STATE OF MICHIGAN

COURT OF CLAIMS

MACKINAC CENTER FOR PUBLIC POLICY,

Plaintiff,

OPINION AND ORDER REGARDING DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

v

Case No. 20-000253-MZ

UNIVERSITY OF MICHIGAN,

Hon. Christopher M. Murray

Defendant.
_____/

Before the Court are cross-motions for summary disposition brought pursuant to MCR 2.116(C)(10). The parties have filed responses, and the matter is ripe for decision. Oral argument is unnecessary as the briefs adequately set out the parties' positions.

I. INTRODUCTION

In this Freedom of Information Act (FOIA) case, plaintiff claims that defendant has improperly redacted the e-mail addresses of (1) public employees and (2) private persons who were involved in making recommendations or providing information to the State of Michigan regarding the state's "MI Safe Start map." Plaintiff also seeks certain redacted portions of e-mails between certain employees of defendant and the state. Although defendant has produced a large number of documents, it argues that the remaining information—the e-mail addresses, security codes, remote access links, and certain substantive text from e-mails—are exempt from disclosure.

II. ANALYSIS

The FOIA is a mechanism through which the public may examine and review the workings of government and its executive officials. *Messenger v Ingham Co Prosecutor*, 232 Mich App 633, 641; 591 NW2d 393 (1998). It was enacted to carry out this state's strong public policy favoring access to government information, recognizing the need for citizens to be informed so that they may fully participate in the democratic process, and to hold public officials accountable for the decisions they make and how they discharge their duties. MCL 15.231(2); *Messenger*, 232 Mich App at 641. By its express terms, the FOIA is a pro-disclosure statute, as a public body must disclose all public records not specifically exempt under the act. MCL 15.233(1); *Herald Co v Bay City*, 463 Mich 111, 119; 614 NW2d 873 (2000).

A. E-MAIL ADDRESSES

The first issue is whether plaintiff is entitled to disclosure of the e-mail addresses of the identified employees employed by defendant, and those of private business owners. With respect to defendant's employees, there is no exemption for the work e-mails of those individuals. E-mail addresses do not contain passwords or information of a personal nature, and do not fall within the exemptions contained in MCL 15.243(1)(u) and (y). Unlike the cases cited by defendant, these e-mails are not related in any manner to these employees' home, or home e-mail addresses, nor do the e-mail addresses otherwise allow the public to make any connection to information of a personal nature.[1] The same, however, is not true with respect to the e-mail addresses of private

[1] Footnote 2 of defendant's reply brief states that defendant is not withholding the e-mail addresses of university employees, but is instead only withholding non-university governmental employees. Defendant also signals a willingness to disclose those non-university governmental employees' e-mail addresses. This opinion and order requires them to do so.

persons. The names of those individuals have already been provided,[2] and to provide the private e-mail addresses of those individuals would in fact provide the public with information of a personal nature, would be a clearly unwarranted invasion of these non-government individuals' privacy, and thus fall within the exemption contained within MCL 15.243(1)(a). The disclosure of the e-mail addresses would not contribute at all to the public understanding of the operations and activities of government. See *ESPN, Inc v Mich State Univ*, 311 Mich App 662, 668-669; 876 NW2d 593 (2015) (citation omitted) (explaining that contributing to an understanding of the operations of government is the "only relevant public interest" that should be considered in determining whether disclosure of private information would be clearly unwarranted). E-mail addresses are used for all sorts of business, personal matters, etc., and to open those addresses to the public is unwarranted. Nor would producing these addresses shed any light of government decision-making. For this same reason, and to ensure the exemption is enforceable, any "work group e-mail" addresses also are exempt and cannot be produced if they contain the e-mail addresses of these private individuals.

While initially put in issue by plaintiff, there does not appear to be much dispute at this time about the request for passwords or virtual meeting links, as plaintiff admits it is not seeking passwords. And to the extent plaintiff still seeks information about e-mail addresses or names of those in "work group e-mails," the Court has already concluded that the private e-mail addresses

[2] While plaintiff at times appears to contest the same, the Court's review of defendant's motion for summary disposition—in particular, Exhibit 11 to defendant's motion for summary disposition— reveals that the names of the business entities and of the private individuals have been disclosed.

are not producible, the public ones are, and it appears there is no dispute but that all names of participants in the e-mails have been previously produced.

B. FRANK COMMUNICATION EXEMPTION

Finally, there is some argument about the applicability of the "frank communications" exemption contained within MCL 15.243(1)(m) to certain redactions made to materials that were disclosed to plaintiff. There is no dispute that the first three criteria for resolving the applicability of this exemption—the documents cover more than purely factual matters, are between public bodies, and involves something preliminary to a final government decision—are met. The main question is whether the public interest in encouraging frank communications clearly outweighs the public interest in disclosure of the redacted information, knowing that the balancing test weighs in favor of disclosure. *Herald Co v Eastern Mich University*, 475 Mich 463, 473-474; 719 NW2d 19 (2006) (explaining that a public record "is not exempt under the frank communication *unless* the public body demonstrates that the public interest in encouraging frank communication between officials and employees of public bodies *clearly outweighs* the public interest in disclosure").

Defendant has the burden of demonstrating the applicability of the exemption. *Id*. at 477. Here, defendant has not produced sufficient evidence or argument that the exemption applies, i.e., defendant has not shown that non-disclosure of the redacted information clearly outweighs the public interest in disclosure. Defendant has not offered any persuasive caselaw, nor any affidavits or other evidence, that disclosure of the redacted information would inhibit frank communications amongst public bodies. Instead, defendant has offered the type of "platitudes and generalities" that have been deemed inadequate to satisfy the burden placed on a public body. See *id*. at 474. To that end, it is readily apparent that fostering frank communications *can* often be in the public interest. Defendant has given the Court nothing beyond that general concern, however. On the

other hand, plaintiff has convincingly argued that the public release of information that may have influenced actions taken by government employees and officials during the early days of the COVID-19 pandemic is a matter of potentially significant public interest. And as plaintiff points out, the disclosure of these frank communications were not offset by other, similar information, meaning that this case is not comparable to the communications withheld in *Herald Co*, where the withheld documents were offset by an audit that released to the public other pertinent financial information. See *id*. at 481-482. Accordingly, in light of the arguments and (lack of) evidence regarding the balancing test, the Court concludes that defendant has not met its burden and that the materials redacted pursuant to MCL 15.243(1)(m) must be disclosed to plaintiff.

C. ATTORNEY FEES

Plaintiff's complaint requested attorney fees under MCL 15.240(6). The statute provides that, when a person requesting public documents prevails in part, as plaintiff did here, "the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements." MCL 15.240(6). See also *Detroit Free Press, Inc v Dep't of Attorney General*, 271 Mich App 418, 421; 722 NW2d 277 (2006). The Court concludes that an award of fees is not warranted. While not diminishing plaintiff's victory in this matter, the Court is not of the opinion that the victory is significant enough or complete enough to justify an award of fees. The few redactions and relatively benign redactions—as it concerns the non-university government employees' e-mail addresses—are not of such a character to convince the Court that fees should be awarded.

III. CONCLUSION

IT IS HEREBY ORDERED that summary disposition is GRANTED in part to plaintiff as it concerns the redactions of government employees' e-mail addresses and those materials claimed to be exempt under the frank-communications exemption.

IT IS FURTHER ORDERED that summary disposition is GRANTED in part to defendant as it concerns the redactions pertaining to the e-mail addresses of private individuals and/or private business entities, as well as related work group e-mail addresses.

IT IS HEREBY FURTHER ORDERED that plaintiff's request for attorney fees is DENIED.

This is a final order that resolves the last pending claim and closes the case.

Date: December 21, 2021

Christopher M. Murray
Judge, Court of Claims