

**STATE OF MICHIGAN
GENESEE COUNTY CIRCUIT COURT**

**THE MACKINAC CENTER FOR PUBLIC
POLICY, a nonprofit Michigan Corporation**

Case No.: 21-_____

Plaintiff,

v.

Hon.

**THE CITY OF FLINT, a Michigan
municipal corporation.**

Complaint

Defendant.

Derk A. Wilcox (P66177)
Stephen A. Delie (P80209)
Patrick J. Wright (P54052)
Mackinac Center for Public Policy
Attorneys for Plaintiff
140 West Main Street
Midland, MI 48640
(989) 631-0900 – voice
(989) 631-0964 – fax

COMPLAINT

There is no other pending or resolved civil action arising out of the same transaction or occurrence alleged in the complaint.

NOW COMES Plaintiff, The Mackinac Center for Public Policy, and for its Complaint alleges and states as follows:

INTRODUCTION

The plaintiff, Mackinac Center for Public Policy (the “Mackinac Center”) is a nonprofit organization dedicated to improving the quality of life for all Michigan residents by promoting sound

solutions to state and local policy questions. To that end, the Mackinac Center routinely uses the Freedom of Information Act (“FOIA”) to obtain relevant documents from state and local governments.

On January 7, 2021, the Mackinac Center made a routine request to the City of Flint (the “City”), seeking the gross salaries of the City’s public employees. On January 11, 2021, the Mackinac Center clarified that this request was intended to include the names of employees in addition to their salaries. Having received no response from the City, the Mackinac Center sent follow up correspondence on February 26, 2021. To date, the Center has not received any correspondence or records from the City. This suit follows, as the City has failed to fulfill the basic requirements of the FOIA.

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff, the Mackinac Center for Public Policy (the “Mackinac Center”), is a Michigan nonprofit corporation headquartered in Midland County, Michigan.
2. Defendant, the City of Flint (“The City”), is a municipal corporation and public body which is headquartered in Genesee County, Michigan.
3. Venue is proper pursuant to MCL 15.240(1)(b).
4. Pursuant to MCL 15.240(5), this action should be “assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.”
5. Pursuant to MCL 15.240(1)(b) and MCL 600.605, the circuit court has jurisdiction over this claim.

VIOLATIONS OF THE FREEDOM OF INFORMATION ACT

6. The Plaintiff hereby incorporates the preceding paragraphs as if fully restated herein.
7. On January 7, 2021 Mackinac Center employee Jarrett Skorup submitted a FOIA request to the City for the following records:

The total gross salaries (salary, OT, bonuses, etc.) for every city employee for the 2019 and 2020 calendar years.

Exhibit A, Mackinac Center's FOIA Request and Clarification.

8. The Mackinac Center later clarified this request to include the names of employees, stating:

To clarify this request - I need the salaries for every individual employee for both years (with the names, in order to make a comparison).

If you need a new request, it is below:

January 11, 2021

FOIA Request for salary information

Pursuant to the Michigan compiled Laws Section 15.231 et seq., and any other relevant statutes or provisions of your agency's regulations I am making the following Freedom of Information Act request.

The name and total gross salary (salary, OT, bonuses, etc.) for each city employee for the 2019 and 2020 calendar years.

I request this information be delivered via email.

Id.

9. Having received no response whatsoever, the Mackinac Center contacted the City on February 26, 2021 to determine the status of its request. The Center received no response.

Exhibit B, Follow Up Correspondence.

10. The City's failure to respond to the Mackinac Center's request is a clear violation of FOIA.
11. MCL 15.231(2) states:

It is the public policy of this state that all persons, except those persons incarcerated in state or local correctional facilities, are entitled to fully 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 participate in the democratic process.

12. MCL 15.235(2) requires a public body to respond to a FOIA request within five (5) business days. That response must be either a grant of the request, a denial of the request, or ten (10) business day extension of the period to respond. *Id.*
13. The Mackinac Center's request was filed on January 7, 2021. Thus, the City's response was due no later than January 14th. **See Exhibit A.**
14. Assuming *arguendo* that the Mackinac Center's clarification of January 11, 2021 constituted a new FOIA request for purposes of MCL 15.235(2), the City's response was due no later than January 18, 2021. **See Exhibit A.**
15. At time of writing, it has been fifty-one (51) business days since the Center filed its request, and forty-nine (49) business days since the Center clarified its request. The City has not responded in any fashion, let alone responded in the fashion required by MCL 15.235(2).
16. Thus, the City has violated FOIA by failing to respond within the five (5) business days as required by MCL 15.235(2).
17. The City's failure to respond to the Center's request is arbitrary and capricious under MCL 15.240(7), thereby subjecting the City to a civil fine of \$1,000.00 payable to the general treasury and a separate \$1,000.00 to the Mackinac Center.
18. The City's failure to respond as required by MCL 15.235(2) constitutes a willful and intentional failure to comply under MCL 15.240b, thereby subjecting it to a civil fine of \$2,500 to \$7,500 payable to the state treasury.
19. Pursuant to MCL 15.240(6), the Center, if it prevails, is entitled to attorneys' fees and costs:

If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in an action commenced under this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or public body prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages under subsection (7).

RELIEF REQUESTED

Plaintiff, Mackinac Center for Public Policy, respectfully requests that this Court order Defendant, the City of Flint, to provide all documents sought in the FOIA request in unredacted form; apply the full penalties available under MCL 15.234(9), MCL 15.240(7), and MCL 15.240b; award attorneys' fees and costs under MCL 15.240(6); and award any other relief this Court determines to be just and equitable to remedy the City's failure to produce the requested information and causing the need to bring this suit.

Dated: _____, 2021

Derk Wilcox (P66177)
Senior Attorney
Mackinac Center for Public Policy

Exhibit A

Delie, Steve

From: Delie, Steve
Sent: Thursday, March 18, 2021 3:43 PM
To: Delie, Steve
Subject: FW: FOIA - total gross salaries of employees

From: Skorup, Jarrett
Sent: Monday, January 11, 2021 9:18 AM
To: Skorup, Jarrett
Subject: Re: FOIA - total gross salaries of employees

To clarify this request - I need the salaries for every individual employee for both years (with the names, in order to make a comparison).

If you need a new request, it is below:

January 11, 2021

FOIA Request for salary information

Pursuant to the Michigan compiled Laws Section 15.231 et seq., and any other relevant statutes or provisions of your agency's regulations I am making the following Freedom of Information Act request.

- The name and total gross salary (salary, OT, bonuses, etc.) for each city employee for the 2019 and 2020 calendar years.

I request this information be delivered via email.

Jarrett Skorup
Director of Marketing and Communications
Mackinac Center for Public Policy
140 W. Main St.
Midland, Michigan 48640
www.mackinac.org
989-631-0900

From: Skorup, Jarrett
Sent: Thursday, January 7, 2021 1:44:26 PM
Subject: FOIA - total gross salaries of employees

January 7, 2021

FOIA Request for salary information

Pursuant to the Michigan compiled Laws Section 15.231 et seq., and any other relevant statutes or provisions of your agency's regulations I am making the following Freedom of Information Act request.

- The total gross salaries (salary, OT, bonuses, etc.) for every city employee for the 2019 and 2020 calendar years.

I request this information be delivered via email.

Jarrett Skorup
Director of Marketing and Communications
Mackinac Center for Public Policy
140 W. Main St.
Midland, Michigan 48640
www.mackinac.org
989-631-0900

Exhibit B

Delie, Steve

From: Delie, Steve
Sent: Thursday, March 18, 2021 3:43 PM
To: Delie, Steve
Subject: FW: Following up Fw: FOIA - total gross salaries of employees

From: Skorup, Jarrett
Sent: Friday, February 26, 2021 9:40 AM
To: foiarequest@cityofflint.com
Subject: Following up Fw: FOIA - total gross salaries of employees

I have not received a response to this request and it is quote a bit late.

From: Skorup, Jarrett
Sent: Thursday, January 7, 2021 1:44 PM
Subject: FOIA - total gross salaries of employees

January 7, 2021

FOIA Request for salary information

Pursuant to the Michigan compiled Laws Section 15.231 et seq., and any other relevant statutes or provisions of your agency's regulations I am making the following Freedom of Information Act request.

- The total gross salaries (salary, OT, bonuses, etc.) for every city employee for the 2019 and 2020 calendar years.

I request this information be delivered via email.

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