

STATE OF MICHIGAN  
COURT OF CLAIMS

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DETROIT FREE PRESS, INC.,

Plaintiff,

Docket No. 25-000122-MT

v

MICHIGAN DEPARTMENT OF  
TREASURY,

Defendant.

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**DEFENDANT MICHIGAN DEPARTMENT OF TREASURY'S 11/13/2025  
MOTION FOR SUMMARY DISPOSITION**

**INTRODUCTION**

In this action challenging the constitutionality of Michigan's taxpayer confidentiality provision, MCL 205.28(1)(f), Plaintiff seeks certain records concerning a transformational brownfield plan in Detroit after the Department of Treasury denied its Freedom of Information Act (FOIA) request. Plaintiff relies on

a provision of Michigan's Constitution to argue that the records requested are public financial records that must be disclosed. This claim is erroneous as a matter of law.

The records at issue are not public financial records. Generally, these are records generated by a public entity that are summary/compilation documents concerning public financial information. No such documents are at issue here. Instead, they are a series of documents that are either generated by private actors (employers and/or developers) or are project/taxpayer specific records containing confidential information that must be protected by MCL 205.28(1)(f).

Because the records at issue are not "financial records" within the meaning of Michigan's Constitution – and are otherwise confidential records under Michigan's taxpayer confidentiality provision – these records are not subject to disclosure.

Accordingly, summary disposition in Treasury's favor is appropriate.

### **BACKGROUND PRINCIPLES**

Michigan's taxing scheme is one of voluntary compliance. This system of voluntary compliance is dependent on taxpayers self-reporting and correctly calculating their tax liability. Crucial to voluntary tax compliance is a taxpayer's reasonable expectation that information it submits to Treasury will remain confidential. As recognized by the Council on State Taxation, "every state has a dedicated agency of specialists to ensure that tax laws are fairly interpreted and enforced. If lawmakers are concerned that those laws are not being correctly administered, the appropriate response is proper oversight of the tax agency and not disclosure of confidential taxpayer information." (*Confidentiality of Taxpayer*

*Information.*<sup>1)</sup> Taxpayers are disadvantaged if they must disclose information that their competitors are not required to disclose. *Id.*

The Internal Revenue Code, like Michigan, protects the confidentiality of taxpayer information. IRC § 6103. This provision protects a taxpayer’s “reasonable expectation that information submitted to the IRS [will] remain confidential.” *Payne v United States*, 290 F Supp 2d 742, 750–51 (SD Tex, 2003). “The need to minimize disclosures is particularly important when it is remembered that our voluntary assessment system of tax action is in large measure dependent upon the realization of a taxpayer’s expectation that the information required of him for this purpose would be kept confidential.” *Diamond v United States*, 944 F2d 431, 434 (CA 8, 1991). Retaining confidentiality of tax records was a Congressional determination “that, with respect to tax returns, confidentiality, not sunlight, is the proper aim.” *Aronson v IRS*, 973 F2d 962, 966 (CA 1, 1992). The government must take strong precautions to protect taxpayer information, otherwise “taxpayers’ confidence in the federal tax system might erode, with harmful consequences for a tax system that depends heavily on voluntary compliance.” *Id.*

Michigan, too, has promised confidentiality to taxpayers. MCL 205.28(1)(f) broadly protects “facts or information obtained in connection with the administration of a tax. . . .” This confidentiality provision is key to the continued system of voluntary tax compliance in Michigan. Without this promise of

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<sup>1</sup> Available at <<https://www.cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-policy-positions/confidentialityoftaxpayerinformation.pdf>> (accessed November 6, 2025).

confidentiality, harmful consequences may occur, eroding the system that relies on taxpayers to correctly self-report and calculate their tax liability. Trust between the State and taxpayers is necessary to allow the flow of taxes in the self-assessment system to continue unimpeded.

Against that backdrop, here, Plaintiff concedes that the records its reporter requested are protected by MCL 205.28(1)(f). (Am Compl, ¶ 18.) This concession conclusively establishes that Treasury complied with Michigan law.

MCL 205.28(1)(f) is not discretionary. If a person requests confidential taxpayer information, Treasury must deny that request. Otherwise, the Treasury employee violates the Revenue Act, is guilty of a felony, and must be dismissed from state employment. MCL 205.28(2).

Plaintiff's concession recognizes that it seeks taxpayer information. And for the reasons discussed below, the records at issue are not "financial" records that must be disclosed per the Michigan Constitution, but instead are confidential taxpayer records.

Treasury properly denied the request consistent with Michigan law.

## **STATEMENT OF FACTS**

### **Michigan's brownfield credit program**

Michigan's Brownfield credit program generally seeks to promote revitalization of certain underutilized properties in Michigan. The program is governed by 1996 PA 381, the Brownfield Redevelopment Financing Act, which preamble provides as follows:

AN ACT to authorize municipalities to create a brownfield redevelopment authority to facilitate the implementation of brownfield plans; to create brownfield redevelopment zones; to promote the revitalization, redevelopment, and reuse of certain property, including, but not limited to, previously developed, tax reverted, blighted, or functionally obsolete property; to promote the utilization of certain property for housing development; to prescribe the powers and duties of brownfield redevelopment authorities; to permit the issuance of bonds and other evidences of indebtedness by an authority; to authorize the acquisition and disposal of certain property; to authorize certain funds; to prescribe certain powers and duties of certain state officers and agencies; and to authorize and permit the use of certain tax increment financing.

The brownfield credit statute is a tax increment finance scheme that captures the difference between a property's current taxable value and its original taxable value, with the difference in tax proceeds being issued to an eligible claimant.

MCL 125.2652(f); MCL 125.2665a. The One Campus Martius project at issue in this case is a transformational brownfield plan: 2017 amendments to the Brownfield Redevelopment Financing Act introduced this program (delineated at MCL 125.2663c). 2017 PA 46.

Here, Bedrock Management Services, LLC executed an agreement with the City of Detroit Brownfield Redevelopment Authority, the Michigan Strategic Fund, and the Department of Treasury. (Ex 1 to Pl's Am Compl.) The agreement requires additional reporting from the developer and Treasury, as further elaborated upon below.

### **Plaintiff's complaint**

Plaintiff filed a complaint on July 21, 2025, challenging Treasury's denial of a FOIA request submitted by one of its reporters. After Treasury filed a motion for

more definite statement, Plaintiff filed an amended complaint. Therein Plaintiff asserts that on March 17, 2025, Business Reporter John Reindl submitted a FOIA request to Treasury seeking certain documents:

- Annual Withholding Capture Reports
- Annual Employer Reports
- Developer Notice
- Non-compliance notice

(Am Compl, ¶ 9). Treasury denied this request on the basis that the information sought was protected taxpayer information that is protected from disclosure by MCL 205.28(1)(f). (*Id.*, ¶ 10). Plaintiff challenges that denial. Notably, Plaintiff concedes that the records at issue are otherwise protected by MCL 205.28(1)(f). (*Id.*, ¶ 18.) For purposes of this motion for summary disposition, Treasury agrees that the facts are not in dispute.

Plaintiff asserts two counts: (1) violation of FOIA; and (2) violation of Michigan’s Constitution and Plaintiff’s substantive due process rights, although as discussed above, Plaintiff has conceded the first count. Plaintiff’s core allegation is that the records requested are public financial records that must be disclosed under Art 9, § 23 of the Constitution, and that Michigan’s confidentiality statute, MCL 205.28(1)(f), “cannot excuse the nonproduction of these documents under FOIA.” (*Id.*, ¶¶ 59–60, 63–68.) Plaintiff asserts its constitutional claims as an as-applied challenge. (*Id.*, ¶ 69.)

### **STANDARD OF REVIEW**

Summary disposition is appropriate under MCR 2.116(C)(8) when a party has failed to state a claim on which relief can be granted. A motion brought under this

subrule tests the legal sufficiency of the complaint based solely on the pleadings. *Dalley v Dykema Gossett*, 287 Mich App 296, 304–305 (2010). Summary disposition under MCR 2.116(C)(8) “should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery.” *Id.* at 305. The claim here is ripe for adjudication: it is unenforceable as a matter of law, and no factual development would justify a right of recovery.

## LAW & ARGUMENT

This dispute concerns Michigan’s constitution and taxpayer confidentiality statute. Const 1963, art 9, § 23 provides:

All financial records, accountings, audit reports and other reports of public moneys shall be public records and open to inspection. A statement of all revenues and expenditures of public moneys shall be published and distributed annually, as provided by law.

Going back 55 years, Michigan courts have generally construed Article 9, § 23, of the Constitution as providing the public with access to financial summaries and compilations that are official records:

The manifest purpose of article 9, § 23 is to allow the public to keep their finger on the pulse of government spending. The most expeditious way of so doing is to give the public access to summaries, balance sheets, and other such compilations which map out and correlate a myriad of financial transactions into a meaningful account. It strains one’s credulity to think that the framers of the Constitution meant to allow the public to inspect every receipt, every application for licensure and every writing evidencing a receipt or expenditure. It is totally unnecessary to give such authority to the public to achieve the purpose aforementioned and such authority could easily serve as a tool to harass governmental agencies by unreasonable demands for great volumes of individual documents. We hold that the public right to information given by article 9, § 23 is best promoted, and the smooth

functioning of the government best protected, by construing the words “financial records” to require more than a receipt or document[.]

*Grayson v Mich State Bd of Accountancy*, 27 Mich App 26, 34–35 (1970).

Michigan’s taxpayer confidentiality provision prohibits disclosures of “any facts or information obtained in connection with the administration of a tax. . .” MCL 205.28(1)(f). The statute permits disclosure in limited circumstances, including “pursuant to a judicial order if the taxpayer's liability for a tax administered under this act is to be adjudicated by the court that issued the judicial order.” *Id.*

The records Plaintiff alleges<sup>2</sup> to be in the Department’s possession do not fall within the meaning of the Constitution because they are not official documents or financial compilations. And because they are not documents that must be disclosed under the Constitution, there is no conflict between art 9, § 23 and MCL 205.28(1)(f).

Finally, as Plaintiff concedes, these records are otherwise “exempt from disclosure” in accordance with MCL 205.28(1)(f). For these reasons, Plaintiff’s claims are untenable as a matter of law.

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<sup>2</sup> It is not an established fact that the Department of Treasury actually has any of the requested records; it is merely an allegation. MCL 205.28(1)(f) prohibits Treasury employees from even acknowledging the existence of such records, as any such acknowledgment would involve a disclosure of taxpayer information. To illustrate, if the Free Press were working on an article about a company and asked for a copy of the company’s latest tax return filed with Treasury, a response from Treasury acknowledging or denying possession of the requested return would involve a disclosure of taxpayer information.

**I. The sought records are not subject to disclosure under Const 1963, art 9, § 23.**

The records Plaintiff seeks are not “financial records, accountings, audit reports and other reports of public monies” that “shall be public records and open to inspection.” Certain of the reports are not generated by Treasury, nor do they document the actions of Treasury, and therefore, are not official documents. The remaining reports Plaintiff seeks are not summaries or compilations of financial information, for which reason they are not financial records contemplated by the Constitution.

**A. Certain of the requested records are not official documents within the meaning of Art 9, § 23 of Michigan’s Constitution.**

The Michigan Supreme Court has examined what are “official records” for purposes of article 9, § 23. Specifically, in *Sole v Mich Econ Dev Corp*, 509 Mich 406 (2022), the plaintiff sought a Michigan Economic Growth Authority (MEGA) agreement between General Motors and the Michigan Economic Development Corporation under the FOIA. The Court determined that it was subject to disclosure, in accordance with the FOIA, which conclusion was supported by the “constitutional-doubt canon.” *Id.* at 419–420. In analyzing this canon, the Court examined the definitions of “financial” and “record” that were available at the time article 9, Sec 23 was ratified:

[T]he term “financial” was defined as “of or relating to money and its use and distribution” and “record” was defined as “an official document that records the actions of a public body or officer.” [*Id.* at 420.]

In analyzing whether the agreement was a “financial record,” the Court noted that it was “a binding legal contract between a public body and a corporation,” for which reason the Court considered (without deciding) that it “might be considered the ‘official document that records the action of’ . . . a public body, or an ‘account or statement’ of the body’s financial transactions.” *Id.* at 421.

Here, none of the annual capture withholding, employer, and safe harbor reports requested are “official documents” within the meaning of Article 9, § 23, for which reason they are not financial records that require disclosure.

#### Annual capture withholding reports

Plaintiff, through its reporter, requested a copy of the “Annual Withholding Capture Reports” for the One Campus Martius Project in Detroit. (Am Compl, ¶ 9.) These are reports that are prepared by “each employer occupying the eligible property,” who must “report the amount of withholding . . . from individuals employed within the eligible property.” (*Id.*, ¶ 27.) *See also* MCL 125.2652(III). The employer provides that information to the Developer (here, Bedrock). (*Id.*, Ex 1, p 13.) In other words, these are not reports or compilations generated by the Department of Treasury or any public entity, and the reports do not record the actions of a public body. For that reason, they are not official documents within the meaning of Article 9, § 23.

### Annual employer report

Similarly, the “annual employer report” is “the annual report submitted by Developer to Treasury identifying the employers located within a Transformational Project Site.” (*Id.*, Ex 1, p A–1.) Because this report is not generated or created by the Department of Treasury, and does not record the actions of Treasury, it is not an official document that must be disclosed under Article 9, § 23.

### Safe harbor report

Finally, the “safe harbor report” is a document issued by the Developer to Treasury that lists leased commercial space as well as active leases for each space. (*Id.*, ¶ 51, Ex 2, p 5.) Like the annual capture and withholding reports, these are not documents that the Department of Treasury—or any public entity—generates, for which reason they are not official documents to be disclosed per Article 9, § 23.

## **B. Certain of the requested documents are not summaries or compilations of financial information within the meaning of Art 9, Sec 23.**

Michigan courts have historically interpreted “financial records” for purposes of Michigan’s constitution to be “more than a receipt or document,” i.e., a summary, balance sheet and other compilation documents. For example, in *Grayson*, the plaintiff sought names and addresses of CPA exam candidates for purposes of distributing promotional materials. 27 Mich App at 425. The defendant denied the request on grounds that 306 PA 1967 prohibited disclosure of “[a]ny application, document or other information filed by or concerning an applicant.” *Id.* The plaintiff challenged this determination on several grounds, including Article 9, Sec.

23 of the Constitution, arguing that the “application forms become financial records when they are stamped with the amount paid and the date.” *Id.* at 427. The Court of Appeals digested the manner of processing the applications:

When an application, together with the application fee of \$25, is received by the Department of Licensing and Regulation, a cashier counts the money and inserts each individual application into a machine which prints the amount of money received and the date of receipt upon it in the space provided thereon. The applications are then sorted and a ‘validation recap sheet’ is prepared. The names and addresses do not appear on the ‘recap sheet,’ which is placed in a receipt journal by an accountant. Finally, the applications are microfilmed by the Department of Licensing and Regulation before they are turned over to the Board of Accountancy. [*Id.*]

The Court noted that “there has been no judicial pronouncement as to the precise meaning of the words ‘financial records,’” for which reason it considered a construction by the chief of the accounting division of Michigan’s Department of Administration:

[F]inancial records are those records from which the above statements and reports (audit reports, financial reports, and statements) are made up and include general and subsidiary ledgers within which summary and detail entries are made from documents, listings, and recapitulations. That documents such as payrolls, expense vouchers, purchase orders, receipts vouchers, warrants, applications for licensure and the like are not financial records and are not available to the public. [*Id.* at 427–428.]

The Court also noted that according to the Department’s chief deputy, “no financial record exists until the recap sheet is validated.” *Id.* at 428. The Court deferred to this administrative interpretation, holding that “the imprinted applications are documents and not financial records.” *Id.* After noting “the manifest purpose of article 9, s 23,” the Court held that:

[T]he public right to information given by article 9, s 23 is best promoted, and the smooth functioning of the government best protected, by construing the words 'financial records' to require more than a receipt or document, such as the imprinted applications here. [Id.]

Similarly, in *Booth Newspapers, Inc v Univ of Mich Bd of Regents*, 444 Mich 211 (1993), the Michigan Supreme Court considered a FOIA request for travel records related to a university regent search for a new president. In the process of selecting a new university president, individual regents traveled to interview candidates. *Id.* at 216–220. In a dissenting opinion, Justice Riley noted that the defendant “must disclose that it purchased airline tickets, the price of the tickets, and other pertinent information.” *Id.* at 267 n 28 (Riley, J. dissenting). The dissent also stated that “Defendant must release at least ‘summaries, balance sheets, and other such compilations which map out and correlate a myriad of financial transactions into a meaningful account.’” *Id.*, citing *Grayson*, 27 Mich App at 34.

Finally, in *Davis v City of Detroit*, unpublished opinion of the Court of Appeals, issued March 24, 2020 (Docket No. 347931) (Ex 1), the plaintiff sought records from the City of Detroit, i.e., relating to contracts and expenditures between the Mayor and a third party as well as two nonprofit organizations. *Id.* at \*1. Specifically, the plaintiff sought two classes of documents: (1) contracts and employment agreements; (2) copies of documents reflecting monetary payments, i.e., checks, cancelled checks, invoices, and check registers. *Id.* at \*7. As to the first class of documents, the Court determined that contracts “clearly do not constitute ‘financial records, accountings, audit reports and other reports of public moneys.’”

*Id.* As to the second class of documents, the Court held that this “essentially amounted to a request for every expenditure by defendant [to the third parties] over a nearly four-year period.” *Id.* For that reason, the records did not “constitute ‘summaries, balance sheets, and other such compilations.’” *Id.* The Court further reasoned that:

Plaintiff’s extensive requests appear to be the exact kind the *Grayson* Court aimed to prevent so as not to allow article 9, § 23, of Michigan’s 1963 Constitution to be used as a “tool to harass governmental agencies by unreasonable demands for great volumes of individual documents.” [*Id.*, citing *Grayson*, 27 Mich App at 35.]

As applied here, the developer notice and non-compliance notice are not “financial documents,” i.e., summary or compilation documents, within the meaning of Article 9, § 23.

#### Developer notice

The developer notice is “the notice from Treasury to Developer identifying the amount of Withholding Tax Capture Revenues reported and reimbursable to Developer for a given year.” (Am Compl, ¶ 42, Ex 1, p A-2.) The Reimbursement Agreement provides that “[o]n or about June 1 of each calendar year that Treasury receives an Annual Employer Report, Treasury shall provide Developer with notice as to the amount of Withholding Tax Capture Revenue for each Project for such year.” (*Id.*, Ex 1, p 13.)

In other words, the Developer Notice relates to a specific project for a single year. This is akin to the *Grayson* applications and the *Davis* documents insofar as it evidences a monetary payment—i.e., an expenditure, or a receipt voucher/warrant

—detailing the amount Treasury issues to a specific developer for a specific project. It is not a summary or compilation document reflecting the aggregate brownfield credits issued by Treasury in a given year across all developers/projects. *Cf.*, MCL 125.2666(3). It is the latter type of document that would “allow the public to keep their finger on the pulse of government spending.” *Grayson*, 27 Mich App at 34.

#### Non-compliance notice

Plaintiff also identifies a non-compliance notice as part of its FOIA request. (*Id.*, ¶ 9(2)(b).) The Amendment to the Reimbursement Agreement describes this notice as follows:

If Treasury determines that the information provided does not comply with Section 31(c)(i) of this Agreement, Treasury shall, within 60 days of receiving the Annual Income Tax Capture Safe Harbor Report, provide notice to Developer of the non-compliance and the information required to comply with Section 31(c)(i) of this Agreement. At any time, Developer may submit a revised Annual Income Tax Capture Safe Harbor Report. [Am Compl, Ex 2, ¶ 31(c)(i).]

This section of the Amendment to the Reimbursement Agreement requires the developer to report to Treasury certain information necessary for the Safe Harbor Report, i.e., a listing of residential units leased/owned as well as evidence of active leases/sales. (*Id.*, ¶ 31(c)(i).)

If Treasury determines that the information provided does not comply with Section 31(d)(i) of this Agreement, Treasury shall, within 60 days of receiving the Annual Withholding Tax Capture Safe Harbor Report, provide notice to Developer of the non-compliance and the information required to comply with Section 31(d)(i) of this Agreement. At any time, Developer may submit a revised Annual Withholding Tax Capture Safe Harbor Report. [*Id.*, ¶ 31(d)(i).]

Section 31(d) also requires the developer to report to Treasury certain information necessary for the Safe Harbor Report, i.e., a listing of commercial spaces leased/owned as well as evidence of active leases/operating agreements. (*Id.*)

Like the Developer Notice, the non-compliance notice is also not a summary/compilation document relating to brownfield credits issued by Treasury for all developers/projects in a given year. While it is generated by Treasury, it pertains to a single project. Yet this notice is even more attenuated than the Developer Notice, the *Grayson* applications, or the *Davis* documents (and MCL 125.2666(3)) insofar as it does not directly relate to any expenditures—instead the notice relates generally to occupancy of the project space. This information allows for certain reports to be generated pertaining to that one project.

**C. Plaintiff's as-applied challenge is inappropriate in this case.**

This case involves a fresh look at the scope of Art 9, § 23 on different facts with different requested information and a nondisclosure statute, MCL 205.28(1)(f), that indisputably applies (and forms the linchpin of Michigan's self-assessed system of taxes). There is no issue of legislative intent, there is only an issue whether the people of the State of Michigan have left the Legislature no authority to make the type of taxpayer information requested here confidential. That is, if this Court holds MCL 205.28(1)(f) unconstitutional as applied on these facts, then taxpayer confidentiality fails every time a request is made for information needed to ascertain the equivalent of "direct distributions from the state's coffers." *Sole*, 509 Mich 406, 420–421.

An important distinguishing feature between *Sole* and this case yields a conclusion that *Sole*'s interpretation of Art 9, § 23 does not control here. This case does not involve disclosure of an agreement between Treasury and anyone: the Free Press already has agreements<sup>3</sup>, and it is asking for more. As observed by the Court of Appeals in *Grayson*, "It strains one's credulity to think that the framers of the Constitution meant to allow the public to inspect every receipt, every application for licensure and every writing evidencing a receipt or expenditure." If the Free Press believes that it should have better access to this type of information, it should approach the Legislature, not the courts, and seek an amendment to MCL 205.28(1)(f). It is inappropriate to ask this Court for an "as applied" application of MCL 205.28(1)(f) that requires Department of Treasury employees to make judgment calls and risk serving jail time.

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<sup>3</sup> It is not clear why the Free Press attaches only a portion of the reimbursement agreement as Exhibit 1 to its complaint, but it is clear from the table of contents that only the first 17 pages of the agreement have been included. The remaining pages have been excluded. The omitted pages contain a provision on confidentiality. Accordingly, that provision, whether relevant or not, is not a part of this record.

## CONCLUSION

Because the records at issue are not “financial records” within the meaning of Michigan’s Constitution, and because they are undisputedly confidential taxpayer records, summary disposition in Treasury’s favor is appropriate.

Respectfully submitted,

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Dated: November 13, 2025