

STATE OF MICHIGAN
COURT OF CLAIMS

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 1/22/2026
REPLY BRIEF IN SUPPORT OF ITS
MOTION FOR SUMMARY DISPOSITION**

INTRODUCTION

Plaintiff's response brief makes several untenable assertions and does not otherwise identify a genuine issue of fact. Specifically, Plaintiff posits that private developers stand in Treasury's shoes as a tax capturing entity, for which reason the Revenue Act's confidentiality provision has no application. Plaintiff also relies on non-controlling case law that does not address the constitutional provision at issue. Finally, Plaintiff points to the inapposite Management and Budget Act, as well as state retention schedules, to assert that the records at issue are public records.

Treasury addresses each of these arguments in turn and asserts that summary disposition in its favor is warranted.

LAW & ARGUMENT

I. Plaintiff's request demands disclosure of private taxpayer information by a governmental entity, i.e., the Department of Treasury, which is prohibited by the Revenue Act.

Plaintiff asserts that "the treasury statute relied upon by Defendant applies only to the administration of individual taxpayers and cannot be applied to a situation such as this where a private developer stands in the shoes of a governmental entity and captures and keeps public tax money aggregated from numerous people and businesses." (Pl's Br, p 5.) But the matter at hand involves administration of tax information for individual taxpayers – whether business entities or individuals. Further, the developer does not step into the shoes of a governmental entity. Instead, it carries the obligation of collecting information from individual taxpayers and submitting it to the Michigan Economic Development

Corporation (MEDC) and the Department of Treasury. The developer is not responsible for administering the tax credits; it merely conveys information. MEDC and Treasury administer the credits by ensuring the credit claimant qualifies and calculating/awarding any available credits. In the course of its duties, Treasury has a mandate to protect confidential taxpayer information. MCL 205.28(1)(f).

Thus, it is inaccurate to assert that “when such information is more than the information of a discrete taxpayer and encompasses a private entity stepping into the shoes of the government and keeping and capturing tax revenues, then the Constitution will not allow such nondisclosure.” (Pl’s Br, pp 5–6.) All of the information requested pertains to discrete taxpayers and no one steps into Treasury’s shoes. This otherwise would mean that anytime an individual taxpayer is allowed to take credits against tax and is responsible for submitting information to Treasury, it is acting as a governmental agency and MCL 205.28(1)(f) has no application. *See e.g.*, MCL 206.711 (employee income withholding diversion to community colleges for job training). It would also mean that all tax returns showing credits (which are tax expenditures, 2 USC 622(3)) are subject to disclosure. This is untenable insofar as it would eliminate taxpayer confidentiality in Michigan whenever tax credits are involved.

II. Case law supports Treasury’s position that the records at issue are not subject to disclosure.

Plaintiff cites the non-controlling case of *Sole v Mich Econ Dev Corp*, 509 Mich 406 (2022), which did not turn on the constitutional provision at issue, but instead on statutory grounds. In *Sole*, the plaintiff sought a Michigan Economic

Growth Authority (MEGA) agreement between General Motors and the Michigan Economic Development Corporation under the FOIA. The Michigan Supreme Court determined that it was subject to disclosure, in accordance with FOIA, which conclusion was supported by the “constitutional-doubt canon.” *Id.* at 419–420. Plaintiff concedes that *Sole* was not decided under Article 9, § 23, but instead the Court avoided the constitutional question. (Pl’s Br, p 10.)

Plaintiff also omits that in analyzing whether the agreement at issue 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. But here, there is no parallel contractual record at issue; instead Plaintiff seeks records with confidential information belonging to individual taxpayers. This is fundamentally distinct from the *Sole* facts.

Plaintiff does not otherwise address the case law raised by Treasury, other than to assert that it is superseded by state retention schedules and FOIA. But these arguments do not address the constitutional provision at issue.

III. Plaintiff’s arguments concerning state retention schedules and FOIA are inapposite to the constitutional requirement at issue.

While Plaintiff points to state retention schedules under the Management and Budget Act and FOIA for the proposition that case law such as *Grayson v Mich State Bd of Accountancy*, 27 Mich App 26, 34–35 (1970) is superseded, (Pl’s Br, pp

12-14), Plaintiff disregards that neither the schedules nor FOIA have any impact on the constitutional question at issue. Neither does Plaintiff explain how a document being considered a “record” under the Management and Budget Act, or a “public record” under FOIA, requires disclosure under Article 9, § 23 of the Constitution.

And while there is relation, the Management and Budget Act and FOIA serve distinct purposes. The Management and Budget Act requires state departments to “maintain a records management program to provide for the development, implementation, and coordination of standards, procedures, and techniques for forms management, and for the creation, retention, maintenance, preservation, and disposition of the records of this state.” It defines “record” to include a:

document, paper, letter, or writing, including documents, papers, books, letters, or writings prepared by handwriting, typewriting, printing, photostating, or photocopying; or a photograph, film, map, magnetic or paper tape, microform, magnetic or punch card, disc, drum, sound or video recording, electronic data processing material, or other recording medium, and includes individual letters, words, pictures, sounds, impulses, or symbols, or combination thereof, regardless of physical form or characteristics. [MCL 18.1284(b)].

In contrast, FOIA requires disclosure only of a “public record,” which is defined 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.” MCL 15.232(i). A record does not become subject to the FOIA simply because it is in possession of a public body; rather, “a record must be used in the performance of an official function to be a public record.” *Hopkins v Duncan Twp*, 294 Mich App 401, 409–10 (2011).

Ultimately, even if the records referenced in the Management and Budget Act must be disclosed under the FOIA, this is of no moment because not all public records are subject to disclosure under Article 9, § 23 of the Constitution.

IV. There is no genuine issue of material fact.

While Plaintiff asserts that summary disposition is improper for the reason that “factual development could show that Plaintiff’s requests are more like the financial records related to public moneys at issue in *Sole*,” (Pl’s Br, p 15), Plaintiff does not identify a dispute of fact. The records at issue are not in dispute—only their legal characterization is.

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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