

STATE OF MICHIGAN
COURT OF CLAIMS

THE INVISIBLE INSTITUTE and
DETROIT METRO TIMES,

Plaintiffs,

Case No. __-

-MB

v.

Hon.

THE MICHIGAN STATE POLICE,

Defendant.

_____ /

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MCR 8.120

_____ /

MICHIGAN FREEDOM OF INFORMATION ACT VERIFIED COMPLAINT

*There is no other pending or resolved civil action arising out
of the transaction or occurrence alleged in this Verified Complaint.*

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INTRODUCTION

1. Plaintiffs the Invisible Institute and Detroit Metro Times are media organizations that bring this Michigan Freedom of Information Act (FOIA) action against the Michigan State Police (MSP).
2. Plaintiffs seek information of great value to the public about certified and decertified police officers within Michigan.
3. Specifically, Plaintiffs seek the names, ages, and full employment history information of all certified and decertified officers.
4. Plaintiffs seek this information to assist in creating a national database of police officers so that journalists can better track actual and potential incidences of misconduct as officers move between agencies and departments, both inside and outside their home states.
5. Without such a database, it is difficult for reporters to know when officers who have committed misconduct in one or more jurisdictions move to other jurisdictions.
6. The ultimate goal of the database is to help increase accountability, responsibility, and transparency of police agencies nationwide, including here in Michigan.
7. Thus far, at least *thirty-four* state agencies have fully complied with similar state-FOIA requests by Plaintiffs.
8. Plaintiffs continue to seek information from the remaining states.
9. This information is of keen public interest today, especially in the wake of the murder of George Floyd and the movement to end police brutality and other misconduct.

10. Courts around the country have recognized the crucial function that the press plays in safeguarding our democracy and the constitutional rights we hold most dear. *See Detroit Free Press v Ashcroft*, 303 F3d 681, 711 (CA 6, 2002).
11. Furthermore, FOIA recognizes the importance of providing members of the public with an entitlement to “full and complete information regarding the affairs of government and the official acts of those who represent them” so that the public can fully participate in the democratic process. MCL 15.231(2).
12. In repeatedly denying Plaintiffs’ FOIA requests, the MSP incorrectly invoked FOIA exemptions to withhold information in ways that flout Michigan case law and the purpose of FOIA as a “pro-disclosure” statute.
13. Consequently, Plaintiffs now bring this action and request this Court to force the MSP to comply with the basic requirements of FOIA and disclose the remaining information that the MSP withheld from Plaintiffs in their FOIA requests.

JURISDICTION & VENUE

14. This is an action under the Michigan Freedom of Information Act, MCL 15.240, *et seq.*, to compel the production of public records from the Michigan State Police.
15. Defendant Michigan State Police has possession of and control over the “public records,” MCL 15.232(2)(i), that Plaintiffs seek.
16. Jurisdiction to compel production of public records is proper in this Court pursuant to MCL 15.240(10)(1)(b).
17. Venue is proper under MCL 15.240(10)(1)(b) as Defendant is a state public body that denied Plaintiffs’ FOIA request within the last 180 days.

18. Pursuant to venue under MCL 15.240(10)(1)(b), the Court must place the burden of proof on the public body when assessing whether to sustain its denials. MCL 15.240(10)(4).

PARTIES

19. Plaintiff the Invisible Institute is a 501(c)(3) nonprofit organization registered in the United States and headquartered in Chicago, Illinois, that works to enhance the capacity of citizens to hold public institutions accountable through investigative reporting, media storytelling, and the curation of public information.
20. Plaintiff Detroit Metro Times is a media organization headquartered in Detroit, Michigan, that produces hard-hitting journalism and cultural writing on the Detroit metropolitan area.
21. Plaintiffs are “persons” under MCL 15.232(2)(g).
22. Defendant the MSP is the state police agency for the State of Michigan headquartered in Lansing, Michigan.
23. Defendant is a “public body” under MCL 15.232(2)(h)(i).

STATEMENT OF FACTS

Plaintiffs’ Original FOIA Request

24. Plaintiffs the Invisible Institute and Detroit Metro Times are award-winning media organizations committed to holding public institutions accountable.
25. Consistent with this mission, Plaintiffs are collaborating to develop a nationwide database that compiles information on police officers to assist journalists in tracking officers moving between agencies or departments, both in and out of state.
26. The database aims to collect information such as officers’ names, identification numbers or unique codes, ages, and all prior work history.

27. Once collected, journalists can use this information to better identify, track, and report on officers who have engaged in police misconduct or who have been accused of engaging in misconduct.
28. To create this database, Plaintiffs require officer information that the MSP possesses, and which is subject to disclosure under FOIA.
29. On January 4, 2023, Plaintiffs submitted a FOIA request to the MSP seeking the following information on *all* certified officers and decertified officers:
 - a. Officer's full name;
 - b. Officer's date of birth or, if not releasable, year of birth or current age;
 - c. Officer's last/current department or agency;
 - d. Officer's last/current position and/or rank at that department or agency;
 - e. Officer's previous departments/agencies (employment history), with start and end dates;
 - f. Officer's current status of certification (active, lapsed, expired, suspended, etc.).

(Exhibit A).

30. "Certified officers" maintain good standing and certification to act as officers in the state of Michigan.
31. "Decertified officers" were once certified to work as officers in the state of Michigan, but have: (1) voluntarily surrendered their certification; (2) had their certification revoked; (3) had their certification suspended; or (4) been decertified for "any other actions."
32. On January 10, 2023, the MSP partially granted and denied the request. Exhibit B.

33. On February 21, 2023, the Invisible Institute paid the \$120.50 deposit required for the MSP to process the request.
34. On March 8, 2023, the MSP refused to provide Plaintiffs with officer names, unique numbers, and “other” information, stating in full that:

Denial of Records:

Denial is based on the following provision(s) of the Freedom of Information Act, MCL 15.243, Sec. 13(1). Exemptions that apply are displayed below.

(a) Information of a personal nature where the public disclosure of the information would constitute a clearly unwarranted invasion of an individual’s privacy:

- name(s)
- other
- MCOLES, unique identifier number(s)

(s) Unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance, public records of a law enforcement agency, the release of which would do any of the following:

- [(vii)] Endanger the life or safety of law enforcement officers or agents or their families, relatives, children, parents or those who furnish information to law enforcement departments or agencies.

(Exhibit C).

35. Plaintiffs administratively appealed the MSP’s partial denial to the head of the MSP pursuant to MCL 15.240(10).

Administrative Appeal

36. Plaintiffs filed their Appeal with the head of the MSP on April 19, 2023, pursuant to MCL 15.240(10). Exhibit D.
37. The Appeal laid out in detail why the denied information is not considered “personal” under MCL 15.243(13)(1)(a), why the information would not endanger officer safety, MCL 15.243(13)(1)(s)(vii), and why the public interest in disclosing this information outweighs the public interest in nondisclosure. MCL 15.243(13)(1)(s).

38. Plaintiffs re-requested *all* information that the MSP denied in its response letter.
39. On June 1, 2023, the MSP sent a letter informing Plaintiffs that, upon administrative appeal, their FOIA request was again granted in part and denied in part. Exhibit E.
40. Defendant denied a significant amount of vital information that Plaintiffs require to accomplish their mission in creating their database.
41. For certified officers, Defendant withheld the names of all certified officers, citing exemptions under MCL 15.243(13)(1)(s)(vii), (viii), and (ix).
42. Defendant did not provide information on certified officers' last/current position and/or rank at the current or previous departments, citing MCL 15.235(5)(5)(b).
43. Defendant also did not provide information on decertified officers' last/current position and/or rank at prior departments or agencies, citing MCL 15.235(5)(5)(b).
44. The MSP claimed to provide all decertified officers' full names, unique ID numbers, last/current department/agency, and other decertification action information. However, the spreadsheet that the MSP provided to Plaintiffs, titled "II_FOIA_Revoked," upon information and belief, only contains the listed information for decertified officers whose certifications the MSP *revoked*.
45. The MSP has not disclosed the requested information for decertified officers who voluntarily surrendered their certifications, who had their certification suspended, or faced other decertification actions.
46. Additionally, the MSP did not provide the requested full employment history for *any* decertified officer.

CAUSE OF ACTION

Violation of the Michigan Freedom of Information Act

47. Plaintiffs incorporate by reference the previous allegations as set forth in full herein.

48. FOIA provides that “all persons . . . 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. The people shall be informed so that they may fully participate in the democratic process.” MCL 15.231(2).
49. The Michigan Supreme Court has emphasized that FOIA is a “prodisclosure statute” and has required that courts interpret broadly FOIA’s disclosure provisions to ensure public access. *Herald Co v Bay City*, 463 Mich 111, 119; 614 NW2d 873 (2000); *Swickard v Wayne Co Med Examiner*, 438 Mich 536, 544; 475 NW2d 304 (1991).
50. Furthermore, “exemptions must be construed narrowly, and the burden of proof rests with the party asserting an exemption.” *Manning v East Tawas*, 234 Mich App 244, 248; 593 NW2d 649 (1999) (abrogated on other grounds); *Bradley v Bd of Ed of the Saranac Community Schs*, 455 Mich 285, 293; 565 NW2d 650 (1997).
51. A public body must disclose all public records not specifically exempted by FOIA. *Hopkins v Duncan Twp*, 294 Mich App 401, 409; 812 NW2d 27 (2011); MCL 15.233(1).

A. Defendant Has Not Carried Its Burden of Proving that Any FOIA Exemption Justifies Not Disclosing Certified Officers’ Names and Employment History.

1. Names.

52. Defendant relies on three FOIA exemptions in support of its refusal to disclose certified officers’ names: MCL 15.243(13)(1)(s)(vii), (viii), and (ix).
53. Defendant’s reliance on each exemption is misplaced.

a. MCL 15.243(13)(1)(s)(vii) Does Not Apply Because Defendant Has Not Carried Its Burden of Showing that Disclosing Certified Officers' Names Would Endanger Them or that the Public Interest in Nondisclosure Outweighs the Strong Public Interest in Disclosure.

54. Exemption MCL 15.243(13)(1)(s)(vii) states that:

Unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance, public records of a law enforcement agency, the release of which would . . . [e]ndanger the life or safety of law enforcement officers or agents or their families, relatives, children, parents, or those who furnish information to law enforcement departments or agencies [are exempted from disclosure].

55. Defendant has not sufficiently carried its burden of proving that releasing certified officers' names to Plaintiffs would endanger their lives or the lives of others.

56. Moreover, given the strong public interest in tracking potential police misconduct and enhancing police transparency, the public interest in disclosure far outweighs any minimal public interest in nondisclosure.

i. Defendant has failed to show that releasing certified officers' names "would" harm anyone.

57. The Michigan Supreme Court has plainly stated that "the burden of proof is on the public body to demonstrate why it is entitled to protect a record from disclosure." *Federated Publications, Inc v Lansing*, 467 Mich 98, 101; 649 NW2d 383 (2002) (abrogated on other grounds).

58. It is not enough that an agency merely suggests that releasing this information *could* harm its officers.

59. The Michigan Court of Appeals recently held in a published decision that such "speculative" or "tentative opinion[s]" are insufficient to meet this burden. *Hjerstedt v Sault Ste Marie*, __ Mich App __, __; __ NW2d __; No. 358803, 2023 WL 2144757, at *19 (2023).

60. Instead, an agency must prove that releasing this information “*would*,” MCL 15.243(13)(1)(s) (emphasis added), endanger these officers—a “positive” showing that such consequences *will* occur. *Hjerstedt*, 2023 WL 2144757, at *19; *see also Evening News Ass’n v Troy*, 417 Mich 481, 505–06; 339 NW2d 421 (1983).
61. Defendant cannot surmount this high bar.
62. In its appeal response letter, the only justification that Defendant gave for invoking the MCL 15.243(13)(1)(s)(vii) officer safety exemption was:

The release to the public of a roster containing the names of all certified law enforcement officers in the State of Michigan would endanger the life and safety of the law enforcement officers and their families, because the information would lead to the doxing of law enforcement officers and their families. The released information also can be combined with information available via open-source databases, leading to further threat to law enforcement officers. Law enforcement officers work to apprehend dangerous and violent criminals. Some of these criminals work within organized criminal groups. The safety of the officers, and their families and homes, would be jeopardized because the release under the FOIA is release [sic] to all persons, including those taking and using the personally identifiable information of law enforcement officers to threaten officers and their families, and “whatever else the criminal mind might evoke.” *Mager [v Dep’t of State Police]*, [460 Mich 134, 143; 595 NW2d 142 (1999)].

63. Part of this justification is simply Defendant reciting statutory text to deny disclosing the information; however, the portions that do present specific arguments to deny release fail on the merits because Defendant does not provide “positive” evidence of why these consequences *would* happen, rather than simply *could* happen. *See Troy*, 417 Mich at 506.
64. Defendant’s policies and conduct demonstrate that it does not believe that publicly disclosing officers’ names would endanger its officers’ lives or those of others.
65. Disclosing certified officers’ names is consistent with the MSP’s Code of Conduct and information already made available by Defendant.

66. Section 4.9 of MSP’s Official Order 02-01, Member Conduct and Authority, makes clear that “[u]nless on special assignment with prior authorization, on duty officers *shall* identify themselves by name and badge number when requested by the *public*.”¹
67. Defendant’s official policy *requires* certified officers to identify themselves when the *public*, of which Plaintiffs are members, requests their names.
68. Defendant’s officers comply with this policy every day at the request of members of the public.
69. Requests by Plaintiffs, as members of the public, should not be treated differently.
70. Moreover, Defendant already releases identifying information about certified police officers, including names and *photographs* of new officers, to the public.
71. For example, in May 2022, an article listed the names and assignments of the nineteen newest state police troopers in the Upper Peninsula.²
72. If Defendant already releases the names of troopers—along with photographs, which Plaintiffs are not requesting—to news outlets, then it is difficult to maintain that releasing such information to Plaintiffs *would* endanger the safety of officers or others.
73. Defendant has not provided any evidence that the troopers whose names it voluntarily provided to the news media have faced any danger due to the fact that it released their names.

¹ Michigan State Police, *Department Policies: Written Directives* <<https://www.michigan.gov/msp/about-msp/departments-policies/>> (accessed November 5, 2023) (emphasis added).

² TV6, *Meet the New UP State Police Troopers* <<https://www.uppermichiganssource.com/2022/05/27/meet-new-up-state-police-troopers/>> (accessed October 25, 2023); *see also* Ryan Jeltima, ABC 12 News, *Michigan State Police Welcome 59 New Troopers After Graduation Thursday* <https://www.abc12.com/news/state/michigan-state-police-welcome-59-new-troopers-after-graduation-thursday/article_05b26ef6-6110-11ed-be05-9394658166c6.html> (accessed October 25, 2023) (containing a photograph of the 59 new graduates of Trooper Recruit School).

74. Defendant's second concern about the requested information being used in connection with other information "available via open-source databases" to threaten officers is also not borne out in reality.
75. Plaintiffs will share their database with verified journalists for investigative reporting, but will not publish online the raw data for public consumption or use.
76. This limited use and release of officers' information should mitigate concerns about officer safety.
77. Furthermore, thirty-four other state agencies have already released this exact information to the Invisible Institute.
78. Many of the states that have released the names of officers have open records acts that contain a life or safety exemption similar to MCL 15.243(13)(1)(s)(vii).³
79. There have been no reported incidences in these other states of doxing or threats to officer safety that have followed from releasing this information to Plaintiffs.
80. The fact that these states released such identifying information demonstrates that they believe such information will not endanger their officers.
81. Defendant, without providing any evidence, has merely speculated that releasing certified officer names *could* lead to endangering officers. It has not demonstrated that releasing certified officers' names *would* endanger them as required under Michigan law. *See Hjerstedt*, 2023 WL 2144757, at *7–8.

³ *See, e.g.*, Alas Stat § 40.25.120(g) (2015); Conn Gen Stat § 1-210(19) (2019); Vt Stat Ann tit 1, § 317(c)(5)(A)(vi) (2021).

ii. The strong public interest in disclosing certified officer names outweighs any countervailing public interest in nondisclosure.

82. Even if Defendant could meet the high bar of proving that releasing certified officers' names *would* endanger the safety of certain officers, it would not justify withholding the names of all officers. The exemption Defendant relies on only applies if the public interest in nondisclosure outweighs the public interest in disclosing these names "in the particular instance." MCL 15.243(13)(1)(s).
83. The public interest in knowing certified officers' names far outweighs any purported public interest in keeping all officers' names secret.
84. As with the officer endangerment exemption itself, the balancing test in MCL 15.243(13)(1)(s) places the burden on the public agency to prove that the public interest in nondisclosure outweighs the public interest in disclosure in the particular instance. *Detroit Free Press, Inc v Southfield*, 269 Mich App 275, 286; 713 NW2d 28 (2005) (citing *Federated Publications*, 467 Mich at 105, 107).
85. Michigan courts have held that the public interest balancing test alone may prevent a public body from invoking an exemption to refuse disclosing requested information. *Detroit Free Press*, 269 Mich App at 286 (citing *Federated Publications*, 467 Mich at 101) and *Landry v Dearborn*, 259 Mich App 416, 424; 674 NW2d 697 (2003)).
86. As the Court in *Detroit Free Press* explained, "a record that falls within one of [the MCL 15.243(13)(1)(s)] categories is not automatically exempt from disclosure. Rather, the record is exemptible and exempt only if the public-interest balancing test is also satisfied." 269 Mich App at 286–87.

87. In assessing the public interest, courts consider “whether the requested information would shed light on the governmental agency’s conduct or further the core purposes of FOIA.” *Rataj v Romulus*, 306 Mich App 735, 751; 858 NW2d 116 (2014).
88. In light of national and local incidences of police misconduct, there is a significant public interest in journalists knowing the names of officers who currently are or were employed by Defendant.
89. When weighing this strong public interest against Defendant’s interest in officer safety—which, as shown *supra*, if existent at all, is small—the balance clearly tips in Plaintiffs’ favor.
90. Officer names are an essential piece of information in developing Plaintiffs’ database.
91. Knowing certified officers’ names will allow journalists to use Plaintiffs’ database to track officers who have committed or may commit misconduct as they move from one agency or department to the next, both in and outside Michigan.
92. Public reporting on police misconduct often only contains the officer’s name—without any other identifying information.
93. Plaintiffs’ database helps collect other identifying information, including *inter alia* unique identification numbers, ages, and full employment history.
94. If journalists knew an officer’s name from public reporting on a misconduct incident, and then wanted to visit Plaintiffs’ database to track where that officer has, is, or is going to work as a police officer, they could not effectively use the database if it lacks officers’ names.
95. If the database only contains identification information without names, journalists who may only possess officers’ names would have no way of using the database to

identify and differentiate between officers that they interact with who may have committed misconduct.

96. Without certified officers' names, the effectiveness of this database as a transparency and accountability mechanism for police officers is severely undermined—and with it, the public's own interest in holding police officers to account.
97. In the wake of the killing of George Floyd and dozens of other unarmed people by police officers, the public interest in exposing police misconduct is at its zenith.
98. The ability to learn the names of officers is critical to identifying officers who engage in misconduct, ensuring public safety, and holding officers and police departments accountable.
99. Especially in an era where news stories of police abuse are common, the attempt to keep the names of officers secret contradicts democratic values such as transparency for and checks on governmental power. Indeed, hiding the names of police officers is something that we would expect to happen in countries with authoritarian forms of government, not in a democracy.
100. Moreover, Defendant made no effort to demonstrate that the “public interest in nondisclosure *in the particular instance*,” MCL 15.243(13)(1)(s) (emphasis added), outweighs the public interest in disclosure.
101. The “particular instance” requirement puts the burden of proof on Defendant to show why withholding this information for a *particular* certified officer is justified against the strong interest in disclosing these names to the public.

102. Instead of arguing why a particular officer’s name should be kept secret based on their individual circumstances, Defendant simply asserts that *all* certified officers’ names must be kept secret.

103. In short, Defendant has failed to carry its heavy burden of proving that the names of particular officers should be withheld under the public interest balancing test.

b. MCL 15.243(13)(1)(s)(viii) Does Not Apply Because, While Publicizing Certified Officers’ Names Will Identify Them, the Public Interest in Disclosure Outweighs the Public Interest in Nondisclosure.

104. The MCL 15.243(13)(1)(s)(viii) exemption states that “[u]nless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance, public records of a law enforcement agency, the release of which would . . . [i]dentify or provide a means of identifying a person as a law enforcement officer, agent, or informant,” are exempted from disclosure.

105. Plaintiffs do not contest that disclosing certified officers’ names would “[i]dentify or provide a means of identifying a person” as an officer. *Id.*

106. However, to rely on this exemption, Defendant must also prove that the public interest in nondisclosure outweighs the public interest in disclosure in the particular instance. MCL 15.243(13)(1)(s); *Detroit Free Press*, 269 Mich App at 286 (citing *Federated Publications*, 467 Mich at 105, 107).

107. It is not enough for Defendant to simply prove that disclosing certified officers’ names would allow individuals to identify them as law enforcement officers.

108. Defendant must succeed in overcoming its burden of proof in the balancing test as well.

109. This exemption, like any other, “must be construed narrowly, and the burden of proof rests with the party asserting an exemption.” *Manning*, 234 Mich App at 248; *see also Bradley*, 455 Mich at 293.
110. Defendant has not met this burden because it gave *no reasoning* to justify invoking this exemption.
111. The only particularized justifications that Defendant relied on in citing MCL 15.243(13)(1)(s)(viii) to deny Plaintiffs’ request are contained *supra* ¶62.
112. However, all of the specific justifications Defendant invoked are couched in preventing endangering officers, which only justify invoking MCL 15.243(13)(1)(s)(vii)—not (s)(viii).
113. Defendant proposed no separate justifications for why, in the particular instance, the public interest in nondisclosure outweighs the public interest in disclosing certified officers’ names for merely *identifying* those officers as police officers.
114. As before, *supra* ¶¶100–103, to meet the “in the particular instance” requirement, MCL 15.243(13)(1)(s), Defendant must provide particularized reasons for why the public interest in hiding particular officers’ names outweighs the public interest in disclosure.
115. The MSP director regularly touts the importance of transparency in policing.⁴
116. Defendant has not, and cannot, meet the heavy burden of proving that the public interest in disclosing the identity of officers is somehow outweighed by the public interest in nondisclosure.

⁴ Joe Gasper, Detroit News, *Gasper: Modern Policing Means Principled Understanding of Enforcement* <<https://www.detroitnews.com/story/opinion/2023/03/13/gasper-modern-policing-means-principled-understanding-of-enforcement/70004101007/>> (accessed November 4, 2023).

c. MCL 15.243(13)(1)(s)(vii) Does Not Apply Because Publicizing Certified Officers' Names Would Not Disclose Their Personnel Records.

117. The MCL 15.243(13)(1)(s)(ix) exemption states that “[u]nless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance, public records of a law enforcement agency, the release of which would...[d]isclose personnel records of law enforcement agencies” are exempted from disclosure.

118. However, an officer’s name does not constitute a “personnel record.”

119. Further, Defendant has not met its burden of proof under the MCL 15.243(13)(1)(s) balancing test to justify not disclosing certified officers’ names.

i. A certified officer’s name is not a “personnel record” under MCL 15.243(13)(1)(s)(ix).

120. To construe a certified officer’s name itself as a personnel record would contradict Michigan courts’ decades-long practice of construing FOIA exemptions “narrowly” and resting the burden of proof “with the party asserting [the] exemption.” *Manning*, 234 Mich App at 248; *see also Bradley*, 455 Mich at 293.

121. Michigan courts have construed the personnel records exemption to include just that—*records*.

122. A commonly understood definition of the term “record” is as follows: “something that records: such as a) something that recalls or relates past events; [or] b) an official document that records the acts of a public body or officers; [or] c) an authentic copy of a document; . . . [or] d) the official copy of the papers used in a law case.”⁵

⁵ Meriam-Webster Dictionary, *Record* < <https://www.merriam-webster.com/dictionary/record> > (accessed November 6, 2023).

123. An overview of Michigan case law demonstrates that Michigan courts construe the term personnel record in the MCL 15.243(13)(1)(s)(ix) exemption following this common definition of the term “record.” *See e.g., Landry*, 259 Mich App at 243–44 (construing personnel records exempt from disclosure to include “employment applications” for the position of a city police officer); *Sutton v Oak Park*, 251 Mich App 345, 350; 650 NW2d 404 (2002) (*documents* held by city regarding internal investigation of police officer); *Kent Co Deputy Sheriff’s Ass’n v Kenty Co Sheriff*, 238 Mich App 310, 330; 605 NW2d 363 (1999), *aff’d* 463 Mich 353; 616 NW2d 677 (2000) (*documents* contained in sheriff’s internal affairs files and *reports* generated during sheriff’s investigation into jail guards); *Newark Morning Ledger Co v. Saginaw Co Sheriff*, 204 Mich App 215, 223; 514 NW2d 213 (1994) (*records* of sheriff department’s completed internal affairs investigations).
124. A certified officer’s name—or, “a *word or phrase* that constitutes the distinctive designation of a person or thing”⁶—does not fit within the common interpretation that Michigan courts have routinely applied to the term “record,” which includes items such as documents, files, reports, applications, or papers that contain personal or professional information about officers in the possession of the police agency.
125. Michigan case law also establishes that an officer’s name is not *personal* information. *Rataj*, 306 Mich App at 753–54; *see also Tobin v Mich Civil Serv Comm*, 416 Mich 661, 672; 331 NW2d 184 (1982) (emphasizing that names “are not ordinarily personal, intimate, or embarrassing pieces of information” under MCL 15.243(13)(1)(a)).

⁶ Meriam-Webster Dictionary, *Name* <<https://www.merriam-webster.com/dictionary/name>> (accessed November 6, 2023) (emphasis added).

126. Defendant does not offer any particularized justification for why a name constitutes a personnel record under MCL 15.243(13)(1)(s)(ix).

127. Defendant's blanket claims are contrary to Michigan case law, and, without more, it is clear that Defendant has not carried its burden to prove that disclosing certified officers' names would disclose their personnel records.

ii. The strong public interest in disclosing certified officers' names outweighs any countervailing public interest in nondisclosure.

128. Even if this Court agrees with Defendant that names constitute personnel records, Defendant must still disclose certified officers' names because the public interest in disclosure outweighs the public interest in nondisclosure.

129. As with the MCL 15.243(13)(1)(s)(vii) and (viii) exemptions discussed above, *supra* ¶¶82–86, 106–109, the burden of proof to invoke the personnel record exemption and win on the MCL 15.243(13)(1)(s) balancing test is on Defendant as the public body. *Detroit Free Press*, 269 Mich App at 286.

130. Defendant has not and cannot demonstrate that, in the particular instance, the public interest in nondisclosure outweighs the public interest in disclosure.

131. Defendant did not provide particularized justifications showing that the public interest in not disclosing personnel records outweighs the public interest in disclosing them.

132. This fact alone demonstrates that Defendant has not met its burden to prove that the public interest in disclosure does not outweigh the public interest in nondisclosure.

133. However, Defendant cannot put forth a sufficient argument justifying why disclosing certified officers' names is less important to the public than not disclosing that "record."

134. Defendant especially cannot demonstrate that the nondisclosure interest wins out *in the particular instance*.

135. Therefore, since Defendant's other claimed exemptions to not disclose certified officers' names also fail, the Court should require Defendant to disclose to Plaintiffs the full names of all certified officers.

2. Full Employment History.

136. Plaintiffs requested that Defendant disclose the "last/current department or agency state date . . . [and] last/current position and/or rank at that department or agency" of all certified officers. Exhibit A.

137. Plaintiffs also requested that Defendant disclose all "previous departments/agencies (employment history), with start and end dates . . . [and] positions and/or ranks at previous departments or agencies" of all certified officers. Exhibit A.

138. Defendant invoked the MCL 15.235(5)(5)(b) exception in response to these requests.

139. MCL 15.235(5)(5)(b) states that:

(5) A written notice denying a request for a public record in whole or in part is a public body's final determination to deny the request or portion of that request. The written notice must contain:

* * *

- (b) A certificate that the public record does not exist under the name given by the requester or by another name reasonably known to the public body, if that is the reason for denying the request or a portion of the request.

140. Therefore, Defendant asserted in its replies that it does not maintain the last/current department or agency of its certified officers and that it does not maintain the history of their employment throughout their time at other departments or agencies.

141. Upon information and belief, Defendant does possess at least some of this information and misunderstood the request.

142. For Defendant to meet its burden under MCL 15.235(5)(5)(b) it must demonstrate that it does not collect or store the information requested by Plaintiffs.

143. Defendant collects and stores *at least* the “last/current position and/or rank at [an officer’s] department or agency” for certified officers.

144. Further, Defendant also likely collects and stores the “previous departments/agencies (employment history), with start and end dates . . . [and] positions and/or ranks at previous departments or agencies” of certified officers.

145. In response to requests for this information, Defendant provided Plaintiffs with a spreadsheet that included the current/last department or agency that employs its certified officers, along with at least one “previous agency” and the start and end dates at the current and one previous agency at which the certified officer worked.

146. Defendant also maintains a public-facing directory that includes the names, ranks/positions, and employment locations of some of its officials, including higher ranking officers, but also those in other roles such as its “Training, Exercise, and Preparedness Section.”⁷

147. It would be surprising for Defendant to collect extensive current and past employment history and information, including employment locations, start and end

⁷ Michigan State Police, *Division Directory* < <https://www.michigan.gov/msp/divisions/emhsd/contact-us/emhsd-contact-list/division-directory> > (accessed November 5, 2023).

dates, and ranks/positions of *some* officials, but not collect rank/position information or data on all certified police officers.

148. It would also be surprising to collect some, but not all, prior employment locations and ranks/positions at those locations within the agency held by certified officers.

149. Based on the information already provided to Plaintiffs, Defendant likely has additional employment location and rank/position history that it did not disclose.

150. Defendant cannot otherwise invoke an exemption to disclosing this information because information “contained in a personnel file pertaining to an individual’s official position such as salary history and *employment* dates is subject to disclosure under the Freedom of Information Act” under MCL 15.231. OAG 1981-1982, No. 6019, 1981 WL 153541, at *2 (December 29, 1981).

151. Therefore, Plaintiffs request that the Court compel Defendant to disclose any remaining employment history to Plaintiffs that meets the standards described in Plaintiffs’ FOIA requests.

B. Defendant Has Not Carried Its Burden of Proving that Any FOIA Exemption Justifies Not Disclosing Decertified Officers’ Ages, Employment History, and Names.

a. Age.

152. Defendant relies on a single exemption—MCL 15.243(13)(1)(a)—to deny disclosure of decertified officers’ age.

153. MCL 15.243(13)(1)(a) states that “[a] public body may exempt from disclosure as a public record under this act...[i]nformation of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual’s privacy.”

154. This exemption has two prongs: (1) whether information is “of a personal nature” and (2) whether public disclosure of the information “would constitute a clearly unwarranted invasion of an individual’s privacy.” *Rataj*, 306 Mich App at 750–51.

155. Defendant cannot meet its burden of proving that age information is personal in nature or that disclosing it would clearly unwarrantedly invade decertified officers’ privacy.

156. Therefore, Defendant’s reliance on this exemption fails.

i. Defendant Has Failed to Meet Its Burden to Prove that Age Is “Of a Personal Nature.”

157. Information is “of a personal nature” when it is an “intimate, embarrassing, private and confidential detail[] regarding [a] citizen’s life.” *Mich Federation of Teachers & Sch Related Personnel, AFT, AFL-CIO v Univ of Mich*, 481 Mich 657, 683; 753 NW2d 28 (2008).

158. Defendant has the burden to prove age information meets this standard, but it has not even attempted to do so.

159. In fact, Defendant’s disclosure of age information for certified officers demonstrates that it does *not* believe officers’ ages are of such a personal nature to justify invoking the MCL 15.243(13)(1)(a) exemption.

160. It is difficult to imagine how age could be of such a personal nature to certified officers, but not so to decertified officers, such that Defendant can justifiably claim that disclosure is permissible in the first, but not the second, instance.

161. By disclosing age information for certified officers, Defendant has conceded that officers’ ages are not personal information under MCL 15.243(13)(1)(a).

162. Defendant cannot now prove that age information is of a personal nature to justify invoking MCL 15.243(13)(1)(a) in the decertified officer context.

163. Therefore, this Court should require that Defendant disclose age information for decertified officers, just as it has done for certified officers.

ii. Defendant Has Failed to Meet Its Burden of Proving that the Public Interest in Keeping Decertified Officers' Ages Private Outweighs the Public Interest in Disclosure.

164. Even if this Court finds that decertified officers' age information is of a personal nature, Defendant must still prove that disclosing decertified officers' ages to the public "would constitute a clearly unwarranted invasion of an individual's privacy." *Rataj*, 306 Mich App at 750–51.

165. Personal information only triggers the privacy exemption when it "would constitute a clearly unwarranted invasion of an individual's privacy," which occurs when two factors are met: (1) the individual's private interest in privacy outweighs the public interest in government transparency, *see Herald Co*, 463 Mich at 126–27; and (2) the disclosure would not "serve the core purpose of FOIA, which is contributing significantly to public understanding of the operations of activities of the government." *Rataj*, 306 Mich App at 751 (quoting *Practical Political Consulting, Inc v Secretary of State*, 287 Mich App 434, 462, 789 NW2d 178 (2010) (quoting *Mich Federation of Teachers*, 481 Mich at 673)).

166. "In all but a limited number of circumstances, the public's interest in governmental accountability prevails over an individual's, or a group of individuals', expectation of privacy." *Practical Political Consulting*, 287 Mich App at 464.

167. Defendant did not even attempt to justify invoking this exemption for decertified officers' ages, which is particularly anomalous since Defendant did disclose the ages of its certified officers.
168. Defendant cannot now meet this burden of proof.
169. Knowing the ages of decertified officers is crucial to Plaintiffs' purposes in building their database to increase Defendant's accountability, responsibility, and transparency to the public.
170. Decertified officers have lost their certifications for the exact types of behavior that Plaintiffs seek to highlight.
171. For example, when Defendant produced a list of decertified officers who had their certifications revoked the reasons that Defendant listed for revoking these officers' certifications included "[c]riminal investigation," "[f]elony conviction," and "[s]eparation of service review."
172. Journalists have a keen interest in knowing the ages of the officers who have committed such transgressions or illegalities because age information will allow them to better differentiate between these decertified officers and other officers who have not committed such acts.
173. This is especially relevant when two officers may have the same name or other similar identifying information.
174. Further, if anything, releasing age information, when used in this way by Plaintiffs and other journalists, may actually *benefit* officers' own interests.
175. It seems reasonable that well-behaving officers would want to ensure journalists have as much information as possible to distinguish them from misbehaving officers.

176. Lastly, Defendant has shown that it does not believe officers' interest in keeping age information private outweighs the public interest in knowing that information because it has already disclosed age information for tens of thousands of certified officers.
177. Defendant faces a steep climb if it now wants to attempt to prove that decertified officers have a stronger privacy interest in keeping their age confidential compared to that of certified officers.
178. It is clear that for both certified and decertified officers, journalists, on behalf of the public, have a stronger interest in disclosure than nondisclosure.
179. For the second part of this test, Defendant must prove that disclosing decertified officers' ages does not promote the core interest of FOIA—increasing public agencies' accountability to the public. *Rataj*, 306 Mich App at 751.
180. It is clear at this point that Plaintiffs' primary purpose in obtaining the information it requests from Defendant is to promote public accountability, responsibility, and transparency of Defendant and its officers.
181. Disclosing the ages of all decertified officers helps Plaintiffs and other journalists better track officers to hold them accountable for their actions.
182. If anything, FOIA's purposes are even more acutely achieved in the decertified officer context because officers who have, for instance, been convicted of a felony, deserve greater public scrutiny.
183. Journalists play a crucial role in investigating and reporting on police misconduct.
184. Having access to the ages of decertified police officers will allow journalists to better track and distinguish individual officers who engage in misconduct and move between departments or agencies.

185. In this way, disclosing age information will help ensure that the public is “informed so that [it] may fully participate in the democratic process.” MCL 15.231(2).

186. For these reasons, Defendant has not and cannot meet its burden of proof necessary to invoke MCL 15.243(13)(1)(a) to exempt decertified officers’ ages from disclosure.

187. Consequently, this Court must compel Defendant to disclose decertified officers’ age.

a. Full Employment History.

188. Plaintiffs requested that Defendant disclose the “last position and/or rank at” the decertified officer’s “last department/agency.”

189. Defendant responded by invoking MCL 15.235(5)(5)(b), which is the same exception Defendant invoked in response to requests for similar employment history information for certified officers. *Supra* ¶¶138–139.

190. MCL 15.235(5)(5)(b) states that:

(5) A written notice denying a request for a public record in whole or in part is a public body's final determination to deny the request or portion of that request. The written notice must contain:

* * *

- (b) A certificate that the public record does not exist under the name given by the requester or by another name reasonably known to the public body, if that is the reason for denying the request or a portion of the request.

191. Therefore, by invoking this exception, Defendant asserts that it does not possess or maintain information on decertified officers’ position and/or rank at the department or agency where they were last employed.

192. Upon information and belief, Defendant does possess such rank and/or position information because Defendant disclosed substantially similar information to Plaintiffs already or publicly releases similar information for other officials.

193. Defendant did produce the “last/current agency” where decertified officers who had their certification revoked worked, along with their “start date” and “stop date” at that location and in that position.

194. It would be surprising for Defendant to know where that officer worked, the dates that they worked there, and the reason for their termination (certification revocation due to criminal investigation or conviction), but not know the job and title for which that decertified officer was employed.

195. This is particularly true since Defendant publishes a Directory where it catalogues the names, employment locations, and ranks/positions of some of its officials.⁸

196. Therefore, it seems likely that Defendant collects the information that Plaintiffs requested.

197. This Court should require that Defendant disclose any such information herein requested to Plaintiffs.

b. Names.

198. Plaintiffs requested the names of *all* decertified officers in its FOIA requests.

199. Decertified officers include any officer who has had their certification revoked or suspended as well as any officer who has voluntarily surrendered their certification, or who has otherwise lost their certification for “any other purpose.” Exhibit A.

200. Defendant’s response to the administrative appeal stated that it granted the “[f]ull name” of all decertified officers as defined by Plaintiffs.

⁸ *Id.*

201. However, upon information and belief, the only information and data on decertified officers' names that Plaintiffs have received pertains only to decertified officers who have had their certification *revoked*.
202. Defendant produced a spreadsheet titled "II_FOIA_Revoked" to Plaintiffs that contains 272 entries of officers, with full names, who had their certification "revoked" following action taken by Defendant.
203. Defendant revoked these individuals' certifications for various reasons, including "[c]riminal investigation[s]," "[f]elony conviction[s]," and "[s]eparation of service review[s]."
204. Neither this spreadsheet, nor any other dataset or document produced by Defendant, contains the same information for decertified officers who have had their certification suspended; who voluntarily surrendered their certification; or who have had their certification otherwise removed or deactivated by Defendant.
205. Plaintiffs believe that Defendant possesses the names of decertified officers who lost their certification for reasons other than revocation alone, including for such reasons as suspension, voluntary surrender, and/or otherwise.
206. Therefore, Plaintiffs request that the Court order Defendant to produce decertified officers' names for *all* decertified officers.

RELIEF REQUESTED

Plaintiffs respectfully request that the Court grant the following relief:

- A. Issue a judgment declaring that the MSP has violated FOIA by failing to disclose all records lawfully requested by Plaintiffs for *certified* officers, including all full names and full employment history with rank/position and location information.

- B. Issue a judgment declaring that the MSP has violated FOIA by failing to disclose all records lawfully requested by Plaintiffs for *decertified* officers, including all full names of non-revoked decertified officers, ages, and full employment history with rank/position and location information.
- C. Issue an order requiring that the MSP produce all responsive data, documents, and records—including everything in Plaintiffs’ initial FOIA requests and administrative appeal—in spreadsheet files;
- D. Award Plaintiffs’ attorneys’ fees and costs pursuant to MCL 15.240(6); and
- E. Grant such other and additional relief that the Court finds just and appropriate under the circumstances.

Respectfully submitted,



Michael J. Steinberg (P43085)

Derek A. Zeigler*

Eli Massey*

Civil Rights Litigation Initiative

University of Michigan Law School

701 S. State St., Suite 2020

Ann Arbor, MI 48109

(734) 763-1983

mjsteinb@umich.edu

dzeigler@umich.edu

masseye@umich.edu


Counsel for Plaintiff

* Student Attorney practicing
pursuant to MCR 8.120

Dated: November 27, 2023

SIGNATURE AND VERIFICATION OF COMPLAINT BY PLAINTIFF

I, Andrew Fan, am the executive director of Plaintiff Invisible Institute, and, pursuant to MCL 600.6431, I hereby verify this the allegations in complaint are true to the best of my information, knowledge, and belief.



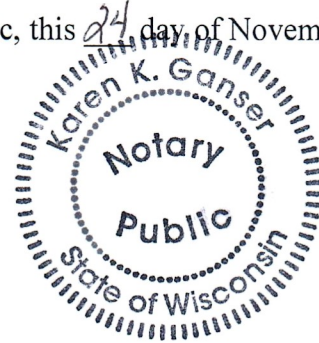
Andrew Fan

RECEIVED by MCCOC 11/28/2023 9:58:34 AM

United States of America)
State of Wisconsin) SS
County of Dane)

SUBSCRIBED AND SWORN TO before me, a Notary Public, this 24 day of November, 2023.

Karen K. Ganser
Notary Public
Printed Name: Karen K. Ganser
Resident of Dane County
My Commission Expires: 3/6/2027



SIGNATURE AND VERIFICATION OF COMPLAINT BY PLAINTIFF

I, Leyland DeVito am the Editor-in-Chief of Plaintiff Metro Times, and, pursuant to MCL 600.6431, I hereby verify that the allegations in this complaint are true to the best of my knowledge, information, and belief.

Leyland DeVito
Name

11/24/23

United States of America)
State of MICHIGAN) SS
County of OAKLAND)

SUBSCRIBED AND SWORN TO before me, a Notary Public, this 24th day of November, 2023.

Bechara Damouni

Notary Public

Printed Name: BECHARA DAMOUNI

Resident of WAYNE County

My Commission Expires: 12th OCT 2027

BECHARA DAMOUNI
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF WAYNE
My Commission Expires October 12, 2027
Acting in the County of OAKLAND



EXHIBIT A

Plaintiffs' Original FOIA Request

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INVISIBLE INSTITUTE



Via: Email to msprecords@michigan.gov
Attention: Freedom of Information Officer
Michigan State Police
7150 Harris Drive
Lansing, Michigan 48909

January 4 2023

Dear Records Custodian

This is a request under the Michigan Freedom of Information Act.

We are seeking two categories of data regarding officer certifications by the Michigan Commission on Law Enforcement Standards:

- **All certified officers.** All law enforcement officers who are actively certified as of the date of this request (or when the request is processed). If your system maintains historical records of previously certified officers who are no longer active, please include them as far back as possible. If correctional officers are certified by your agency, please include them as well.
- **Decertified officers.** All law enforcement officers who have been decertified through revocations, voluntary surrenders, suspensions or any other actions going back as far as possible. Please include records for decertified correctional officers if available.

For the purposes of this request, “officer” means a sworn member of a law enforcement agency in the state of Michigan of any rank, and “data” means logs or spreadsheets showing individual information.

Data elements for certified officers:

- Officer unique ID number
- POST or state certification ID number
- Officer’s full name
- Officer’s date of birth or, if not releasable, year of birth or current age
- Officer’s city and/or zip code of residence
- Officer’s last/current department or agency

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- Officer's last/current department or agency start date
- Officer's last/current position and/or rank at that department or agency
- Officer's previous departments/agencies (employment history), with start and end dates
- Officer's positions and/or ranks at previous departments or agencies
- Officer's original date of certification
- Current status of certification (active, lapsed, expired, suspended, etc.)
- Last action taken on certification
- Date of last action on certification
- Disciplinary actions taken against this officer's certification
- Dates of disciplinary actions taken against this officer's certification
- Training history/additional certifications of this officer, if available

Data elements for decertified officers:

- Officer unique ID number
- POST ID number
- Officer's full name
- Officer's date of birth or, if not releasable, year of birth or current age
- Officer's city and/or zip code of residence.
- Officer's last department/agency, with start and end date
- Officer's last position and/or rank at that department or agency
- Decertification action taken (revocation, suspension, voluntary surrender, etc.)
- Date decertification action taken
- POST case number, if applicable
- Reason for decertification or similar action

If your certification system contains data elements not listed above, please include them in the response, provided they are releasable under the law. On the other hand, we recognize some of the information we are asking for may not be tracked by your system. If that is the case, we are willing to accept as many of the data elements as your agency maintains. If some records are more readily available, we are happy to receive partial information as soon as possible while the remaining request is processed.

In addition to the data elements listed, we request documentation necessary to understand and interpret the data, including but not limited to record layouts, data dictionaries, code sheets, lookup tables, etc.

Our preference is to receive structured data provided in a machine-readable text file, such as delimited or fixed-width formats. We can also handle a variety of other data formats including SQL databases, Excel workbooks and MS Access. If there are additional formats your agency would prefer to provide, please let us know.

In the event MSP denies or redacts any of the requested information, please provide the legal reasoning behind every denial and/or redaction pursuant to Mich. Comp. Laws Ann. § 15.235(5). As a reminder, this provision of the law requires a denial (which includes the redaction of any

material) to contain the following:

A written notice denying a request for a public record in whole or in part is a public body's final determination to deny the request or portion of that request. The written notice must contain:

- (a) An explanation of the basis under this act or other statute for the determination that the public record, or portion of that public record, is exempt from disclosure, if that is the reason for denying all or a portion of the request.
- (b) A certificate that the public record does not exist under the name given by the requester or by another name reasonably known to the public body, if that is the reason for denying the request or a portion of the request.
- (c) A description of a public record or information on a public record that is separated or deleted under section 14, if a separation or deletion is made.
- (d) A full explanation of the requesting person's right to do either of the following:
 - (i) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the disclosure denial.
 - (ii) Seek judicial review of the denial under section 10.
- (e) Notice of the right to receive attorneys' fees and damages as provided in section 10 if, after judicial review, the court determines that the public body has not complied with this section and orders disclosure of all or a portion of a public record.

Specifically, in compliance with the law, in the event that MSP intends to both deny any material *and* deny our fee waiver, we request to be notified of all material that would be redacted from the released records, should the fee be paid.

Please email the documents or files, and any communications, to foia@invisibleinstitute.com and ldevito@metrotimes.com.

This request is brought by the Invisible Institute and Detroit Metro Times. The Invisible Institute is an award-winning nonprofit journalistic production company based in Chicago's Woodlawn neighborhood. Our mission is to enhance the capacity of citizens to hold public institutions accountable.

Founded in 1980, Detroit Metro Times is an award-winning newsweekly that covers Michigan.

Invisible Institute and Detroit Metro Times make this request as part of a national collaborative of news organizations convened by Big Local News, and including ABC News, KQED, MuckRock and other news organizations. Big Local News is a program of Stanford University's Journalism and Democracy Initiative and helps journalists collect, process and analyze public data.

Because we, the requestors, are journalists, and we seek the information in order to disseminate it to the public, and “because searching for or furnishing copies of the public record can be considered as primarily benefiting the general public,” we request a fee waiver for this data pursuant to Mich. Comp. Laws Ann. § 15.234(2). It is not for commercial benefit because we are members of the news media whose principal purpose is to access and disseminate information regarding the general public’s safety, welfare, and legal rights. To the extent you intend to assess any charges, please notify us to discuss first.

Thank you for your time and prompt attention to this matter. Please contact me should you have any questions related to this request.

Sam Stecklow
Invisible Institute
Experimental Station
6100 South Blackstone Avenue
Chicago, Illinois 60637
foia@invisibleinstitute.com

Lee DeVito
Detroit Metro Times
P.O. Box 20734
Ferndale, Michigan 48220
ldevito@metrotimes.com

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EXHIBIT B

Defendant's Initial FOIA Partial Grant & Denial Response

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STATE OF MICHIGAN
DEPARTMENT OF STATE POLICE
LANSING

GRETCHEN WHITMER
GOVERNOR

COL. JOSEPH M. GASPER
DIRECTOR

1/10/2023

Sam Stecklow
Invisible Institute / Detroit Metro Times
6100 SOUTH BLACKSTONE AVENUE
CHICAGO, IL 60637

Subject: CR-31264417

Dear Sam Stecklow:

The Michigan State Police (MSP) has received your request for public records under the Michigan Freedom of Information Act (FOIA), MCL 15.231 *et seq.*

Your request is granted as to existing, non-exempt records in the possession of the MSP that fall within the scope of your request. To process your request, the MSP estimates a FOIA processing fee of \$241.01 to search for, retrieve, review, examine, and separate exempt material, if any.

If your request was submitted via the Records Request Portal, you may pay the deposit of \$120.50 in the portal by selecting "Request Details" for the request number (CR) indicated in the subject line above. All other requestors can make payment using the online payment center (<http://mistatepolicepmts.state.mi.us/crsearch>). Users of the online payment center will need to provide the request number (CR) listed above to utilize the online payment option. Please note there is a \$2.00 processing fee for online payments.

If you prefer, you can mail a check or money order, made payable to the State of Michigan, to Michigan State Police, Cashiers Unit, P.O. Box 30266, Lansing, Michigan 48909. To ensure proper credit, please enclose a copy of this letter with your payment.

As set forth under section 4(14) of the FOIA, MCL 15.234(14), if a fee appeal has not been filed under section 10a of the FOIA, MCL 15.240a, the MSP must receive the required deposit within 45 days after your statutorily-determined receipt of this notice, which is 2/27/2023, otherwise the FOIA request will be considered abandoned and the MSP will not be required to fulfill the request.

Upon receipt of the deposit, the MSP will complete the processing of your request. You will be notified of the balance due before release of the records, and of the statutory basis for the exemption of any records or portions of records, and of your statutory remedial rights, if applicable. The MSP estimates a processing time of 10 business days after receipt of payment.

Under the FOIA Section 10a you have the right to appeal the fee to the head of this public body.

The MSP's FOIA procedures and guidelines and written public summary can be accessed at www.michigan.gov/msp.

Sincerely,

Kristina Rodgers
Records Resource Section

EXHIBIT C

Defendant's Reasoning for Initial FOIA Partial Grant & Denial

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STATE OF MICHIGAN
DEPARTMENT OF STATE POLICE
LANSING

GRETCHEN WHITMER
GOVERNOR

COL. JOSEPH M. GASPER
DIRECTOR

3/8/2023

Sam Stecklow
Invisible Institute / Detroit Metro Times
6100 SOUTH BLACKSTONE AVENUE
CHICAGO, IL 60637

Subject: CR-31264417

Dear Sam Stecklow:

The Michigan State Police (MSP) has received your request for public records under the Michigan Freedom of Information Act (FOIA), MCL 15.231 *et seq.*

Your request is granted in part and denied in part. Portions of your request are exempt from disclosure based on provisions set forth in the FOIA. Please see the comments on the next page. Under the FOIA, Section 10, you have the right to appeal to the head of this public body or to a judicial review of the denial. You have a right to receive attorney's fees and damages as provided in section 10, if after judicial review, the court determines the MSP has not complied with the FOIA and orders disclosure of all or a portion of a public record. Please pay the amount of \$87.04. Once payment is received the documents will be provided to you. Under the FOIA, Section 10a, you have the right to appeal the fee to the head of this public body.

For requests that were granted or granted in part and for which a balance is owed:

If your request was submitted via the Records Request Portal, you can make payment in the portal by selecting "Request Details" for the request number (CR) indicated in the subject line above. All other requestors can make payment using the online payment center (<http://mistatepolicepmts.state.mi.us/crsearch>). You will need to provide the request number (CR) listed above. Please note there is a \$2.00 processing fee for online payments.

If you prefer, you can mail a check or money order made payable to the State of Michigan to Michigan State Police, Cashiers Unit, P.O. Box 30266, Lansing, MI 48909. To ensure proper credit, please enclose a copy of this letter with your payment.

The MSP's FOIA procedures and guidelines and written public summary can be accessed by visiting www.michigan.gov/msp.

Sincerely,

Kristina Rodgers
Records Resource Section



STATE OF MICHIGAN
DEPARTMENT OF STATE POLICE
LANSING

GRETCHEN WHITMER
GOVERNOR

COL. JOSEPH M. GASPER
DIRECTOR

Denial of Records:

Denial is based on the following provision(s) of the Freedom of Information Act, MCL 15.243, Sec. 13(1). Exemptions that apply are displayed below.

(a) Information of a personal nature where the public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy:

- name(s)
- other
- MCOLES, unique identifier number

(s) Unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance, public records of a law enforcement agency, the release of which would do any of the following:

- Endanger the life or safety of law enforcement officers or agents or their families, relatives, children, parents or those who furnish information to law enforcement departments or agencies.

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EXHIBIT D

Plaintiffs' FOIA Appeal

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MICHIGAN LAW
CIVIL RIGHTS LITIGATION INITIATIVE
UNIVERSITY OF MICHIGAN

April 19, 2023

Colonel Joseph Gasper
Michigan State Police
7150 Harris Drive
Dimondale, MI 48821
GasperJ@michigan.gov

VIA EMAIL AND
FIRST CLASS MAIL

Re: APPEAL of Freedom of Information Act Request CR-31264417

Dear Colonel Gasper:

The Civil Rights Litigation Initiative (CRLI) at the University of Michigan Law School represents Sam Stecklow, the Invisible Institute, and the Detroit Metro Times in the above-referenced matter.

The [Invisible Institute](#) is an award-winning nonprofit journalistic production company that works to enhance the capacity of citizens to hold public institutions accountable. Founded in 1980, [Detroit Metro Times](#) is an award-winning newsweekly that covers Michigan. Both organizations made a FOIA request as part of their work with a national collaborative of news organizations convened by [Big Local News](#), a program of Stanford University's Journalism and Democracy Initiative that helps collect, process, and analyze public data through information-sharing platforms for journalists nationwide.

On January 4, 2023, the Invisible Institute and Detroit Metro Times sent a joint FOIA request to the Michigan State Police (MSP) for "two categories of data regarding officer certifications by the Michigan Commission on Law Enforcement Standards." Exh. 1, p. 1. The request asked for a list of "all certified officers" and "decertified officers," along with identifying information including these officers' names, unique identification numbers, most recent MSP departments, and certification statuses. Exh. 1, pp. 1-2.

On January 10, 2023, MSP's FOIA coordinator issued a response granting the request "as to existing, nonexempt records in the possession of the MSP that fall within the scope of [the] request." Exh. 2, p. 1. On February 21, 2023, Invisible Institute paid the \$120.50 deposit required for MSP to process the request.

On March 8, 2023, MSP's FOIA coordinator further detailed which portions of the FOIA request are granted and which are denied. *See* Exh. 3. The denial of records portion reads as follows:

Denial is based on the following provision(s) of the Freedom of Information Act, MCL 15.243, Sec. 13(1). Exemptions that apply are displayed below.

(a) Information of a personal nature where the public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy:

- name(s)
- other
- MCOLES, unique identifier number

(s) Unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance, public records of a law enforcement agency, the release of which would do any of the following:

- Endanger the life or safety of law enforcement officers or agents or their families, relatives, children, parents or those who furnish information to law enforcement departments or agencies.

MSP's FOIA coordinator did not clarify what constitutes the "other" information it asserts is of a personal nature and so is being withheld. The FOIA coordinator also did not explain which requested information, in particular, she believes the release of which would endanger officer life or safety.

Pursuant to MCL 15.240(10), the Invisible Institute and Detroit Metro Times hereby appeal MSP's March 8, 2023 FOIA partial denial (Denial) to the head of MSP. A copy of the Invisible Institute and Detroit Metro Times's initial FOIA request dated January 4, 2023 (Request) is attached as Exhibit 1 and a copy of the Denial is attached as Exhibit 2.

I. Disclosure of Officer Names and Identifiers is Consistent with MSP's Code of Conduct, Already Available Information, and the Public's Investment in Law Enforcement.

MSP's policies and procedures already require officers to identify themselves to members of the public upon request. Pursuant to Section 4.9 of [Official Order 02-01, Member Conduct and Authority](#), "[u]nless on special assignment with prior authorization, on-duty officers shall identify themselves by name and badge number when requested by the public." Per stated policy, "[m]embers of the MSP shall adhere to these written directives throughout the course of their duties and follow all applicable policies and procedures when taking action." The requested information—the names and identifiers of certified and decertified officers—is consistent with what individual officers must already do upon request.

Further, MSP already publicly releases identifying information about its certified police officers, including names and photographs of many new officers. For example, in May 2022, [an article](#) listed the names and assignments of the nineteen newest state police troopers in the Upper Peninsula. In November 2022, [another article](#) announced that fifty-nine new troopers graduated from the Trooper Recruit School and included a photograph of all fifty-

nine new officers. Thus, MSP is already, without being asked, releasing identifying information about many officers.

Finally, the public interest in open government and accountability for public officials is perhaps nowhere more important than in the identification of the public's law enforcement officers. Disclosure of basic identifying information of public officials is essential for maintaining a free and democratic society.

Moreover, the public is invested in the training and certification of Michigan's law enforcement in a literal sense. Earlier this year, Governor Whitmer signed an increased investment of [\\$20 million in continued training](#) for licensed officers. Taxpayers must be able to trust that their government is not abusing its power or tax dollars, and it is important for the public to understand who and what their tax dollars support.

II. FOIA is a Pro-Disclosure Statute; Denials Lacking Justification Undermine This Crucial Premise.

Michigan's FOIA states its public policy purpose explicitly:

All persons . . . 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. The people shall be informed so that they may fully participate in the democratic process.

MCL 15.231 (emphasis added). The Michigan Supreme Court has repeatedly affirmed that FOIA is a "prodisclosure statute" and has also made clear that FOIA's disclosure provisions must be interpreted broadly to ensure public access. *See, e.g., Herald Co v Bay City*, 463 Mich 111, 119; 614 NW2d 873 (2000); *Swickard v Wayne Co Med Examiner*, 438 Mich 536, 544; 614 NW2d 873 (1991). "A FOIA request must be fulfilled unless MCL 15.243 lists an applicable specific exemption." *Coblentz v City of Novi*, 475 Mich 558, 573; 719 NW2d 73 (2006). Exemptions must be narrowly construed. *Swickard*, 438 Mich at 544 (citing *State Emps Ass'n v Dep't of Mgmt & Budget*, 428 Mich 104, 110; 404 NW2d 606 (1987)).

Given this strong and explicitly articulated public policy in disclosure, denials not justified by any statutory exemptions, including this one, are improper.

III. MSP's Denial Improperly Invoked the Privacy Exemption in Refusing to Disclose Officer Names, Unique Identifier Numbers, and Other Identifying Information; Michigan Case Law Makes Clear that Government Agencies Cannot Refuse to Disclose Names, Addresses, and Related Employment Information of Employees, Including Police Officers, Under FOIA's Privacy Exemption.

The FOIA coordinator's denial of "name(s), other, [and] MCOLES, unique identifier number" as requested by the Invisible Institute and the Detroit Metro Times is based on the individual privacy exemption under MCL 15.243(1)(a). The FOIA statute provides that "[a]

public body may exempt from disclosure as a public record . . . [i]nformation of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy." MCL 15.243(1)(a). This exemption consists of two prongs: 1) whether the information is "of a personal nature," and 2) whether public disclosure of the information "would constitute a clearly unwarranted invasion of an individual's privacy." *Id.*; *Rataj v City of Romulus*, 306 Mich App 735, 750; 858 NW2d 116 (2014).

In *Rataj*, the plaintiff sought disclosure of all records pertaining to a police officer's assault of an unnamed individual, including an unredacted copy of the official incident report and internal reports. *Rataj*, 306 Mich App at 740. The Court plainly stated that a person's name "is not '[i]nformation of a personal nature' within the meaning of MCL 15.243(1)(a)" and, on that basis, determined that the privacy exemption did not apply to the names that had been redacted from the incident report. *Id.* at 753–54 (alteration in original).

Similarly, in *Tobin v Mich Civil Serv Com*, the Court found that disclosure of names and home addresses of classified civil service employees did not infringe upon the employees' common law or constitutional rights to privacy such that exemption from disclosure of that information was warranted. *Tobin v Mich Civil Serv Com*, 416 Mich 661, 672; 331 NW2d 184 (1982). In this so-called "reverse" FOIA case, plaintiff employees sought to enjoin the Civil Service Commission from releasing this information. *Id.* The Court emphasized that names and addresses "are not ordinarily personal, intimate, or embarrassing pieces of information" and therefore are not protected from disclosure. *Id.*

"Because the names of . . . officer[s] are not information of a personal nature, the names are subject to disclosure and there is no need to consider the second prong of the privacy exemption." *Rataj*, 306 Mich App at 753–54.

Like names, officer unique identification numbers are not of a personal nature. In concluding that names and home addresses of civil employees were not private in *Tobin*, the Court quoted from a Louisiana case where the Court rejected the argument that a constitutional right to privacy protected the disclosure of employee addresses:

A person's employment, where he lives, and where he works are exposures which we all must suffer. We have no reasonable expectation of privacy as to our identity or as to where we live or work. Our commuting to and from where we live and work is not done clandestinely and each place provides a facet of our total identity.

Tobin, 416 Mich at 677. This language was again quoted by the Michigan Supreme Court and underlies the rationale requiring disclosure in *State Emps Ass'n*, 428 Mich at 124–25. Michigan's courts make clear that there can be no expectation of privacy surrounding one's name and employment and certainly no such privacy interest that would constitute a clearly unwarranted invasion of privacy upon public disclosure. MSP cannot invoke the privacy exemption to withhold identifying information of officers.

IV. The Denial Improperly Relied on the “Officer Life or Safety Exemption” In Refusing to Release Names, Unique Identifier Numbers, and Other Identifying Information Where Release of Such Information Would Not Pose a Risk to Officers.

The Denial also invokes the exemption under MCL 15.243(s)(vii), hereinafter the “officer life or safety exemption,” which provides that

A public body may exempt from disclosure as a public record under this act any of the following:

* * *

(s) Unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance, public records of a law enforcement agency, the release of which *would* do any of the following:

* * *

(vii) Endanger the life or safety of law enforcement officers or agents or their families, relatives, children, parents, or those who furnish information to law enforcement departments or agencies.

MCL 15.243 (emphasis added). However, a police agency may not use this exemption to deny disclosure if either 1) the “public interest in disclosure outweighs the public interest in nondisclosure in the particular agency,” or 2) releasing the requested information “would” “endanger the life or safety of law enforcement officers” (or other related individuals). *Id.* The Michigan Supreme Court has affirmed that the public interest balancing test on its own may prevent a public body from invoking the exemption. *Detroit Free Press, Inc v City of Southfield*, Mich App 275, 286; 713 NW2d 28 (2005) (citing *Federated Publ’ns, Inc v City of Lansing*, 467 Mich 98, 101; 649 NW2d 383 (2002) (abrogated on other grounds); *Landry v City of Dearborn*, 259 Mich App 416, 424; 674 NW2d 697 (2003)). In *Detroit Free Press*, the Court noted, “[a]s the statute indicates, a record that falls within one of [the § 15.241(1)(s)] categories is not automatically exempt from disclosure. Rather, the record is exemptible and exempt only if the public-interest balancing test is also satisfied.” *Id.*

Consistent with the public body’s general burden to sustain its decision to withhold disclosure, as discussed in Part V, the burden of proving that the public interest in the disclosure outweighs the public interest in nondisclosure rests with the public body. *Federated Publ’ns*, 467 Mich at 143. In *Federated Publ’ns*, the Michigan Supreme Court confirmed that this language, both by plain-text reading and when read in combination with the provision in MCL 243(1)(s), “plainly states that the burden of proof is on the public body to demonstrate why it is entitled to protect a record from disclosure.” *Id.*

A. The Denial Fails to Balance the Public Interest in Disclosure Versus the Public Interest in Nondisclosure As Required by MCL 15.243(1)(s).

There is a significant public interest in the disclosure of the information requested. First, that Michigan has a strong public interest in disclosure and that FOIA is a “prodisclosure

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statute” make it already likely that the public interest in disclosure outweighs the public interest in nondisclosure. *See* MCL 15.231; *see also* *Rataj*, 306 Mich App at 751. Second, recent national events regarding police misconduct and violence make information on law enforcement certifications particularly important for the public, news organizations, and individual citizens to understand and access.¹ Michigan’s public policy surrounding freedom of information and heightened public attention on police conduct together make the case for transparency surrounding the information requested.

Additionally, there is no discernable public interest in nondisclosure. Undoubtedly, there is a public interest in the life and safety of police officers, who are devoted civil servants and play an essential role in keeping communities safe. However, there is no evidence that disclosure of the requested information would, in any discernible or tangible way, increase the risk of endangerment to officers’ lives or safety.

B. MSP Cannot Demonstrate that Disclosure *Would* Endanger Officer Life or Safety.

The FOIA coordinator’s denial contends that the requested information that would endanger officer life or safety includes “name(s),” “unique identifier number” and “other,” without defining what “other” constitutes. *See* Exh. 3, p. 2. Thus, for the denial to be upheld, MSP must show that sharing the names and unique identifier numbers of officers would endanger those officers’ lives or safety.

As set forth above, the plain language of the FOIA statute precludes MSP from invoking the life or safety exemption unless it can show that the release of information “would” endanger the life and safety of officers or their families. The use of the word “would” in the FOIA’s officer life or safety exemption indicates a high bar for invoking it. FOIA requires government agencies to make a “positive” showing that a risk an exemption is aimed at protecting against will indeed occur. *Evening News Assoc v Troy*, 417 Mich 481, 505–06; 339 NW2d 421 (1983). In particular, the *Evening News* Court stressed that the words “could” and “would” “are obviously not the same thing.” *Id.* Although the Court was considering the exemption delineated in MCL 15.231(1)(b)(i) in making this conclusion, the Michigan Court of Appeals recently confirmed in a February 2023 decision that the *Evening News* Court’s analysis is applicable to the officer life or safety exemption in MCL 15.243(1)(s)(vii), as well. *Hjerstedt v City of Sault Ste Marie*, __ Mich App __, __; __ NW2d __; No. 358803, 2023 WL 2144757, at *19 (2023). The *Hjerstedt* Court made clear that in invoking the officer life or safety exemption, showing that endangerment *could* occur or stating without evidence that endangerment would occur are both “insufficient to meet the [respondent’s] burden.” *Id.* According to the Court, a “speculative” or “tentative opinion” is not sufficient. *Id.* Instead, MSP must meet a higher burden, demonstrating a “positive conclusion” that officer endangerment *would* occur. *Id.* It has not done so and cannot do so.

¹ *See generally* Hannah Bloch-Wehba, “Visible Policing: Technology, Transparency, and Democratic Control,” 109 CALIF. L. REV. 917 (2021); *see also* Barry Friedman & Maria Ponomarenko, “Democratic Policing,” 90 N.Y.U.L. REV. 1827, 1833 (2015).

The information requested would not endanger officers' life or safety for several reasons. First, as a matter of common sense, names and unique identifier numbers alone would not enable anyone with that information to find police officers, let alone endanger their lives or safety. Anyone in possession of the requested information would only be aware of officers' certification statuses; they would not be equipped with additional information that would give possessors physical access to those officers.

Second, police agencies from other states have released the same information requested here without experiencing any resulting officer endangerment, indicating both that other state police agencies are not concerned about endangerment and that there is no real threat of endangerment. In *Hjerstedt*, the Court of Appeals noted that

numerous other jurisdictions . . . have opted to make their use-of-force policies easily available to the public via the internet. Given this easy and widespread exposure, and the similarity in subject matter discussed, it is telling that the [FOIA request respondent] could not produce any particularized evidence that the availability of [the requested information] has resulted in endangerment of the life or safety of law enforcement officers, their families, or the general public.

Hjerstedt, ___ Mich App at ___; No. 358803, 2023 WL 2144757, at *20–21. Here, as in *Hjerstedt*, several other state police agencies have released the requested information, indicating that the risk of endangerment is low. In all, thirty-two states have released substantially similar information to that requested here, either to the Invisible Institute or other collaborating organizations. Several of the states that have released similar information also have life or safety exemptions similar to MCL 15.243(1)(s)(vii). For instance, in Alaska, state agencies do not need to release information in response to FOIA requests if doing so “could reasonably be expected to endanger the life or physical safety of an individual.” Alas Stat 40.25.120(g). Likewise, in Connecticut, disclosure is not required “when there are reasonable grounds to believe [it] may result in a safety risk, including the risk of harm to any person, any government-owned or leased institution or facility.” Conn Gen Stat 1-210(19). Finally, in Vermont, a state agency may deny a FOIA request on records involving the investigation of a crime when they “could reasonably be expected to endanger the life or physical safety of any individual.” Vt Stat Ann tit 1 317. Despite these statutory exemptions, state police agencies in Alaska, Connecticut, and Vermont have each released the names, unique identifiers, and other information for certified officers as requested by the Invisible Institute. There have been no reports of officer life or safety endangerment as a result of releasing the requested information in any of the twenty-four states whose police agencies have done so.

Finally, if the information requested is not private, as addressed in Part III, it is a far cry from being capable of endangerment. The bar for determining information as private is lower than the bar for determining information as endangering officer life or safety, and MSP cannot even show that the requested information is private.

V. MSP Must Provide Particularized Justifications for Denials; It Has Not and Cannot Do So Here.

MSP's FOIA coordinator, and all public bodies, must provide particularized justification for invoking FOIA exemptions. *Evening News Assoc*, 417 Mich at 493–94. In 1983, the Michigan Supreme Court concluded that the FOIA “exemptions require particularized justification.” *Id.* The Michigan Court of Appeals has reiterated the same and clarified the requirement several times since *Evening News*. The Court of Appeals has held multiple times that “the public body claiming a [FOIA] exemption should provide complete particularized justification, rather than simply repeat statutory language.” *Detroit Free Press, Inc v City of Warren*, 250 Mich App 164, 167; 645 NW2d 71 (2002) (citing *Hyson v Dep't of Corrections*, 205 Mich App 422, 424; 521 NW2d 841 (1994)). This year, the same Court, while discussing the officer life or safety exemption under MCL 15.243(1)(s)(vii), made clear that “[i]t was the city’s burden to produce particularized evidence that disclosure would endanger law enforcement personnel.” *Hjerstedt*, ___ Mich App at ___; No. 358803, 2023 WL 2144757, at *8. Thus, for the last several decades, Michigan Courts have required public bodies to provide particularized justification.

In this case, the Denial repeats statutory language without providing any particularized justification for the (unjustifiable) claimed exemptions. In the Denial, the MSP FOIA coordinator invoked the privacy and officer life or safety exemptions in refusing to provide “name(s),” “MCOLES, unique identifier number,” and “other.” See Exh. 3, p. 2. However, they did not even attempt to explain why these exemptions applied, never mind provide a “particularized justification” for invoking them. *Id.*; *Evening News Assoc*, 417 Mich at 493–94. Further, they listed “name(s),” “MCOLES, unique identifier number,” and “other” under the privacy exemption but listed no requested information under the officer life or safety exemption. Finally, they did not explain what constitutes “other.” Exh. 3, p. 2. Accordingly, MSP has failed to meet its burden in denying access to the requested records.

VI. Publicly, Colonel Gasper and MSP Have Pledged to Make Transparency a Priority.

Recently, you wrote a powerful [opinion piece for the Detroit News](#) outlining the priorities and principles that guide MSP as a twenty-first-century police force. Among the priorities and principles guiding MSP today, you stated that “[a] modern police agency promotes transparency” and “works with the communities it serves to develop authentic connections and to serve real needs within communities.”

Additionally, as you have [acknowledged elsewhere](#) that “[t]he role and responsibility of police officers in our society is a great one; one in which our authority is derived from the trust and support of the people we serve.” Public trust and support require, at the most basic level, an awareness of who is certified to serve as a police officer.² Sharing the

² See, e.g., Tammy Rinehart Kochel & Wesley G. Skogan, “Accountability and transparency as levers to promote public trust and police legitimacy: findings from a natural experiment,” 44 POLICING: INT’L J. 1046 (2021), <https://doi.org/10.1108/PIJPSM-04-2021-0062>.

requested information with Invisible Institute and Detroit Metro Times is essential to maintaining the public's trust.

Further, you issued another recent [press release](#) in which you rightly explained that "policing is a privilege bestowed upon those who swear an oath to uphold the Constitution and protect the public's safety, and it is incumbent on every officer, and those who lead police officers, to hold themselves and those around them accountable for their conduct." It is also incumbent upon the public to hold officers and police agencies accountable through the disclosure of *full and complete information* regarding the affairs and certifications of public employees, as the Invisible Institute and Detroit Metro Times is entitled to under FOIA.

MSP's Denial violates both the letter and the spirit of the law and should be reversed. The Invisible Institute and Detroit Metro Times should be provided with unredacted information, including the names and unique identification numbers of employees, regarding the State's certified police officers.

Thank you for your consideration of these issues. If there are any questions or you require further information about this request, please contact Kassie Fotiadis at kassie@umich.edu and Natalie Punzak at npunzak@umich.edu. We look forward to a response within ten (10) business days. MCL 240.10(2).

Sincerely,

Kassie Fotiadis, Student Attorney
Natalie Punzak, Student Attorney
Michael J. Steinberg, Director
Civil Rights Litigation Initiative
701 S. State Street, Suite 2020
Ann Arbor, MI 48109
Phone: (734) 763-1983

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EXHIBIT E

Defendant's FOIA Appeal Response Letter

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STATE OF MICHIGAN
DEPARTMENT OF STATE POLICE
LANSING

GRETCHEN WHITMER
GOVERNOR

COL. JOSEPH M. GASPER
DIRECTOR

June 1, 2023

Civil Rights Litigation Initiative (CRLI)
Mr. Michael J. Steinberg, Director
Ms. Kassie Fotiadis
Ms. Natalie Punzak
701 South State Street, Suite 2020
Ann Arbor, Michigan 48109

Subject: CR-31264417

Dear CRLI:

This notice is issued as a result of CRLI's April 19, 2023, appeal of the Michigan State Police's (MSP) January 10, 2023, notice in response to CRLI's clients' January 4, 2023, request for information under the Freedom of Information Act (FOIA), MCL 15.231 *et seq.* Specifically, the FOIA request asked for records related to certified and decertified officers in Michigan. On appeal, the MSP conducted another review of the request, revised the initial disclosure determination, and remanded the matter to the FOIA coordinator for processing. This notice is sent directly to CRLI, because CRLI informed MSP that it represents the requesters. (Copies of the FOIA request and appeal and the MSP's January 10, 2023, notice are attached and incorporated herein.)

The FOIA request is granted in part and denied in part.

As to the partial grant, for each certified officer, copies of the following records, if applicable, are enclosed:

- Unique ID number and post or state certification ID number.
- Current age.
- Last/current department or agency and officer's last/current department or agency start date / previous departments/agencies (employment history), with start and end dates.
- Original date of certification, current status of certification, last action taken on certification, date of last action on certification, disciplinary actions taken against the officer's certification, dates of disciplinary actions taken against the officer's certification, and training history/additional certifications of the officer is granted.

As to the partial grant, for each decertified individual, copies of the following records, if applicable, are enclosed:

- Unique ID number and post ID number.
- Full name.
- Last department/agency, with start and end date.
- Decertification action, post case number, date of decertification action taken, and reason for decertification or similar action taken.

Finally, as to the partial grant, no further FOIA processing fees are due.

As to the partial denial, for each certified officer, the following information is not provided based on the statutory provisions stated and the particularized justifications explained below:

- Full name. MCL 15.243(1)(s)(vii), (viii), and (ix).
- Date and year of birth. MCL 15.243(1)(a).
- City and/or zip code of residence. MCL 15.235(5)(b).
- Last/current position and/or rank at that department or agency / positions and/or ranks at previous departments or agencies. MCL 15.235(5)(b).

As to the partial denial, for each decertified individual, the following information is not provided based on the statutory provisions stated and the particularized justifications explained below:

- Date of birth, year of birth, and age. MCL 15.243(1)(a).
- City and/or zip code of residence. MCL 15.235(5)(b).
- Last position and/or rank at that department or agency. MCL 15.235(5)(b).

Finally, as to that part of the FOIA request for records on certified and decertified correctional officers, the request is denied under MCL 15.235(5)(b).

The FOIA does not permit a public body to consider the requesting person's identity and motivation or purpose for making the request or the intended use of the information. *State Employees Ass'n v Dep't of Mgt and Budget*, 428 Mich 104, 121, 126 (1987). Further, the FOIA provides no mechanism to prevent the ongoing dissemination of the information after an initial disclosure under the act. Disclosure of information under the FOIA is essentially disclosure to the world at large. *Kestenbaum v Michigan State Univ*, 414 Mich 510, 528 (1982); *State Employees Ass'n*, 428 Mich at 125-126.

For the above reasons, the FOIA recognizes a class of public records that, "are exempt from disclosure." MCL 15.232(i)(j).

Under MCL 15.243(1)(a), the FOIA authorizes a public body to exempt from disclosure, "[i]nformation of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy." In raising this exemption in this particular instance, the MSP relies on *Mager v Dep't of State Police*, 460 Mich 134, 145-146 (1999), where the Michigan Supreme Court noted that the FOIA's purpose, as set forth under MCL 15.231(2), is not promoted by the public disclosure of personal information found in governmental files, "that reveals little or nothing about an agency's own conduct."

The FOIA also allows a public body to withhold law enforcement agency records from public disclosure under MCL 15.243(1)(s)(vii), (viii), and (ix). The exemption applies, where the public interest in nondisclosure is not outweighed by a public interest in disclosure. In this particular instance, the disclosure of certain personal information of law enforcement officers to the public at large under the FOIA would endanger the lives or safety of the officers, as well as their immediate and extended families; identify or provide a means of identifying the persons as law enforcement officers; and disclose a personnel record of the law enforcement agency.

The release to the public of a roster containing the names of all certified law enforcement officers in the State of Michigan would endanger the life and safety of the law enforcement officers and their families, because the information would lead to the doxing of law enforcement officers and their families. The released information also can be combined with information available via open-source databases, leading to further threat to law enforcement officers. Law enforcement officers work to apprehend dangerous and violent criminals. Some of these criminals work within organized criminal groups. The safety of the officers, and their families and homes, would be jeopardized because the release under the FOIA is release to all persons, including those taking and using the personally identifiable information of law enforcement officers to threaten officers and their families, and "whatever else the criminal mind might evoke." *Mager*, 460 Mich, at 147.

Finally, to the best of the MSP's knowledge, information, and belief, certain information described in the FOIA request and referred to above does not exist within the MSP under those descriptions or under other descriptions reasonably known to the MSP. Neither the MSP nor the Michigan Commission on Law Enforcement Standards collects such information. Thus, under MCL 15.235(5)(b), those parts of the request must be denied.

As to the partial denial, the MSP informs the requesters that, under MCL 15.240, they have the right to appeal the partial denial decision in writing to the head of the MSP, Colonel Joseph Gasper, Director, 7150 Harris Drive, Dimondale, Michigan 48821. The writing must state the word "appeal" and must identify the reason or reasons the requesters believe the partial denial should be reversed. The head of the MSP must respond to the appeal within ten business days after its receipt. Under unusual circumstances, the time for response to the appeal may be extended by ten business days.

The requesters also may commence an action in the Court of Claims within 180 days after the date of the final determination to partially deny the request. If the requesters prevail in such an action, the court is to award reasonable attorney fees if applicable, costs and disbursements, and possible damages.

The MSP's FOIA procedures and guidelines and written public summary can be accessed at www.michigan.gov/FOIA-MSP.

Sincerely,

Kristina L. Rodgers
Assistant FOIA Coordinator

Enclosures