

STATE OF MICHIGAN  
COURT OF CLAIMS

THE MACKINAC CENTER FOR PUBLIC  
POLICY, a nonprofit Michigan Corporation

Plaintiff,

v.

MICHIGAN DEPARTMENT OF  
LICENSING AND REGULATORY  
AFFAIRS, a state public body.

Defendant.

Case No.: 20- 000222 MZ

Hon. Stephens

Complaint

RECEIVED  
NOV 04 2020

COURT OF CLAIMS

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

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COMPLAINT

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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 June 5<sup>th</sup>, 2020, the Mackinac Center made a routine request to the Department of Licensing and Regulatory Affairs (“LARA”), which responded that same day. In that response, the City took a ten (10) business day extension, as permitted by MCL 15.235(2)(d). On June 26, 2020 LARA responded by providing a good-faith estimate of the costs and time necessary to complete the Mackinac Center’s request, stating:

Dear Jarrett Skorup:

This notice responds to your June 05, 2020 request for records, received by the Michigan Department of Licensing and Regulatory Affairs (LARA). LARA has processed your request under the provisions of the Michigan Freedom of Information Act (FOIA), 1976 PA 442, MCL 15.231 *et seq.*

You requested the following, in summary:

“I’m requesting copies of:

- 1) The cease-and-desist or other letters/emails sent out to businesses violating COVID-19 executive orders or rules.
- 2) The complaints sent in about businesses violating COVID-19 executive orders or rules.”

Your request is granted.

The estimated cost of continuing to process your request is **\$1,372.64**. Please refer to the attached Detailed Itemization Form for a breakdown of the fees. Failure to charge would result in an unreasonably high cost to the Department in this particular instance because the employees must be taken away from pending work to process the request and expend additional time to complete regularly assigned departmental work.

Section 4(8) of the FOIA, MCL 15.234(8), provides that a public body may require a good-faith deposit of one-half of the estimated FOIA processing fee. Upon the FOIA Office’s receipt of a payment for one-half of the above-stated amount, the request will be processed within an estimated **120** business days. Further, upon completing the processing of the request, the Department will send notice of the balance due, the statutory basis for exemptions, if any, and the statutory remedial rights, if applicable. After receipt of the fee balance, copies of the records will be provided to you within five business days.



The Mackinac Center then paid \$1,372.64, the estimated cost of fulfilling the request, which LARA acknowledges having received. Currently, no documents have been produced, over 120 days after LARA's response.

### **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 Department of Licensing and Regulatory Affairs ("LARA"), is a state agency that, upon information and belief, is headquartered in Lansing, Ingham 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 600.6419(1)(a), the Court of Claims 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 June 4, 2020, Mackinac Center employee Jarrett Skorup submitted a FOIA request to LARA for records relating to COVID-19 Complaints:

"I'm requesting copies of:

- 1) The cease-and-desist or other letters/emails sent out to businesses violating COVID-19 executive orders or rules.
- 2) The complaints sent in about businesses violating COVID-19 executive orders or rules."

**See Exhibit A**, LARA's "Service Request Edit Page, pgs 14-15."<sup>1</sup>

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<sup>1</sup> LARA uses an online request and response system. This "Service Request Page" was last accessed and printed for this exhibit on October 28, 2020.



8. On June 12, 2020, LARA responded to the Mackinac Center's FOIA request by taking a 10 business day extension. *Id.*, pgs 12-13.
9. On June 26, 2020, LARA further responded by providing an estimate of the costs necessary to fulfill the request. The requested estimate of total costs was \$1,372.64. *Id.*, pgs 10-11.<sup>2</sup>
10. The Mackinac Center paid the full amount of the estimate (not merely the 50% required by MCL 15.234(8)), receipt of which was acknowledged by LARA on July 7, 2020. *Id.*, pgs 7-8.
11. To date, LARA has not provided the requested information, and has only stated that the request is in processing and a delayed response is necessary due to the requests' "broad scope" for "voluminous" responsive records. *Id.*, p 1.
12. 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.
13. MCL 15.234(8) indicates that a public body may respond to a FOIA request with a good faith estimate as to the cost of the FOIA request. However, the statute further states:

The response shall also contain a best efforts estimate by the public body regarding the time frame it will take the public body to comply with the law in providing the public records to the requestor. The time frame estimate is nonbinding upon the public body, but the public body shall provide the estimate in good faith and strive to be reasonably accurate and to provide the public records in a manner based on this state's policy under [MCL 15.231] and the nature of the request in the particular instance.
14. Our Attorney General, on December 12, 2017, issued Opinion No. 7300 interpreting the requirements of MCL 15.234(8):

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<sup>2</sup> The underlying invoice is no longer accessible through LARA's online portal. Upon information and belief, LARA is in possession of that invoice.



It is my opinion, therefore, that a public body's "best efforts estimate" under subsection 4(8) of FOIA, as to the time it will take to fulfill a request for public records, must be a calculation that contemplates the public body working diligently to fulfill its obligation to produce records to the requestor. The estimate must be comparable to what a reasonable person in the same circumstances as the public body would provide for fulfilling a similar public records request. In addition, under subsection 4(8), the best efforts estimate must be made in "good faith," that is, it must be made honestly and without the intention to defraud or delay the requestor.

15. The requested materials were simply complaints, and should have been easily reviewed and provided.
16. An unreasonable delay in providing FOIA documents is a denial under MCL 15.235, MCL 15.240(1), and MCL 15.240(7).
17. MCL 15.234(9) indicates a public body that does not timely respond to a FOIA request under MCL 15.235(2) shall reduce the charges for any labor rate at a rate of 5% a day with a maximum of 50% if the late response was willful or if the request was clearly identified as a FOIA request.
18. The FOIA request was clearly identified and should have been provided in a reasonable time. To date, more than four months later, no records have been provided. Under MCL 15.234(9), Plaintiff is entitled to the statutory maximum 50% reduction in labor costs.
19. LARA's actions regarding this delay in providing the records responsive to the Mackinac Center's request are arbitrary and capricious under MCL 15.240(7), thereby subjecting LARA to a civil fine of \$1,000.00 payable to the general treasury and a separate \$1,000.00 to the Mackinac Center.<sup>3</sup>

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<sup>3</sup> As LARA is a state public body, the \$1,000 payable to the general treasury is largely symbolic.



20. LARA's actions regarding this delay in providing the records responsive to the Mackinac Center's request constitute 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.<sup>4</sup>

21. Pursuant to MCL 15.240(6), the Center, if it prevails, is entitled to attorneys' fees and costs:

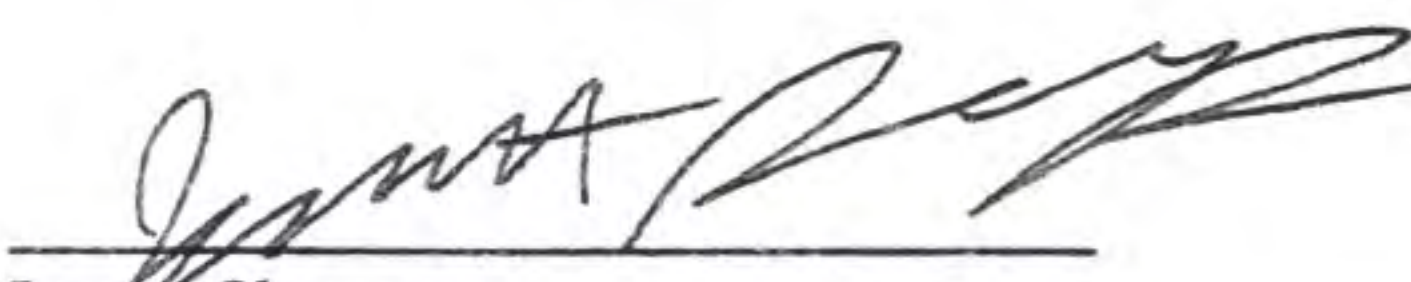
If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in an action commenced under this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or public body prevails in part, the court may, in its 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, LARA, to provide all documents sought in the FOIA request; 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 LARA's delays in providing the requested information and causing the need to bring this suit.

**I declare that the statements above are true to the best of my information, knowledge, and belief.**

Dated: October 29, 2020

  
\_\_\_\_\_  
Jarett Skorup  
Director of Marketing and Communications  
Mackinac Center for Public Policy

Subscribed and sworn to by Jarett Skorup before me on the 29 day of October, 2020.

\_\_\_\_\_  
STEPHEN DELIE  
Notary Public, State of Michigan  
County of Ingham  
My Commission Expires 07-29-2025  
Acting in the County of Midland

<sup>4</sup> Again, given the Defendant's status as a state public body, this would largely be symbolic.



# Exhibit A

## R048779-060420 - FOIA Request

### Message History (12)

✉ On 10/14/2020 4:25:06 PM, MI LARA FOIA Center wrote:

**Subject:** FOIA Request :: R048779-060420

**Body:**

Good afternoon, Mr. Skorup:

LARA is still processing your request. As LARA indicated in its original notice to you--due to the broad scope of the request and voluminous nature of responsive records--it may take as much as 120 business days from the date of payment to complete the processing of your request. Please note that LARA is working diligently on your request and will complete it as soon as possible.

Regarding the receipt of full payment, as LARA has not yet completed the processing of your request, we still do not know the actual cost. LARA requested a good-faith deposit of half of its estimated fee. However, instead of only paying this deposit amount, it appears that the Mackinac Center instead paid the full amount of LARA's estimate. Yet please note that, to the extent the cost of processing your request is less than LARA's estimate, you will be issued a refund for the difference.

We appreciate your patience as we continue to process your request.

Best regards,

LARA FOIA OFFICE  
NG



↩ On 10/14/2020 3:07:04 PM, Jarrett Skorup wrote:

TO: "MI LARA FOIA Center"[michiganlara@mycusthelp.net]

I'm still waiting on this request. I do not have a record of receiving them. Online it says this is paid in full and it is still "in progress."

Jarrett Skorup  
Mackinac Center

From: MI LARA FOIA Center

Sent: Thursday, July 23, 2020 1:29 PM

To: Skorup, Jarrett

Subject: INVOICE - PUBLIC RECORDS REQUEST :: R048779-060420

Attachments:

INV20-R048779-1.pdf

RE: FOIA REQUEST of June 05, 2020, Reference # R048779-060420.

Dear Jarrett Skorup,

Your invoice is ready. Please login to the FOIA Request Center to make an online payment.

The deposit we are requesting is: \$686.32

The total amount of the Invoice is: \$0.00

This invoice is due on 12/23/2020 You must make a payment by this date or the request will be considered abandoned.

To view our fees process on what LARA can charge for FOIA requests click  
HERE

If you wish to apply for indigency, please complete the affidavit located  
HERE.

If paying by mail: Please mail a check or money order, payable to the State of Michigan, to P.O. Box 30004, Lansing, MI 48909 and enclose a copy of this invoice.

Sincerely,

LARA FOIA Office

NG

To monitor the progress or update this request please log into the FOIA Request Center

✉ On 7/23/2020 1:27:07 PM, MI LARA FOIA Center wrote:

**Attachments:** [INV20-R048779-1.pdf](#)



**Subject:** INVOICE - PUBLIC RECORDS REQUEST :: R048779-060420

**Body:**



RE: FOIA REQUEST of June 05, 2020, Reference # R048779-060420.

Dear Jarrett Skorup,

Your invoice is ready. Please login to the FOIA Request Center to make an online payment.

The deposit we are requesting is: \$686.32

The total amount of the Invoice is: \$0.00

This invoice is due on 12/23/2020 You must make a payment by this date or the request will be considered abandoned.

To view our fees process on what LARA can charge for FOIA requests click [HERE](#)

If you wish to apply for indigency, please complete the affidavit located [HERE](#).

If paying by mail: Please mail a check or money order, payable to the State of Michigan, to P.O. Box 30004, Lansing, MI 48909 and enclose a copy of this invoice.



Sincerely,

LARA FOIA Office

NG

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To monitor the progress or update this request please log into the [FOIA Request Center](#)

✉ On 7/23/2020 1:26:48 PM, MI LARA FOIA Center wrote:

**Attachments:** [INV20-R048779-1.pdf](#)

**Subject:** Payment Received on Invoice :: R048779-060420

**Body:**



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

ORLENE HAW  
DIRECTOR

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RE: FOIA Request of June 05, 2020, Reference # R048779-060420

Dear Jarrett Skorup,

We have received your payment on invoice number INV20-R048779-1.

If you are paying the estimate, we will now begin processing your request. Once we have completed processing, the Department will send notice of the balance due, the statutory basis for exemptions, if any, and the statutory remedial rights, if applicable. The actual costs may change from the estimate, depending on how



much time and labor is actually spent on your request. Full payment is required before records are released.

Sincerely,

LARA FOIA Office

NG

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✉ On 7/9/2020 4:05:26 PM, MI LARA FOIA Center wrote:

**Attachments:** [INV20-R048779-1.pdf](#)

**Subject:** Payment Received on Invoice :: R048779-060420

**Body:**



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

ORLENE HAW  
DIRECTOR

---

RE: FOIA Request of June 05, 2020, Reference # R048779-060420

Dear Jarrett Skorup,

We have received your payment on invoice number INV20-R048779-1.

If you are paying the estimate, we will now begin processing your request. Once we have completed



processing, the Department will send notice of the balance due, the statutory basis for exemptions, if any, and the statutory remedial rights, if applicable. The actual costs may change from the estimate, depending on how much time and labor is actually spent on your request. Full payment is required before records are released.

Sincerely,

LARA FOIA Office

NG

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✉ On 7/7/2020 2:10:50 PM, MI LARA FOIA Center wrote:

**Attachments:** [INV20-R048779-1.pdf](#)

**Subject:** INVOICE - PUBLIC RECORDS REQUEST :: R048779-060420

**Body:**



RE: FOIA REQUEST of June 05, 2020, Reference # R048779-060420.

Dear Jarrett Skorup,

Your invoice is ready. Please login to the FOIA Request Center to make an online payment.



The deposit we are requesting is: \$686.32

The total amount of the Invoice is: \$1,372.64

This invoice is due on 8/13/2020 You must make a payment by this date or the request will be considered abandoned.

To view our fees process on what LARA can charge for FOIA requests click [HERE](#)

If you wish to apply for indigency, please complete the affidavit located [HERE](#).

If paying by mail: Please mail a check or money order, payable to the State of Michigan, to P.O. Box 30004, Lansing, MI 48909 and enclose a copy of this invoice.

Sincerely,

LARA FOIA Office

NG

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To monitor the progress or update this request please log into the [FOIA Request Center](#)

✉ On 7/7/2020 2:09:06 PM, MI LARA FOIA Center wrote:

**Attachments:** [INV20-R048779-1.pdf](#)

**Subject:** INVOICE - PUBLIC RECORDS REQUEST :: R048779-060420

**Body:**





RE: FOIA REQUEST of June 05, 2020, Reference # R048779-060420.

Dear Jarrett Skorup,

Your invoice is ready. Please login to the FOIA Request Center to make an online payment.

The deposit we are requesting is: \$686.32

The total amount of the Invoice is: \$1,372.64

This invoice is due on 8/13/2020 You must make a payment by this date or the request will be considered abandoned.

To view our fees process on what LARA can charge for FOIA requests click [HERE](#)

If you wish to apply for indigency, please complete the affidavit located [HERE](#).

If paying by mail: Please mail a check or money order, payable to the State of Michigan, to P.O. Box 30004, Lansing, MI 48909 and enclose a copy of this invoice.

Sincerely,



LARA FOIA Office

NG

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To monitor the progress or update this request please log into the [FOIA Request Center](#)

✉ On 6/26/2020 4:45:57 PM, MI LARA FOIA Center wrote:

**Attachments:** [INV20-R048779-1.pdf](#)

**Subject:** INVOICE - PUBLIC RECORDS REQUEST :: R048779-060420

**Body:**



RE: FOIA REQUEST of June 05, 2020, Reference # R048779-060420.

Dear Jarrett Skorup,

Your invoice is ready. Please login to the FOIA Request Center to make an online payment.

The deposit we are requesting is: \$686.32

The total amount of the Invoice is: \$1,372.64

This invoice is due on 8/13/2020 You must make a payment by this date or the request will be considered



abandoned.

To view our fees process on what LARA can charge for FOIA requests click [HERE](#)

If you wish to apply for indigency, please complete the affidavit located [HERE](#).

If paying by mail: Please mail a check or money order, payable to the State of Michigan, to P.O. Box 30004, Lansing, MI 48909 and enclose a copy of this invoice.

Sincerely,

LARA FOIA Office

NG

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To monitor the progress or update this request please log into the [FOIA Request Center](#)

✉ On 6/26/2020 4:45:34 PM, MI LARA FOIA Center wrote:

**Subject:** FOIA Request :: R048779-060420

**Body:**

June 26, 2020

RE: PUBLIC RECORDS REQUEST of June 05, 2020, Reference # R048779-060420.

Dear Jarrett Skorup:

This notice responds to your June 05, 2020 request for records, received by the Michigan Department of Licensing and Regulatory Affairs (LARA). LARA has processed your request under the provisions of the Michigan Freedom of Information Act (FOIA), 1976 PA 442, MCL 15.231 *et seq.*



You requested the following, in summary:

“I'm requesting copies of:

- 1) The cease-and-desist or other letters/emails sent out to businesses violating COVID-19 executive orders or rules.
- 2) The complaints sent in about businesses violating COVID-19 executive orders or rules.”

Your request is granted.

The estimated cost of continuing to process your request is **\$1,372.64**. Please refer to the attached Detailed Itemization Form for a breakdown of the fees. Failure to charge would result in an unreasonably high cost to the Department in this particular instance because the employees must be taken away from pending work to process the request and expend additional time to complete regularly assigned departmental work.

Section 4(8) of the FOIA, MCL 15.234(8), provides that a public body may require a good-faith deposit of one-half of the estimated FOIA processing fee. Upon the FOIA Office's receipt of a payment for one-half of the above-stated amount, the request will be processed within an estimated **120** business days. Further, upon completing the processing of the request, the Department will send notice of the balance due, the statutory basis for exemptions, if any, and the statutory remedial rights, if applicable. After receipt of the fee balance, copies of the records will be provided to you within five business days.

Section 4(8) of the FOIA, MCL 15.234(8), provides that the time frame estimate is nonbinding upon the public body, but the public body shall provide the estimate in good faith and strive to be reasonably accurate and provide the records in a manner based on this state's public policy set forth in section 1(2) of the FOIA, MCL 15.231(2), and the nature of the request in the particular instance.

The invoice that contains the detailed itemization of fees is ready and available at the **FOIA Center**.

If you wish to discuss possible ways to reduce the costs, please contact us at **larafoiainfo@michigan.gov**.

Payment can be submitted online or by mail –

- To pay online, visit the following link: **FOIA Payment Center**.
- To pay by check or money order (via mail), send the check or money order, made payable to the State of Michigan to P.O. Box 30004, Lansing, MI 48909. **To ensure proper credit, please enclose a copy of the invoice included with this correspondence and include the FOIA request number on the check or money order.**

If you have questions concerning this matter, please email us at **larafoiainfo@michigan.gov**.

To review a copy of LARA's written public summary, procedures, and guidelines, please visit **www.michigan.gov/larafoia**.



Sincerely,

LARA FOIA Office  
NG

✉ On 6/12/2020 12:34:07 PM, MI LARA FOIA Center wrote:

**Subject:** FOIA Request Extension:: R048779-060420

**Body:**



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

ORLENE HAWKS  
DIRECTOR

June 12, 2020

Subject: FOIA Request

Dear Jarrett Skorup,

Your 6/5/2020 request has been received in this office and given the reference number R048779-060420 for tracking purposes. A written request made by facsimile, electronic mail, or other electronic transmission is not received by a public body's FOIA coordinator until one (1) business day after the electronic transmission is made. (MCL15.235(1))

In order to determine the existence of any records/information that might be responsive to your request we require additional time to search for and retrieve records; review and examine any found records to separate exempt from nonexempt material; and to determine any allowable processing costs. For these reasons, it is



necessary to extend the time for response to 6/26/2020.

If you have questions concerning this matter, please feel free to contact the LARA FOIA Office at [LARAFOIAInfo@michigan.gov](mailto:LARAFOIAInfo@michigan.gov).

To review a copy of the LARA's written public summary, procedures, and guidelines, go to [www.michigan.gov/lara](http://www.michigan.gov/lara).

Sincerely,

LARA FOIA Office

NG

✉ On 6/4/2020 10:12:00 AM, MI LARA FOIA Center wrote:



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

ORLENE HAWKS  
DIRECTOR

Dear Jarrett Skorup:

Thank you for your interest in public records of the Department of Licensing and Regulatory Affairs of Michigan. Your 6/4/2020 request has been received in this office and given the reference number R048779-060420 for tracking purposes. A written request made by facsimile, electronic mail, or other electronic transmission is not received by a public body's FOIA coordinator until one (1) business day after the electronic transmission is made. (MCL15.235(1))



**Records Requested:** "I'm requesting copies of:

- 1) The cease-and-desist or other letters/emails sent out to businesses violating COVID-19 executive orders or rules.
- 2) The complaints sent in about businesses violating COVID-19 executive orders or rules."

In accordance with the Michigan Freedom of Information Act (FOIA), MI LARA provides copies of its public records. Records which are exempt from disclosure by state or federal law will not be provided.

The FOIA does not require governmental bodies to create new records or answer questions. A request must ask for records or information already in existence. A person has the right to subscribe to future issuance of public records that are created, issued or disseminated on a regular basis.

Michigan LARA will respond within five business days to a request. If needed, the agency may issue a notice extending for up to 10 additional business days the time it has to respond to your request.

You can monitor the progress of your request at the link below and you'll receive an email when your request has been completed.

[FOIA Request Center](#)

-  
Department of Licensing and Regulatory Affairs



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✉ On 6/4/2020 10:11:58 AM, Jarrett Skorup wrote:

Request was created by customer