

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND**

CAROL BETH LITKOUHI,

Plaintiff,

Case No. 2022-193088-CZ

Hon. Jacob James Cunningham

-vs-

ROCHESTER COMMUNITY SCHOOL DISTRICT,

Defendants.

**ORDER RE: DEFENDANT ROCHESTER COMMUNITY SCHOOL DISTRICT'S
MOTION FOR SUMMARY DISPOSITION**

At said session of the Sixth Circuit Court held in the County
of Oakland, City of Pontiac, State of Michigan,
on this 15th day of December, 2022.

The matter is before the Court on Defendant, Rochester Community School District's (hereafter "RCSD"), motion for summary disposition under MCR 2.116(C)(8) and (10). In this case, Plaintiff alleges RCSD violated the Michigan Freedom of Information Act (hereafter "FOIA") arising out of two separate FOIA requests she made.

Relative to the first FOIA request, dated December 14, 2021, Plaintiff alleges RCSD is required to provide any responsive records prepared, owned, used, or possessed by individual teachers.¹ Relative to the second FOIA request, dated December 27, 2021, Plaintiff alleges RCSD is required to provide Plaintiff with other copyrighted materials used by RCSD faculty. On October 3, 2022, the parties stipulated

¹ Pursuant to a stipulated order entered September 16, 2022, both parties agree that if the Court finds in favor of RCSD's position on this FOIA request, Plaintiff's claim regarding the December 14, 2021, FOIA request should be dismissed.

to dismissing the cause of action related to the second FOIA request. As such, only the December 14, 2021, FOIA request remains before the Court for consideration.

Plaintiff's FOIA request concerned a specific class taught in the RCSD: The History of Ethic and Gender Studies. Plaintiff's FOIA request asked Defendant to provide copies of day-to-day materials used in classroom instruction, including teacher lesson plans, curriculum, readings given to students, viewings, assignments given to students, and materials prepared by the instructors for use in the class. RCSD granted Plaintiff's FOIA request and provided Plaintiff a copy of the topics prepared by an instructor teaching the subject class (in essence, providing information of and concerning the class's syllabus). Defendant's FOIA coordinator indicated the transmitted document was the only responsive record "knowingly in RCSD's possession."

RCSD argues summary disposition is appropriate, as it does not require instructors to create, retain, or provide materials described and otherwise requested by Plaintiff's December 14, 2021, FOIA request. Further, RCSD argues its teachers are not members of the administration, but instead are employees and members of a bargaining unit represented by the Michigan Education Association, and therefore not members of a "public body" as defined under FOIA.

Plaintiff argues summary disposition is not appropriate as FOIA requires the disclosure of all public bodies' documents, unless specifically exempt, and public-school teachers are not expressly FOIA exempt. Plaintiff avers public school districts are also not exempt from the definition of what constitutes a "public body," nor are public school teachers excluded from what constitutes a public employee. Plaintiff further argues the information sought by her December 14, 2021, FOIA request is, in all respects, not

excluded or exempt and, thus, must be produced per the statute. Additionally, Plaintiff argues public-school teachers, as members of collective bargaining agreements, are not outside of the scope of FOIA requests merely due to belonging to a collective bargaining unit. As such, Plaintiff argues the Court should deny Defendant's motion for summary disposition under MCR 2.116(C)(8) & (10), and alternatively request the Court instead find disposition on the legal question in favor of Plaintiff. See MCR 2.116(I)(2).

Summary disposition is appropriately granted under 2.116(C)(8) where the opposing party has failed to state a claim on which relief can be granted. A motion brought under MCR 2.116(C)(8) should be granted only where the complaint is so legally deficient that recovery would be impossible even if all well-pleaded facts were true and construed in the light most favorable to the non-moving party. *Maiden v Rozwood*, 461 Mich 109, 119 (1999). Only the pleadings may be considered when deciding a motion under MCR 2.116(C)(8). *Id.* at 119-120. A motion for summary disposition, for failure to state a claim, tests the legal sufficiency of a claim to determine if an opposing party's pleadings alleged a prima facie case. *Roberts v Vaughn*, 214 Mich App 624 (1995). When examining a motion under MCR 2.116(C)(8), the Court must accept as true all the Plaintiff's factual allegations and determine whether Plaintiff's claim, on the pleadings, is so clearly unenforceable as a matter of law that no factual development can justify a right to recovery. *Martin v State*, 129 Mich App 100 (1983).

A motion under MCR 2.116(C)(10) tests factual sufficiency. In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. Where the

proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4). *Quinto v Cross & Peters Co*, 451 Mich 358 (1996). *Maiden* at 120 (1999). When reviewing a motion for summary disposition under MCR 2.116(C)(10), the Court considers the affidavits, pleadings, depositions, admissions, and other admissible documentary evidence then filed in the action or submitted by the parties. MCR 2.116(G)(4) & (5); *Puetz v Spectrum Health Hosps*, 324 Mich App 51, 68 (2018).

The Michigan Freedom of Information Act, MCL 15.231.1, reads, “[i]t 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.*” (Emphasis added). MCL 15.223(1) reads, “(1) Except as expressly provided in section 13, upon providing a public body's FOIA coordinator with a written request that describes a public record sufficiently to enable the public body to find the *public record*, a person has a right to inspect, copy, or receive copies of the requested public record of the *public body.*” (Emphasis added).

“Public body” is defined in MCL 15.232(h) as, “

(h) “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***, but does not include the governor or lieutenant governor, the executive office of the governor or lieutenant governor, or employees thereof.

(ii) An agency, board, commission, or council in the legislative branch of the state government.

(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 that is created by state or local authority or is primarily funded by or through state or local authority, except that the judiciary, including the office of the county clerk and its employees when acting in the capacity of clerk to the circuit court, is not included in the definition of public body. (Emphasis added).

Additionally, the term “public record” is defined under MCL 15.232(i) 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.” (Emphasis added).

When interpreting a statute, “[e]very word of a statute should be given meaning and no word should be treated as surplusage or rendered nugatory if at all possible.” *Baker v General Motors Corp*, 409 Mich 639, 655 (1980). The most reliable evidence of legislative intent is the plain language of the statute. *South Dearborn Environmental Improvement Ass’n Inc v Dep’t of Environmental Quality*, 502 Mich 349, 360-361 (2018).

MCL 15.232(h)(i) specifically provides employees of the executive branch state government are included in the definition of a “public body”, but subsection (iii) specifically identifies “school district[s]” (notably not listing separately the district employees) as “public bodies.” Because the Legislature specifically did not indicate individual employees of school districts are within the meaning of “public bodies,” the Court is left with a conviction that the Legislature did not intend for a public school district’s *employees* to be included in the definition of “public bodies” relative to FOIA. *South Dearborn Environmental Improvement Ass’n, supra*. A review of the provided case law and does not lead the Court to a conclusion that public school teachers, and their individual work product, are discoverable “public records” of “public bodies” in accordance with FOIA.

“While FOIA includes in the definition of “public body” officers and employees of state government, see MCL 15.232(h)(i), the definitional section does not also include officers and employees of municipalities such

as cities or townships. The distinction between the state and local government officials demonstrates the Legislature's intent to exclude individual government officers and employees not working in state government from the definition of "public body." See *Breighner v Mich High Sch. Athletic Ass'n, Inc*, 471 Mich 217, 233 n 6 (2004) ('[I]t would defy logic (as well as the plain language of § 232[d][iii]) to conclude that the Legislature intended that any person or entity qualifying as an "agent" of one of the enumerated governmental bodies would be considered a "public body" for purposes of the FOIA.') (alteration in original). *Blackwell v City of Livonia*, unpublished per curiam opinion of the Court of Appeals, issued December 16, 2021 (Docket No. 357469).

Therefore, the Court finds summary disposition is appropriate pursuant to MCR 2.116(C)(8), as Plaintiff complaint fails to state a claim on which the relief sought can be granted. *Roberts, supra*.

Additionally, since the Court finds public school district teachers are not "public bodies", therefore their papers and work product are not "public records" under FOIA. Even assuming, arguendo, that public-school teachers are "public bodies" for the purpose of FOIA requests, a review of the court file, pleadings, briefs, and evidence offered show RCSD has **not prepared, owned, used, possessed, or retained** the documents requested by Plaintiff's December 14, 2021, FOIA request. See MCL 15.232(i). As such, the Court finds summary disposition is also and alternatively appropriate under to MCR 2.116(C)(10), as Plaintiff has failed to establish a genuine factual issue exists regarding any material fact regarding Plaintiff's remaining claim for the alleged FOIA violation. *Quinto, supra*. Defendant is entitled to dismissal of Plaintiff's complaint on this ground as well. *Id.*


The Court declines to award Defendant's requests for fees and costs. Additionally, the Court declines to grant Plaintiff's request to find Plaintiff entitled to disposition on the legal question in favor of Plaintiff under MCR 2.116(I)(2).

As previously discussed, the parties stipulated, "if the Court were to find in favor of Defendant's position... Plaintiff's claims regarding her December 14, 2021[,] FOIA request should be dismissed." See order dated September 16, 2022. As the Court finds in favor of Defendant's position, and on stipulation of the parties, the Court dismisses Plaintiff's complaint in this matter.

IT IS SO ORDERED.

This is a final order and closes the case. MCR 2.602(A)(3)

Dated: 12/15/2022



Hon. JACOB JAMES CUNNINGHAM
Circuit Court Judge *JK*