physical media stipulated in the particular instance.]					
4 (1) (d) Cost of paper copies [Actual total incremental cost of necessary duplication or publication, not including labor. The cost of paper copies shall be calculated as a total cost per sheet of paper, itemized to show both cost per sheet and number of sheets provided. The fee shall not exceed 10 cents per sheet of paper for copies of public records made on 8-1/2- by 11-inch paper or 8-1/2- by 14-inch paper. A public body shall utilize the most economical means available, including double-sided printing, if cost saving and available.]					
4 (1) (e) Duplication or publication, including making paper copies, making digital copies, or transferring digital public records to be given to the requestor on nonpaper physical media or through the internet or other electronic means as stipulated by the requestor [Shall not charge more than the hourly wage of lowest-paid employee capable of necessary duplication or publication in the particular instance, regardless of whether that person is available or who actually performs the labor.; labor costs under this subdivision shall be estimated and charged in time increments of the public body's choosing, with all partial time increments rounded down.]					
4 (1) (f) Cost of mailing [Actual cost of mailing, for sending the public records in a reasonably economical and justifiable manner; shall not charge more for expedited shipping or insurance unless stipulated by requestor, but may charge for the least expensive form of postal delivery confirmation when mailing public records.]					
<b>ESTIMATE TOTAL</b>					<b>\$350.27</b>
<b>REQUIRED</b>					<b>\$175.00</b>

When calculating labor costs under (1) (a), (b) or (e), fee components shall be itemized in a manner that expresses both the hourly wage and the number of hours charged. The public body may also add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits if it clearly notes the percentage multiplier used. Subject to the 50% limitation, the public body shall not charge more than the actual cost of fringe benefits, and overtime wages shall not be used in calculating 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 and clearly noted in this detailed itemization.

# Exhibit D

**MICHIGAN STATE  
UNIVERSITY**

DATE: November 4, 2020

TO: Jarrett Skorup  
Director of Marketing and Communications  
Mackinac Center for Public Policy  
skorup@mackinac.org

FROM: Rebecca Nelson, Director and Freedom of Information Act (FOIA) Officer  
Michigan State University FOIA Office *Rebecca Nelson*

SUBJECT: FOIA Response

This is written in response to the FOIA request that you emailed to this Office on June 26, 2020, and for the processing of which this Office received fee deposits on July 20, 2020, and September 9, 2020.



**FREEDOM OF  
INFORMATION ACT  
OFFICE**

**Michigan State  
University**

408 West Circle Drive  
Room 1 Olds Hall  
East Lansing, MI 48824  
517-353-3929  
Fax: 517-353-1794  
foia@msu.edu  
<http://foia.msu.edu>

Your request is granted with regard to information that is not exempt from public disclosure under the Michigan Freedom of Information Act (MIFOIA). That said, given the University's current alternate working arrangements, necessitated by extraordinary community health concerns, record processing times are extending beyond typically anticipated dates. Nevertheless, please be assured that we are working diligently to process your request as quickly as possible, and expect to send to you records or another update on or before Friday, December 4, 2020. We apologize for any inconvenience this unavoidable delay may cause.

The MIFOIA provides that when a public body denies all or a portion of a request, the requester may do one of the following: (1) submit an appeal of the determination to the head of the public body; or (2) commence a civil action in the court of claims to compel the public body's disclosure of the records. If you wish to seek judicial review of any denial, you must do so within 180 days of the date of this letter. If the court of claims orders disclosure of all or a portion of the public record(s) to which you have been denied access, you may receive attorneys' fees and, in certain circumstances, damages under the MIFOIA. Should you choose to file an appeal with the University regarding this response to your request, you must submit a written communication to this Office expressly stating that it is an "appeal" of this response. In your appeal, please state what records you believe should have been disclosed to you. You must also state the reasons you believe any denial of your MIFOIA request should be reversed. This Office will arrange for the processing and review of your appeal. Pursuant to Section 4(4) of the MIFOIA, the University's procedures and guidelines for processing MIFOIA requests can be found at <http://foia.msu.edu>.

MSUF035320

# Exhibit E

**MICHIGAN STATE  
UNIVERSITY**

DATE: December 4, 2020

TO: Jarrett Skorup  
Director of Marketing and Communications  
Mackinac Center for Public Policy  
skorup@mackinac.org

FROM: Rebecca Nelson, Director and Freedom of Information Act (FOIA) Officer  
Michigan State University FOIA Office *Rebecca Nelson*

SUBJECT: FOIA Response Status Notice

This is written as follow-up to our November 4, 2020, response to the FOIA request that you emailed to this Office on June 26, 2020, and for the processing of which this Office received fee deposits on July 20, 2020, and September 9, 2020.

As we previously advised, your request is granted with regard to information that is not exempt from public disclosure under the Michigan Freedom of Information Act (MIFOIA). Please know that we continue to process records responsive to your request as expeditiously as possible. Nevertheless, given the University's current alternate working arrangements, necessitated by extraordinary community health concerns, record processing times are extending beyond typically anticipated dates. At this time, we expect to send to you records or another update on or before Wednesday, December 23, 2020. We apologize for any inconvenience this unavoidably extended response time may cause; fees assessed will be adjusted in consideration of the delay.



**FREEDOM OF  
INFORMATION ACT  
OFFICE**

**Michigan State  
University**

408 West Circle Drive  
Room 1 Olds Hall  
East Lansing, MI 48824  
517-353-3929  
Fax: 517-353-1794  
foia@msu.edu  
<http://foia.msu.edu>

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