

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



MIKE COX
ATTORNEY GENERAL

P.O. Box 30736
LANSING, MICHIGAN 48909-8236

February 17, 2005

Frank J. Lawrence, Jr.
StateBarWatch
941 Westview Road
Bloomfield Hills, MI 48304

Dear Mr. Lawrence:

This notice is issued in response to your February 9, 2005 request (copy attached and incorporated herein) for information under the Freedom of Information Act (FOIA), MCL 15.231 *et seq.*, received by this office on February 10, 2005.

Your request to inspect records is granted in part and denied in part. You will be provided access to copies of the existing, nonexempt records in the possession of this department responsive to the request. The necessary copying costs of the documents to redact exempt information prior to inspection, however, would be the same as mailing the copies to you. The cost of copies, at .25/page for 92 pages, is \$23.00, with postage of \$3.85. Please submit a check for \$26.85 payable to the State of Michigan and sent to Department of Attorney General, FOIA Coordinator, P.O. Box 30736, Lansing, MI 48909-8236. Upon receipt of your check, copies of the documents will be mailed to you. In the alternative, please submit a \$23.00 check, and contact the undersigned to arrange a time for inspection of the documents at our office.

Copies of the following documents will be provided without redaction:

- 1) September 6, 2003 two-page complainant letter.
- 2) September 5, 2003 two-page attorney Hampton letter; (*NB*: verbatim draft exists).
- 3) September 4, 2003 one-page complainant letter; (attachment dealt with, *infra*).
- 4) September 4, 2003 one-page complainant letter; (attachment dealt with, *infra*).
- 5) September 3, 2003 two-page attorney Hyman letter; (with five pp of attachments).
- 6) July 8, 2003 two-page complainant letter.
- 7) April 4, 2003 one-page MSP letter.
- 8) February 24, 2003 one-page MSP letter.
- 9) March 1, 2002 two-page MSP Supplemental Incident Report.
- 10) Annexation proposal – one page.

As to the partial denial of your request, portions of records composed of individuals' names, residence addresses, telephone numbers, and other personal identifiers are being withheld from public disclosure under section 13(1)(a) of the FOIA. This exemption permits a public body to exempt from disclosure information of a personal nature the disclosure of which would

constitute a clearly unwarranted invasion of individual privacy. *See Mager v Dep't of State Police*, 460 Mich 134 (1999).

Records and information that are specifically described and exempted by another statute are being withheld from disclosure under section 13(1)(d) of the FOIA. The names of individuals and the records and documents that are part of the applications for investigative subpoenas issued under the authority of section 2 of Chapter VIIA of the Code of Criminal Procedure, 1995 PA 148, MCL 767A.2(5), are expressly exempt from disclosure under the FOIA.

Accordingly, personal information and identifiers covered under section 13(1)(a) of the FOIA, and information generated under the aforementioned section of the Code of Criminal Procedure, have been redacted from copies of the following documents, with the non-exempt portions of the documents disclosed:

- 1) September 9, 2003 five-page Michigan State Police (MSP) Supplemental Incident Report.
- 2) September 5, 2003 one-page MSP Supplemental Incident Report.
- 3) September 4, 2003 three-page MSP Supplemental Incident Report.
- 4) August 26, 2003 two-page MSP Supplemental Incident Report.
- 5) August 22, 2003 three-page MSP Supplemental Incident Report.
- 6) August 6, 2003 one-page MSP Supplemental Incident Report.
- 7) August 4, 2003 two-page MSP Supplemental Incident Report.
- 8) July 7, 2003 two-page MSP Supplemental Incident Report.
- 9) February 24, 2003 one-page MSP Supplemental Incident Report.
- 10) February 10, 2003 two-page MSP Supplemental Incident Report.
- 11) January 15, 2003 six-page MSP Original Incident Report.
- 12) April 8, 2002 one-page MSP Supplemental Incident Report.
- 13) February 1, 2002 three-page MSP Supplemental Incident Report.
- 14) January 22, 2002 four-page MSP Original Incident Report.
- 15) September 8, 2003 complainant's mailed and faxed letter - five pages.
- 16) September 5, 2003 two-page attorney Posher letter.
- 17) January 30, 2003 one-page complainant letter.
- 18) December 30, 2002 two-page complainant letter.
- 19) October 21, 2001 one-page complainant letter.
- 20) September 11, 2001 five-page election document.
- 21) August and September 2003 deposition transcript invoices - four pages.

Additionally, under section 13(1)(d) of the FOIA, and pursuant to Chapter 168 of the Michigan Election Law, 1994 PA 441, specifically MCL 168.509gg, certain personal information concerning registered voters, which is expressly exempt from disclosure under the FOIA, is being withheld. *See, also*, MCL 168.522(2).

Accordingly, individuals' birth months and days; drivers' license numbers and state personal identification numbers; and other statutorily protected information under section 509gg, where applicable, have been redacted from copies of the following documents, with the non-exempt portions of the documents disclosed:

- 1) QVF Inbox List for Bloomfield Township – one page.
- 2) Voter Inquiry Lists – seven pages.
- 3) County/Local Proposal Petitions – 10 pages.

The work product of the Assistant Attorneys General (AAG) assigned to the matter is being withheld under section 13(1)(h) of the FOIA. *See Messenger v Ingham County Prosecutor*, 232 Mich App 633 (1998). Also, a written communication between the Attorney General's office and its client, the MSP, is being withheld under section 13(1)(g) of the FOIA as a record subject to the attorney-client privilege.

As to this class of records, the attorney work product or attorney client privilege apply to the following documents:

- 1) A seven-page August 4, 2003 AAG Cameron memorandum of legal advice.
- 2) A one-page July 10, 2003 AAG O'Brien memorandum re: investigation.
- 3) A four-page June 16, 2003 AAG Boyd memorandum of legal advice.
- 4) A one-page March 27, 2002 AAG Boyd letter to the MSP.

Finally, the following documents have been withheld for the reasons stated herein:

- 1) Twelve pages of voter records and litigation materials generated by investigative subpoenas, or that would otherwise disclose information derived from investigative subpoenas. Section 13(1)(d), *supra*.
- 2) Eighteen pages composed of statements of individuals under investigative subpoenas. Section 13(1)(d), *supra*.
- 3) Forty-seven pages of documents generated by investigative subpoenas. These documents constitute residential lease agreements, and related documents, executed by individuals subject to investigative subpoenas. Section 13(1)(d), *supra*.

Please note that the residential lease agreements are standard form leases for which disclosure, less personal identifiers, is offered. However, since the copied documents would be duplicates of the same residential lease agreement form, and in light of FOIA processing costs, we will provide redacted copies of these documents upon your written request. The photocopying and mailing costs associated with that request would be \$14.00.

Pertaining to the partial denial of your request, section 10 of the FOIA provides that a requesting person is entitled to pursue the following remedies:

1) Appeal this decision in writing to the Attorney General, head of the department, at 525 W. Ottawa. P.O. Box 30212, Lansing, MI 48909. The writing must specifically state the word "appeal" and must identify the reason or reasons you believe the denial should be reversed. The head of the department, or his designee, must respond to your appeal within 10 business days of its receipt. Under unusual circumstances, the time for response to your appeal may be extended by 10 business days.

2) File an action in circuit court to compel disclosure of the records. The action must be filed within 180 days after the date of the final determination to deny the request. If you prevail in such an action, the court is to award reasonable attorney fees, costs, and disbursements. Further, if the court finds the denial to be arbitrary and capricious, you may receive punitive damages in the amount of \$500.00.

Sincerely,



Christine S. Dingee, FOIA Coordinator
Department of Attorney General
Opinions and Municipal Affairs Division
517-373-9100

Enc.