

Mackinac Center and Michigan Department of Environmental Quality Settle FOIA Lawsuit

A settlement has been reached in a lawsuit filed on July 13, 2016 by the Mackinac Center for Public Policy alleging the Michigan Department of Environmental Quality (DEQ) violated Michigan's Freedom of Information Act (FOIA).

On March 30, 2016, the Mackinac Center filed a FOIA request seeking all emails from two DEQ employees, Liane Shekter-Smith and Stephen Busch, from 2013 and 2015 that contained the word "Flint." The Center also sought the names of "any employees transferred, reassigned, or suspended as a result of the Flint water issues."

The DEQ estimated it would take 4 and ½ hours of work to fulfil this request. The requested fee was paid on April 26, 2016. The requested documents were received 121 days after the FOIA was initially filed and 84 days after the Mackinac Center had paid in full for the requested documents.

The DEQ defended the case alleging that it provided the responsive documents within the period identified in its FOIA response once the processing fee was paid. The DEQ also stated in its court filings that it was processing a great volume of FOIA requests for information about the Flint water matter.

The Court made a preliminary determination that because a public body must comply with all requirements of the FOIA, "a genuine issue of material fact remains concerning whether [DEQ] unreasonably delayed in responding to [the] FOIA request."

In the interest of resolving the case without further litigation, and recognizing that the time period was long, DEQ chose to settle the matter, while denying that its actions constituted arbitrary, capricious or willful wrongdoing.

Both parties recognize that the FOIA's core purpose is providing citizens with, "full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees...so that they may fully participate in the democratic process." The parties also note that there are circumstances for which the FOIA currently lacks certainty when documents must be provided. This lack of clarity can foster litigation over what response times are reasonable.