

**STATE OF MICHIGAN
IN THE COURT OF CLAIMS**

Mackinac Center for Public Policy,

Plaintiff,

v.

Michigan State University,

Defendant.

Case No. 21-00011-MZ

Hon. Elizabeth L. Gleicher

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**BRIEF IN SUPPORT OF DEFENDANT’S 11/12/21
MOTION FOR SUMMARY DISPOSITION**

Defendant Michigan State University moves for summary disposition under MCR 2.116(C)(10).

INTRODUCTION

This is an action under FOIA. In June 2020, Plaintiff sought all emails sent to the President of MSU containing the search term “Hsu” for a defined period of time. MSU produced nearly 600 pages of responsive documents. Plaintiff claims that MSU violated FOIA because the production of the responsive documents was delayed. Plaintiff also claims that certain categories of redactions made in the production pursuant to FOIA exemptions are not proper. Plaintiff

sought and obtained discovery. Discovery is now closed. Judgement should be entered in favor of MSU for the following reasons.

First, FOIA only requires that MSU provide Plaintiff with a “good faith” estimate of how long a production will take and explicitly states that its estimate is “nonbinding.” The uncontested facts establish that MSU satisfied FOIA by providing good faith time estimate and ultimately making the production.

Second, the exemptions MSU asserted are proper and properly established by the uncontested affidavits of Rebecca Nelson, MSU’s Director and Freedom of Information Act Officer and Tom Siu, MSU’s Chief Information Security Officer.

UNCONTESTED FACTS

A. MSU’s FOIA Office

MSU receives between approximately 700 to 1200 FOIA requests a year, or approximately 3 per day on average. (Exhibit A at ¶ 3.) MSU maintains a dedicated office for the purpose of responding to these FOIA requests. (*Id.* at ¶ 4.) The office consists of the Director and Freedom of Information Act Officer, Rebecca Nelson, and, until the beginning of 2020, three assistant FOIA Officers who collect documents, review them, and prepare them for disclosure. (*Id.* at ¶ 5.) One employee retired at the beginning of 2020, leaving the office with only two employees in addition to Nelson. (*Id.* at ¶ 6.)

Typically, when a FOIA request is received, the FOIA office immediately contacts the department or individuals likely to have responsive documents for the purpose of collecting those documents. (*Id.* at ¶ 7.) If the production is going to require significant time to prepare, the requestor is sent a fee deposit notice in accordance with MCL 15.234. (*Id.* at ¶ 8.) Once both the documents and the fee deposit are received, an assistant FOIA officer will review the documents

in hard copy first for the purpose of separating non-responsive and duplicative documents, and then again for the purpose of identifying and redacting or separating information that is exempt from disclosure under FOIA. (*Id.* at ¶ 9.) Nelson then conducts a quality control review to ensure FOIA compliance after which the documents are disclosed. (*Id.* at ¶ 10.)

At the time of the fee deposit notice, the requesting party is provided an estimated timeframe for disclosure based on the number of documents being reviewed. (*Id.* at ¶ 11.) The FOIA office's estimates are generally accurate. In 2020, despite the pandemic, all disclosures except the one at issue in this case were made within the timeframe estimated by the FOIA office. (*Id.* at ¶ 12.)

In March 2020, MSU switched to mostly remote working environment due to the pandemic. (*Id.* at ¶ 13.) The FOIA office employees were directed to work from home. (*Id.*) Nelson comes to the office once or twice a week to collect hard copy documents for review. (*Id.* at ¶ 14.) Because of the pandemic, Governor Whitmer issued a temporary executive order relaxing FOIA's statutory initial five- and ten-day response deadlines.

https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-524359--,00.html (last visited November 11, 2021.) MSU, however, continued to meet these deadlines throughout the pandemic, including in this case. (Exhibit A at ¶ 15.)

B. Plaintiff's FOIA request

On June 26, 2020, Plaintiff sent MSU a request for "Any emails to or from the president of Michigan State University that mention 'Hsu' from Feb. 1, 2020 to June 26, 2020." (Exhibit C.) The Office of the President was immediately directed to begin collecting responsive documents. (Ex. A at ¶ 17.) The Office of the President informed the FOIA office that it estimated that there were at least 150 pages of responsive documents. (*Id.* at ¶ 18.) Based on this

estimate, the FOIA office sent Plaintiff a fee and deposit notice July 7, 2020, stating that the anticipated disclosure date would be six weeks from the receipt of the fee deposit. (*Id.* at ¶ 18; Ex. D.) Plaintiff paid the fee deposit on July 20, 2020. (Ex. A at ¶ 18.)

When the FOIA office received the responsive documents from the Office of the President, there were more than 1000 pages, including non-responsive and duplicate documents. (*Id.* at ¶ 19.) Because the documents were going to take longer than anticipated to review, Nelson took on the initial review herself to expedite the process. (*Id.* at ¶ 20.) After her initial review, there were 620 responsive, non-duplicative documents to be reviewed for exemptions. (*Id.*) On August 31, 2020, MSU sent Plaintiff a revised time and cost estimate and provided the option of accepting the documents reviewed under the prior estimate at that time or paying the additional fee for the full disclosure in which case the anticipated disclosure date would be eight weeks from the receipt of the additional deposit. (*Id.* at ¶ 21; Ex. E.) Plaintiff paid the additional deposit on September 9, 2020. (Ex. A at ¶ 21.)

In early October 2020, a serious health issue arose in Nelson's household. (*Id.* at ¶ 22.) This significantly impacted FOIA office operations and required Nelson to prioritize initial responses to incoming FOIA requests, the timelines for which are statutorily set at five- and ten-days. (*Id.*) As a result, the review of Plaintiff's request was delayed and then ultimately transferred to another employee—Susan Green—in early November 2020. (*Id.* at ¶¶ 22, 23.) MSU provided Plaintiff updates of the review status in November and December and disclosed the requested documents on December 23, 2020. (*Id.* at ¶ 23; Ex. F, G, and H.) Because of the unanticipated delay, MSU refunded the entire processing fee as a courtesy. (Ex. A at ¶ 24.)

C. Threats to MSU community members

In June 2020, the MSU graduate student union circulated a petition seeking the resignation of then-Senior Vice President of Research and Innovation Stephen Hsu from his administrative position with MSU. (*Id.* at ¶ 26.) A counter petition also circulated. (*Id.*) (Collectively, the “Hsu Petitions.”) As Plaintiff alleges, the Hsu Petitions received media coverage. Many individuals, including MSU students, faculty, alumni, and the public at large, sent unsolicited emails to the President of MSU regarding these issues. (*Id.* at ¶ 27.) These emails constitute the bulk of the production at issue here. (*Id.*) Several MSU students, who had been publicly identified as involved in the petitions received threats, including death threats. (*Id.* at ¶¶ 28, 29.) Those threats were referred to the MSU Police Department for investigation. (*Id.*)

ARGUMENT

D. MSU’s estimated time frame for producing documents in response to Plaintiff’s request was made in good faith.

FOIA requires public bodies to respond to all FOIA requests with a grant, denial, or a fee deposit request within five days (or 15 days with an automatic extension). MCL 15.235. MSU met that requirement here and Plaintiff does not argue otherwise. FOIA does not mandate any timeframe for the disclosure of documents. Rather, it requires the public body to provide the requestor with “a best efforts estimate . . . regarding the time frame it will take the public body to comply with the law in providing the public records.” MCL 15.234(8). FOIA is explicit that this estimate is “nonbinding on the public body” but shall be provided “in good faith.” *Id. Forner v. Dep’t of Licensing & Regul. Affs.*, No. 336742, 2017 WL 3044106, at *5 (Mich. Ct. App. July 18, 2017) (failure to meet estimated timeframe for disclosure does not violate FOIA) (Ex. H).

Plaintiff claims that MSU’s time estimate was not made in good faith. In order to make this showing, Plaintiff would have come forward with evidence that MSU’s time estimates were

based on something other than an honest exercise of judgment. *Premier Ctr. of Canton, L.L.C. v. N. Am. Specialty Ins. Co.*, No. 297799, 2011 WL 5964611, at *4-5 (Mich. Ct. App. Nov. 29, 2011) (granting summary disposition where there was no evidence that insurance company's decision to settle was not made in good faith). Plaintiff cannot do that here. As established by the uncontested affidavit of Rebecca Nelson, every time estimate made to Plaintiff was based on an honest judgment based on the best information available to her at the time. (Ex. A at ¶¶ 16-24.) That intervening circumstances require a revision of her estimate or a delay does not show that MSU did not act in good faith. To the contrary, the evidence shows that MSU did act in good faith. This claim should be dismissed.

E. MSU's asserted exemptions are proper.

Plaintiff does not identify any specific document or information that it claims was improperly withheld or redacted. Rather, Plaintiff makes general claims that MSU improperly applied three categories of exemptions as a matter of law. First, Plaintiff claims that any assertion of the frank communications exemption under MCL 15.243(1)(m) in this case would be improper because the information relates to a high-ranking MSU official. (Compl. at ¶¶ 32-39.) Second, Plaintiff claims that MSU improperly redacted the email addresses of MSU employees under MCL 15.243(1)(u), (y), and (z). (*Id.* at ¶¶ 40-49.) Third, Plaintiff claims that MSU improperly redacted non-MSU email addresses and names of individuals who sent unsolicited emails to the President of MSU under MCL 15.243(1)(a). (*Id.* at ¶¶ 50-54.) In each case, Plaintiff is wrong.

1. MSU properly applied the frank communication exemption under MCL 15.243(1)(m).

FOIA generally requires disclosure of public records. In codifying exemptions, however, the Michigan legislature has made the determination that, in certain circumstances, "full

disclosure of certain public records could prove harmful to the proper functioning of the public body.” *Herald Co. v. E. Michigan Univ. Bd. of Regents*, 475 Mich. 463, 472-73 (2006). The “frank communication” exemption, set forth in MCL 15.243(1)(m), is a prime example. This exemption recognizes that good governance requires public officials and employees to communicate candidly in advance of final decisions or actions and that public disclosure of those communications would chill such communications and hamper effective governmental operations. *Id.* at 473, 478, 479.

The exemption states:

Communications and notes within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action. This exemption does not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure.

MCL 15.243(m)(1).

Application of this exemption requires a showing that: (1) the communication or note is of an advisory nature within or between public bodies; (2) it covers other than purely factual material; and (3) it is preliminary to a final agency determination of policy or action. *Herald Co.*, 475 Mich. at 475. If the document meets this test, the Court must determine whether public body’s interest in frank communication clearly outweighs the public interest in disclosure. In applying this balancing test: “the only relevant public interest in disclosure . . . is the extent to which disclosure would serve the core purpose of FOIA, which is contributing significantly to the public understanding of the operations or activities of the government.” *Michigan Fed’n of Tchrs. & Sch. Related Pers., AFT, AFL-CIO v. Univ. of Michigan*, 481 Mich. 657, 673 (2008). The Court’s balancing of these interests must be made based on the particular circumstances of the case and with eye towards how the Court’s ruling could affect “public officials’ ongoing and

future willingness to communicate frankly.” *Herald Co.*, 475 Mich. at 475. The Court’s factual determinations are reviewed for clear error and the balancing of interests is reviewed for abuse of discretion. *Id.* at 471, 72.

Here, the test is met. Of the 592 pages of documents MSU provided Plaintiff, 20 pages contain redactions pursuant to the frank communications exemption. As set forth with specificity in the affidavit of Rebecca Nelson, each redaction represents communications or notes of an advisory nature between MSU officials or employees that are other than purely factual material and preliminary to a final determination or action by MSU. (Ex. A at ¶ 25); *King v. Oakland Cty. Prosecutor*, 303 Mich. App. 222, 228 (2013) (public body can establish application of exemption with particularized justification set forth in affidavit).¹ And as can be seen by reviewing the documents as they were provided to Plaintiff (they are attached as Exhibit B) the redactions are limited to exempt information leaving, in most cases, significant information available for the public to see the context of the communication without revealing advisory, not-purely-factual information. And as can be seen by the description of the redacted information provided by Nelson, it is of the nature that it would likely be chilled if it were subject to public disclosure.

Plaintiff’s claim is that, regardless whether these redactions are properly classified as frank communications, the public interest in viewing the redacted material cannot, as a matter of law, be outweighed by MSU’s interest in frank communication because the communications relate to how “MSU makes decisions about its high-level officials” and because the matter garnered public attention. (Compl. at ¶¶ 34-38.) This argument fails for two reasons.

¹ MSU will provide unredacted documents for the Court’s *in camera* review if the Court requests.

First, the Michigan Supreme Court has already rejected this argument. In *Harold Co. v. Eastern Michigan University*, several newspapers sought a memorandum drafted by Eastern Michigan University's chief financial officer to a board member concerning possible financial misconduct by the president of the university. *Herald Co.*, 475 Mich. 463, at 469. It was withheld pursuant to the frank communication exemption. *Id.* The news organizations argued that there was a strong public interest in potential official misconduct and the investigation of a high-level official. *Id.* at 478. The Supreme Court agreed that there was a public interest in the memorandum but upheld the application of the exemption because disclosure of the communication "would foster a fear among university officials that they could no longer communicate candidly about a sensitive topic without their written communications being disclosed to the public. This would create a chilling effect that would surely dry up future frank communications." *Id.* at 480. In reaching its holding, the Court rejected the argument that communications relating to high-ranking officials could not be exempt from disclosure holding that "were we to adopt such a rule, we would eviscerate the frank communication exemption. We doubt that officials within a public body would offer candid, written feedback, or that they would do so for very long, if that feedback would invariably find its way into the public sphere." *Id.* at 478-79.

So too here. As Plaintiff alleges, the Hsu Petitions garnered significant media coverage and public attention. In such circumstances, MSU always receives numerous FOIA requests from news organizations, advocacy groups, and others. If the frank advisory communications of MSU officials and employees cannot be protected from disclosure in these circumstances, they will, as the Supreme Court recognized, dry up. This would significantly hamper MSU's ability to function.

Second, Plaintiff's argument is based on a false assumption about what has been redacted. Plaintiff assumes that the redactions contain information that would contribute significantly to the public understanding of "how [] MSU makes decisions about its high-level officials." It would not. Only nine of the pages redacted pursuant to the frank communication exemption can fairly be said to relate to the Hsu Petitions. (Ex. A at ¶ 25; Ex. B at Pages 7, 9-16) The others relate to employees other than Hsu, grant funding, or predate the petitions entirely.

Of the nine, seven documents reflect advisory information relating to the public communications and inquiries MSU was receiving regarding the Hsu Petitions and the final two are a single unsolicited letter sent to the President from a faculty member who also held an administrative position in one of MSU's colleges providing not-purely factual information regarding Hsu. (Ex. B at 9-10.) As can be seen by reviewing the documents as they were disclosed to Plaintiff, all of the redactions in communications of senior MSU administrators are drafts public statements or lines in short emails. The disclosure of the redacted information would make public incomplete and contextless comments that are, at best, tangentially related to the Hsu petitions. They would not "contribute significantly to the public understanding of the operations of government." But the disclosure of these types of communications would undoubtedly cause public officials and employees to stop putting candid advice in writing, particularly in high-profile or controversial circumstances where frank communication is often needed the most. Under the particular circumstances here, MSU's interest in protecting the frank communications of its employees and administrators clearly outweighs the public interest in the disclosure of those communications.

2. MSU properly redacted MSU email addresses under MCL 15.243(1)(u), (y), and (z).

Plaintiff objects to MSU's redaction of the email addresses of MSU employees. (Compl. at ¶¶ 40-49.) It is difficult to understand why. To the extent the senders or recipients are MSU officials or administrators, their names have been left unredacted, (Ex. A at ¶ 29), so it is not clear what legitimate purpose would be served by the public disclosure of employee contact information. In any event, the redaction of this information is appropriate under MCL 15.243(1)(u), (y), and (z).

MCL 15.243(1)(u) exempts from disclosure "Records of a public body's security measures, including security plans, security codes and combinations, passwords, passes, keys, and security procedures, to the extent that the records relate to the ongoing security of the public body."

MCL 15.243(1)(y) exempts from disclosure "Records or information of measures designed to protect the security or safety of persons or property, or the confidentiality, integrity, or availability of information systems . . . unless disclosure would not impair a public body's ability to protect the security or safety of persons or property or unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance."

MCL 15.243(1)(z) exempts from disclosure "Information that would identify or provide a means of identifying a person that may, as a result of disclosure of the information, become a victim of a cybersecurity incident or that would disclose a person's cybersecurity plans or cybersecurity-related practices, procedures, methods, results, organizational information system infrastructure, hardware, or software."

As set forth in the affidavit of MSU Chief Information Security Officer Tom Siu, MSU maintains its own information systems and technology resources which can be accessed through

the public internet. (Ex. I at ¶ 3.) This puts MSU at risk of cyber-attack. (*Id.*) Two key attack methods include attempts to access IT services through compromised accounts and malicious email messages sent to MSU email accounts. (*Id.* at ¶¶ 4, 5.) MSU email addresses also serve as the userIDs MSU community members use to access certain IT functions. (*Id.* at ¶ 6.) For these reasons, it is a core practice of MSU’s operational security to restrict its email address directory to MSU users. (*Id.* at ¶ 7.) While MSU users may choose to disclose their email addresses, eliminating unnecessary dissemination of MSU emails addresses reduces the risk of cyber-attack. (*Id.* at ¶ 8.)

For these reasons, the redaction of MSU email addresses serves the security purposes identified in MCL 15.243(1)(u), (y), and (z) and would not serve the public interest in any way if disclosed. They are properly exempt.

3. MSU properly redacted non-MSU email addresses and names under MCL 15.243(1)(a).

Plaintiff objects to the redaction of the names and email address of individuals who sent unsolicited emails to the President of MSU concerning Hsu. MSU has provided Plaintiff with the content of those emails and redacted the identities of the senders. (Ex. A at ¶¶ 26-29.)

MCL 15.243(1)(a) permits exemption of “information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual’s privacy.” The Court must apply a two-prong test to determine whether the privacy exemption applies. *Michigan Fed’n of Tchrs. & Sch. Related Pers., AFT, AFL-CIO v. Univ. of Michigan*, 481 Mich. 657, 675-76 (2008). First, it must determine whether the information sought is of an “embarrassing, intimate, private, or confidential nature.” *Id.* Second, it must determine whether the disclosure of the information sought would reveal information that would “contribute

significantly to the public understanding of the operations or activities of the government.” *Id.* at 673, 82.

Michigan Courts have held that personal contact information is “private” information that can be exempt from disclosure. *Id.* at 679. Similarly, the Michigan Supreme Court has held that the identities of individuals can be private and exempt from disclosure where the disclosure could reveal something controversial about the individual or subject the individual to harm. In *Mager v. State, Dep’t of State Police*, for example, Michigan Supreme Court held that the names of individuals who had registered for gun ownership could be exempt under the privacy exemption because gun ownership is controversial and subject to strong partisan views, and disclosure could potentially allow those on the list to be targeted for gun theft or other harm. 460 Mich. 134, 142-44 (1999).

The facts here lead to the same result. As Plaintiff acknowledges, the Hsu petitions were a controversial subject over which individuals held strong partisan views. Moreover, at the time of MSU’s disclosure, MSU was aware of several threats against students or other members of the MSU community arising from their perceived involvement in the petitions. (Ex. A at ¶ 28.) These included threats of retaliation and at least one death threat that was referred for criminal investigation. (*Id.*) In other words, there is a real threat of harm to the individuals Plaintiff is seeking to identify. It follows that the names and emails of these senders are private and satisfy the first prong of the test.

Under the second prong, the Court must evaluate whether the disclosure of the names and addresses would “contribute significantly to the public understanding of the operations or activities of the government.” *Michigan Fed’n of Tchrs.*, at 673, 82. It would not. The only possible contribution to the public understanding of the operation of government that these

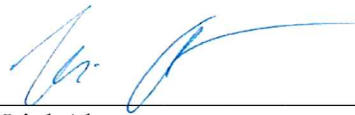
emails provide is to show that MSU's President received a large volume of diverse, unsolicited opinions regarding Hsu. This has already been achieved by providing the content of the emails. Disclosing the names and emails addresses of the senders would contribute nothing additional to the public understanding of the operations of government but could subject the senders to harm. The privacy exemption was therefore properly applied.

CONCLUSION

For the foregoing reasons, MSU requests that judgment be entered in its favor, that the complaint be dismissed in its entirety with prejudice, and for all other relief proper under the circumstances.

Respectfully submitted,

Dated: November 12, 2021



Uriel Abt
Attorney for Defendant

PROOF OF SERVICE

I certify that a copy of this document was served upon plaintiff's counsel of record by electronic mail in compliance with MCR 2.107(C)(4), on November 12, 2021.



Robin Stechschulte

EXHIBIT A

**STATE OF MICHIGAN
IN THE COURT OF CLAIMS**

Mackinac Center for Public Policy,

Plaintiff,

v.

Michigan State University,

Defendant.

Case No. 21-00011-MZ

Hon. Elizabeth L. Gleicher

AFFIDAVIT OF REBECCA NELSON

1. I make this affidavit based on my personal knowledge. I am competent to testify under oath to the facts stated in this affidavit if called upon to do so.

2. I am currently the Director of Michigan State University's Freedom of Information Act (FOIA) Office. In that capacity, I oversee the intake of FOIA requests and the preparation of FOIA responses, including the collection, review, and, where necessary, the redaction and withholding, of requested documents. I have held my current position since 2018.

A. MSU's FOIA Office

3. In 2018, MSU received 1162 FOIA requests. In 2019, MSU received 866 FOIA requests. In 2020, MSU received 681 FOIA requests.

4. MSU maintains a dedicated office for the purpose of responding to FOIA requests.

5. Until the beginning of 2020, the FOIA consisted of me and three assistant FOIA Officers who collect documents, review them, and prepare them for disclosures.

6. In early 2020, one of the assistant FOIA officers retired. I expect to fill that position but have not done so yet due to the pandemic.

7. Typically, when a FOIA request is received, the FOIA office immediately contacts the department or individuals likely to have responsive documents for the purpose of collecting those documents.

8. If the production is going to require significant time to prepare, the requestor is sent a fee deposit notice in accordance with MCL 15.234(8).

9. Once both the documents and the fee deposit are received, an assistant FOIA officer will review the collected documents and separating duplicates and non-responsive documents. Once the responsive, non-duplicative documents are identified, they are reviewed in hard copy for the purpose of identifying and redacting or separating information that is exempt from disclosure under FOIA.

10. After these initial reviews, I will conduct a quality control review to ensure FOIA compliance after which the documents are disclosed.

11. When a fee deposit notice is issued, the requesting party is provided an estimated timeframe for disclosure based on the number of documents being reviewed.

12. In 2020, with the exception of the disclosure at issue in this case, the FOIA office met all of its time estimates.

13. In March 2020, due to the pandemic, the FOIA office employees, including myself, were directed to work from home.

14. Throughout the pandemic, I have come into the office once to two times a week to collect hard copy documents for review and would distribute them to the assistant FOIA officers.

15. The FOIA office continued to provide initial five and ten-day FOIA response with the statutory timeframes throughout the pandemic.

B. Plaintiff's FOIA request

16. I am familiar with the FOIA request made by Mackinac Institute for Public Policy on or about June 26, 2020 ("Mackinac Request"). MSU produce 592 documents in response to this request.

17. Immediately after receiving the Mackinac Request, in accordance with our standard practice, the FOIA office contact the Office of the President to collect responsive documents.

18. I was informed by the Office the President that it estimated "at least 150 pages" of responsive documents. I used this estimate in calculating the estimated fee and timeframe disclosure provided to Plaintiff on July 7, 2020. Plaintiff paid the deposit on July 20, 2020.

19. On or about July 26, 2020, I received the documents collected by the Office of the President. There were over 1000 pages of potentially responsive documents, including duplicates.

20. Given the unexpected volume, I began the initial review and separation of non-responsive and duplicative documents myself rather than delegate it to an assistant FOIA officer to expedite the process. After this initial review, there 620 pages of non-duplicative, responsive documents to be reviewed for purposes of redacting or separating exempt information.

21. On August 31, 2020, I informed Plaintiff that the volume of documents was significantly more than originally estimated, provided a revised fee and timeframe estimate, and gave Plaintiff the option of obtaining what had been reviewed under the prior estimate or paying the additional deposit for the review of the additional documents. Plaintiff paid the additional deposit on September 9, 2020.

22. In early October 2020, a serious health issue arose in my household. This significantly impacted the amount of time I was able to devote to professional responsibilities and ultimately required me to prioritize initial FOIA responses, which have statutorily set five- and ten-day timelines, and delegate work to assistant FOIA officers, including the review of the documents responsive to the Mackinac Request.

23. On or about early November, 2020, I transferred the review of Plaintiff's documents to assistant FOIA officer Susan Green. Green completed the review and I conducted a quality control review. Plaintiff was provided periodic updates on the status of the review in November and December. The documents were disclosed on December 23, 2020.

24. MSU refunded Plaintiff the processing fees as a courtesy due to the unexpected delay in the production.

C. Frank Communications Exemptions

25. MSU redacted information on 20 pages of the 592 pages provided to Plaintiff pursuant to MCL 15.243(1)(m) (the "Frank Communications Exemption"). No documents were withheld pursuant to the Frank Communications Exemption. Exhibit B accurately reflects the pages containing Frank Communications Exemption redactions. The information redacted pursuant to the Frank Communications Exemptions on these pages is as follows:¹

- Pages 1-5 (8-9, 11-12, 13): not-purely-factual information of a preliminary and advisory nature provided by the administrative leaders of an MSU unit to Samuel Stanley, the President of MSU, and by Douglas Gage, the then-Interim Senior Vice President of Research and Innovation to Stanley, regarding institutional grant support for that unit.

¹ Set forth in parenthesis are the pdf page numbers of MSU's December 23, 2020, production to Plaintiff that correspond to the pages in Exhibit B. They are provided for Plaintiff's convenience in coordinating these pages with the documents already in its possession.

- Page 6 (29): not-purely-factual information of a preliminary and advisory nature provided by MSU administrative staff to Stanley regarding the recommended salary for the Interim Senior Vice President of Research and Innovation position.
- Page 7 (169): draft public statements regarding Stephen Hsu's resignation as Senior Vice President of Research and Innovation provided by Emily Guerrant, Vice President and University Spokesperson, to Stanley and MSU's Vice President of Legal Affairs and General Counsel Brian Quinn, for review and approval.
- Page 8 (177): not-purely-factual information of a preliminary and advisory nature provided by Melanie Jacobs, then acting-Dean of the MSU College of Law, to Stanley regarding a faculty member other than Hsu.
- Page 9-10 (199-200): not-purely-factual information of a preliminary and advisory nature provided by Eric Torng, Associate Dean of the Graduate School in the College of Engineering and Associate Chair for Research and Faculty Development for the Department of Computer Science and Engineering, to Stanley regarding Hsu.
- Page 11 (302): draft public statements provided by then-Senior Vice President of Research and Innovation Hsu to President Stanley and Vice President and University Spokesperson Guerrant, for review and approval.
- Page 12 (315): not-purely-factual information of a preliminary and advisory nature provided by MSU Trustee Renee Knake to President Stanley regarding communications received by MSU's Trustees regarding Hsu.
- Page 13 (382): not-purely-factual information of a preliminary and advisory nature provided by MSU Trustee Brian Mosallam to President Stanley regarding communications received by MSU's Trustees regarding Hsu.

- Page 14 (463): not-purely-factual information of a preliminary and advisory nature provided by Special Assistant to the MSU Board of Trustees Jacqueline Vanderbosch to Vice President and University Spokesperson Guerrant regarding communications received by MSU's Trustees regarding Hsu.
- Pages 15-16 (572-73): not-purely factual information of a preliminary and advisory nature set forth in an email chain between President Stanley and Vice President and University Spokesperson Guerrant regarding media inquiries regarding Hsu.
- Page 17 (577): not-purely-factual information of a preliminary and advisory nature provided by MSU's Senior Vice President for Government Relations Kathleen Wilbur to President Stanley and then Senior Vice President for Research and Innovation Hsu regarding an executive order.
- Page 18 (579): not-purely factual information of a preliminary and advisory nature provided by then-Senior Associate Vice President of Research and Innovation, Paul Hunt, to President Stanley and then-Senior Vice President of Research and Innovation Hsu regarding MSU's agreement to a memorandum of understanding.
- Pages 19-20 (581-82) not-purely-factual information of a preliminary and advisory nature provided by the administrative leaders of an MSU unit to then-Provost, Teresa Sullivan, and copying President Stanley, regarding institutional grant support for that unit.

D. Privacy Exemption

26. I am familiar with the petitions circulated regarding Stephen Hsu in or about June 2020 (the "Hsu Petitions").

27. Many individuals, including MSU students, faculty, alumni, and the public at large, sent unsolicited emails to the President of MSU regarding the Hsu Petitions. These emails constitute much of the production at issue here.

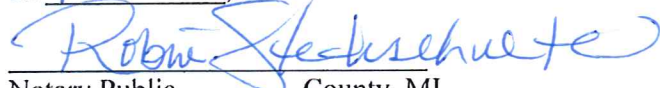
28. In my role as Director and Freedom of Information Act Officer, I am aware that several MSU community members received threats as a result of their involvement in the Hsu Petitions, including threats of retaliation and at least one death threat against a student that was forwarded to the MSU Police Department for investigation.

29. As a result of these threats, the FOIA Office redacted the identities and contact information of individuals who sent unsolicited opinions or information regarding Hsu or the Hsu Petitions to President Stanley in the FOIA Response. The FOIA Office did not redact the identities of MSU officials or administrators whose job duties could include providing or addressing such opinions or information.



Rebecca Nelson

Subscribed and sworn to before me
on Nov. 11, 2021



Notary Public, _____ County, MI

My Commission Expires: _____

ROBIN STECHSCHULTE
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF SHIAWASSEE
My Commission Expires August 28, 2027
Acting in the County of Ingham

EXHIBIT B

From: Gage, Douglas
Sent: Friday, June 26, 2020 10:55 AM
To: Stanley, Samuel
Subject: RE: Action needed on MSU commitment to NSF re: The BEACON Center

Yes, I can do that.

From: Stanley, Samuel [REDACTED]
Sent: Friday, June 26, 2020 10:51 AM
To: Gage, Douglas [REDACTED]
Subject: Re: Action needed on MSU commitment to NSF re: The BEACON Center

Ok, thank you. Do we have the number of indirect cost dollars from the grants generated by the center (that are not part of its direct funding)? Can give me those data when we meet. Sam.

From: "Gage, Douglas" [REDACTED]
Date: Friday, June 26, 2020 at 10:45 AM
To: "Stanley, Samuel" [REDACTED]
Subject: RE: Action needed on MSU commitment to NSF re: The BEACON Center

Hi Sam,

I am familiar with this issue. [REDACTED]
[REDACTED] The BEACON folks interpret this to mean grants already funded and Steve's interpretation was that this referred to new post-BEACON grants. The letter [REDACTED] We can discuss this in more detail at our Monday meeting.

Thanks,

Doug

From: Stanley, Samuel [REDACTED]
Sent: Friday, June 26, 2020 10:38 AM
To: Gage, Douglas [REDACTED]
Subject: FW: Action needed on MSU commitment to NSF re: The BEACON Center

Let's talk about this. Sam.

From: "Samuel L. Stanley Jr., M.D., President" [REDACTED]
Date: Friday, June 26, 2020 at 10:23 AM
To: "Stanley, Samuel" [REDACTED] "Gage, Douglas" [REDACTED]
Subject: FW: Action needed on MSU commitment to NSF re: The BEACON Center

From: Charles Ofria [REDACTED]
Sent: Tuesday, June 23, 2020 2:00 PM

To: Samuel L. Stanley Jr., M.D., President [REDACTED]
Cc: Lenski, Richard [REDACTED] Goodman, Erik [REDACTED] Holecamp, Kay
[REDACTED] Pennock, Robert [REDACTED]
Subject: Action needed on MSU commitment to NSF re: The BEACON Center

Dear President Stanley,

We write with regard to an impasse we have reached with VP Hsu, now further complicated by his resignation and the university's deepening financial crisis. Dr. Hsu committed to the NSF (and to us) that MSU would continue funding the BEACON Center for the Study of Evolution in Action when its NSF Science & Technology Center grant concluded. Specifically, he pledged nearly \$1 million per year for at least two years to sustain and transition BEACON research after the 10 years and nearly \$50 million of NSF funding. This past November, Hsu assured us that the funding was still on track. However, in January he disclosed that he had never arranged a cost distribution with the relevant colleges or Provost's office, and [REDACTED] to a federal agency on behalf of, and with the authority of, MSU. Now, as BEACON approaches its transition to an MSU Center at the end of July, Hsu has refused to release most of the research funds, and he has pushed the colleges to provide most of the much smaller funds for staff support.

The committed funds are essential to support BEACON graduate students and postdocs, all of whom are engaged in interdisciplinary research and education. Moreover, these projects are targeted to yield new external funding. In Hsu's commitment (attached), \$224K/yr was earmarked for basic staffing and our (reduced) core operations. The remaining \$750K/yr was to support this research, and the amount was based on a projected \$7.5 million in additional BEACON-related external funding in 2018-20 (beyond the NDSF Center support), a goal that we have exceeded. BEACON faculty have made plans with these funds in mind. After months of fruitless discussion with Hsu and the relevant colleges, we remain in limbo, unable to confirm positions for our students and postdocs for this coming academic year.

This agreement with the VP Hsu was originally negotiated by Erik Goodman, BEACON's Director at the time of our Center's renewal application to the NSF in 2014. Hsu's letter of commitment was provided as critical evidence of MSU's support to assure BEACON's sustainability after NSF funding ended. Moreover, Hsu reiterated that commitment in person during several BEACON site visits by NSF since 2015, and to Charles Ofria (BEACON's current director) in a November 2019 meeting. Hsu made this commitment to the dozens of BEACON-affiliated MSU faculty and to the NSF in his official capacity as VPRI on behalf of the university. Therefore, MSU cannot and must not ignore this agreement, as if it never existed.

We must also emphasize that VP Hsu [REDACTED] before the onset of COVID-19. We realize that the pandemic has put new financial burdens on MSU, and that all units have to share in budgetary reductions, so we have no objection to receiving a correspondingly reduced share of that commitment. However, we object most strongly and forcefully to MSU either ignoring this agreement or acting as though it was meaningless.

We have not gone to the NSF with a formal complaint, and we would prefer not to be forced to do so by MSU's refusal to honor its agreement with our NSF-funded Center. However, we have tried to resolve this issue with VP Hsu for several months, without success. Even before the new public controversy about Hsu's fitness for his office, it seemed that [REDACTED] Now that he has been removed, we are concerned about starting over with the new, interim VP of Research.

We request that you intervene immediately on behalf of the University to fulfill this agreement and avoid the potential embarrassment over the misrepresentation of university commitments to a federal agency.

Sincerely,

Dr. Charles Ofria
PI and Director of the BEACON Center for the Study of Evolution in Action
President, International Society for Artificial Life
Department of Computer Science & Engineering

Dr. Richard Lenski
Co-PI of the BEACON Center for the Study of Evolution in Action
John Hannah Distinguished Professor
Department of Microbiology & Molecular Genetics
Department of Plant, Soil & Microbial Sciences

**MICHIGAN STATE
UNIVERSITY**

June 23, 2020

Dear President Stanley,

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MSU is an affirmative action,
equal opportunity employer.

MSU0003

Document received by the MI Court of Claims.



**Center for the Study of
Evolution in Action**

**An NSF Science and
Technology Center**

Michigan State University
Biomedical Physical Sciences
Building
967 Wilson Road Room 1441
East Lansing, MI
48824

517-784-2888
Fax: 517-353-7248

<http://beacon-center.org>

We have not gone to the NSF with a formal complaint, and we would prefer not to be forced to do so by MSU's refusal to honor its agreement with our NSF-funded Center. However, we have tried to resolve this issue with VP Hsu for several months, without success. Even before the new public controversy about Hsu's fitness for his office, it seemed that [REDACTED] Now that he has been removed, we are concerned about starting over with the new, interim VP of Research.

We request that you intervene immediately on behalf of the University to fulfill this agreement and avoid the potential embarrassment over the misrepresentation of university commitments to a federal agency.

Sincerely,

[REDACTED]

Dr. Charles Ofria
PI and Director of the BEACON Center for the Study of Evolution in Action
President, International Society for Artificial Life
Department of Computer Science & Engineering.

Dr. Richard Lenski
Co-PI of the BEACON Center for the Study of Evolution in Action
John Hannah Distinguished Professor
Department of Microbiology & Molecular Genetics
Department of Plant, Soil & Microbial Sciences
Department of Integrative Biology

Dr. Erik Goodman
Co-PI and Founding Director of the BEACON Center for the Study of Evolution in Action
Department of Electrical and Computer Engineering

Dr. Kay Holekamp
Co-PI of the BEACON Center for the Study of Evolution in Action
University Distinguished Professor
Director, Graduate Program for Ecology, Evolutionary Biology, and Behavior
Department of Integrative Biology

Dr. Robert Pennock
Co-PI of the BEACON Center for the Study of Evolution in Action
University Distinguished Professor
Lyman Briggs College
Department of Philosophy
Department of Computer Science & Engineering

**MICHIGAN STATE
UNIVERSITY**

MEMORANDUM

To: Prof. Erik Goodman, Director, BEACON Center for the Study of Evolution in Action
From: Stephen D. Hsu, Vice President for Research and Graduate Studies [REDACTED]
Re: BEACON STC Renewal Proposal
Date: May 20, 2014

Michigan State University strongly supports the renewal of the BEACON Center for the Study of Evolution in Action. During its first four years, BEACON has demonstrated exemplary value to the university and to the fields of evolutionary biology and evolutionary applications. So long as BEACON is renewed, the university will provide substantial resources to meet its needs for space, student support, faculty hires, flexible funding, and to sustain it beyond the period of NSF support.

First, in recognition of BEACON's surpassing its expected growth in membership, productivity, and leveraging of resources, the university is exploring the possibility of [REDACTED]



Office of the
**VICE PRESIDENT
FOR RESEARCH
AND GRADUATE
STUDIES**

Stephen Hsu
Vice President

Harrison Administration Bldg.
426 Auditorium Rd., Rm 249
East Lansing, MI 48824

517/335-0306
Fax: 517/432-1171

vpgrs@msu.edu

Second, in addition to senior faculty already recruited to the Colleges of Natural Science and Engineering at BEACON's request, the university will target junior faculty lines and additional senior lines in these and other colleges to strengthen BEACON. Furthermore, Michigan State University will provide \$2,575,000 in cash cost-share direct costs through contributions from the Office of the Provost, Office of the Vice President for Research and Graduate Studies, Dean of the Graduate School, and the participating colleges and departments. These funds will be used to support fellowships, research assistants, postdoctoral researchers, sabbatical visitors, and BEACON staff during the transition to sustainability mode.

Michigan State University intends to support BEACON beyond its 10-year STC funding. Beginning in 2020, MSU will sustain BEACON's staffing and core operations with \$224,000/year for at least two years, and an additional \$750,000/year to seed fund research projects. This latter amount, based on projected BEACON-related funding of \$7.5 million in 2019-20, will scale commensurate with BEACON's performance in externally funded research at MSU in the post-STC period. Both commitments are extendable to at least 2025 so long as BEACON's external funding continues at a level near \$10 million/year. The seed funds can be used to support the MSU portion of new seed research projects undertaken jointly with the partner universities.

All of BEACON's partners have also submitted letters to Michigan State University indicating their continuing support of BEACON for five more years, including a sizeable new commitment at University of Texas Austin. Continuing cooperation with the partners will be encouraged after 2020. Some partners are already installing mechanisms to facilitate the formation of new joint seed projects in addition to continuing work on research areas already established during BEACON's STC funding.

Michigan State University is firmly committed to BEACON's continuing success.

From: Goll, Amanda
Sent: Tuesday, June 23, 2020 11:13 AM
To: Stanley, Samuel
Cc: Goodwin, Mami; Nelson, Jesselyn; Zeig, Michael
Subject: Gage interim salary
Attachments: CORE Salaries - updated 6-22-20.xlsx; SVPRI Big Ten-AAU Salary comps FY19.jpg

Sam,

Below and attached are salary comps for the SVP for Research and Innovation position. The Big Ten and AAU salary data is a year old because we're still in FY20. We don't receive updated numbers until August.

Gage (Assistant VP)

Current Salary = \$220,000 without EM payout

Current Salary = \$214,000 after EM payout

Hsu (Senior VP)

Current Salary = \$378,134 without EM payout

Current Salary = \$363,009 after EM payout

We recommend an interim salary of [REDACTED] before the executive management base payout.

Thanks,
Amanda

Document received by the MI Court of Claims.

[REDACTED]

[REDACTED] DRAFT, 2020

[REDACTED]

[REDACTED]

[REDACTED]

Document received by the MI Court of Claims.

From: Jacobs, Melanie
Sent: Thursday, June 18, 2020 9:09 AM
To: Stanley, Samuel; Jeitschko, Thomas
Cc: Russell, Paulette
Subject: FW: Stephen Hsu controversy

Good morning, Sam and Thomas.

[REDACTED]

I've copied Paulette because she has kindly been advising me on the matter. I think [REDACTED] but [REDACTED] I thought it important you have this additional information.

Best,

Melanie

Melanie B. Jacobs
Interim Dean
Professor of Law
Michigan State University College of Law
517-432-6993

[REDACTED]

From: [REDACTED]
Sent: Wednesday, June 17, 2020 9:29 PM
To: Samuel L. Stanley Jr., M.D., President <[REDACTED]>
Cc: Jeitschko, Thomas <[REDACTED]>; Jacobs, Melanie <[REDACTED]>
Subject: Stephen Hsu controversy

Dear President Stanley,

My name is [REDACTED] I have not had the pleasure of meeting you. I'm [REDACTED] but have just started [REDACTED]

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**MICHIGAN STATE
UNIVERSITY**

June 17, 2020

Office of the President
Michigan State University
426 Auditorium Road
Hannah Administration Building, Room 450
East Lansing, MI 48824-1046

Dear President Stanley,

I am writing to express my thoughts regarding the suitability of Dr. Stephen Hsu to continue in his role as MSU's Senior Vice President for Research and Innovation. It is

Dr. Hsu



[Redacted]

The fundamental issues underlying this controversy are the following:

1. What are the core values of MSU, particularly with respect to diversity, equity, and inclusion?
2. What are the expectations of leaders at MSU to embody these values?
3. How should leaders at MSU engage with those who disagree with them and respond when they make mistakes?

1. Paraphrasing your powerful messaging from the past few weeks, one of the core values at MSU is building a safe, welcoming, and inclusive environment that respects people of all backgrounds and experiences. Going further, we must acknowledge that racism and systemic bias exist in society at large as well as within higher education including MSU itself, and MSU must not only address these issues internally but also should be a leader in the national and international fight against racism and systemic bias.

2. With respect to expectations of leaders at MSU such as the Senior Vice President for Research and Innovation, these leaders must adhere to a higher standard of conduct beyond those of regular faculty and staff because their actions reflect not only their own personal beliefs and values but those of MSU as well. Specifically, Dr. Hsu not only has broad authority and oversight for the entire research enterprise at MSU but also is its de facto representative. In this leadership role, he should be an exemplar of MSU's fight against racism and systemic bias.

[Redacted]

**THE GRADUATE
SCHOOL**

Eric Tomg
Associate Dean

Michigan State University
230H Chubbuck Hall
East Lansing, Michigan
48824-1226

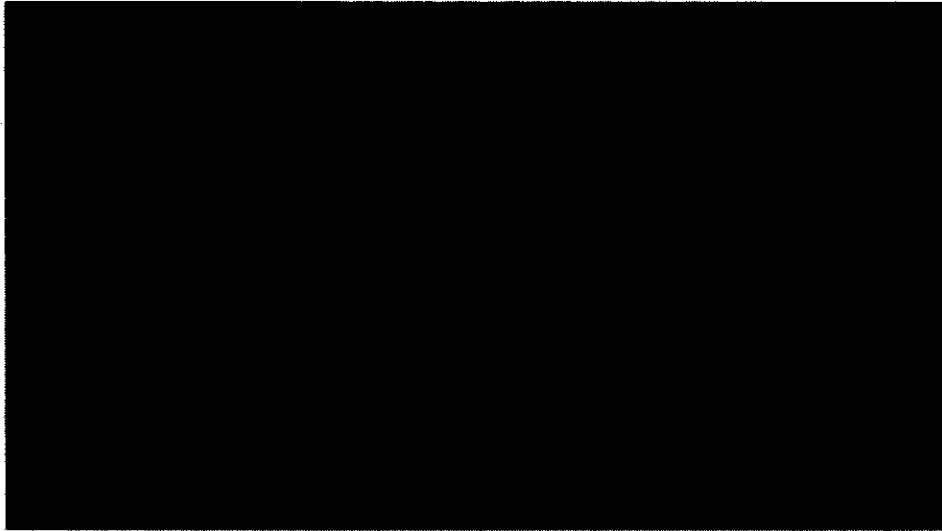
**COLLEGE OF
ENGINEERING**

Department of
Computer Science
and Engineering

Eric Tomg
Associate Professor
and Associate Chair
for Research and
Faculty Development

Michigan State University
3115 Engineering Building
East Lansing, Michigan
48824-1226

(517) 353-8843
FAX: (517) 432-1061



3. The most effective leaders are ones that can engage with those who disagree with them in a professional manner trying to understand the issues and concerns that others might have, and, if necessary, own up to any mistakes they may have made.



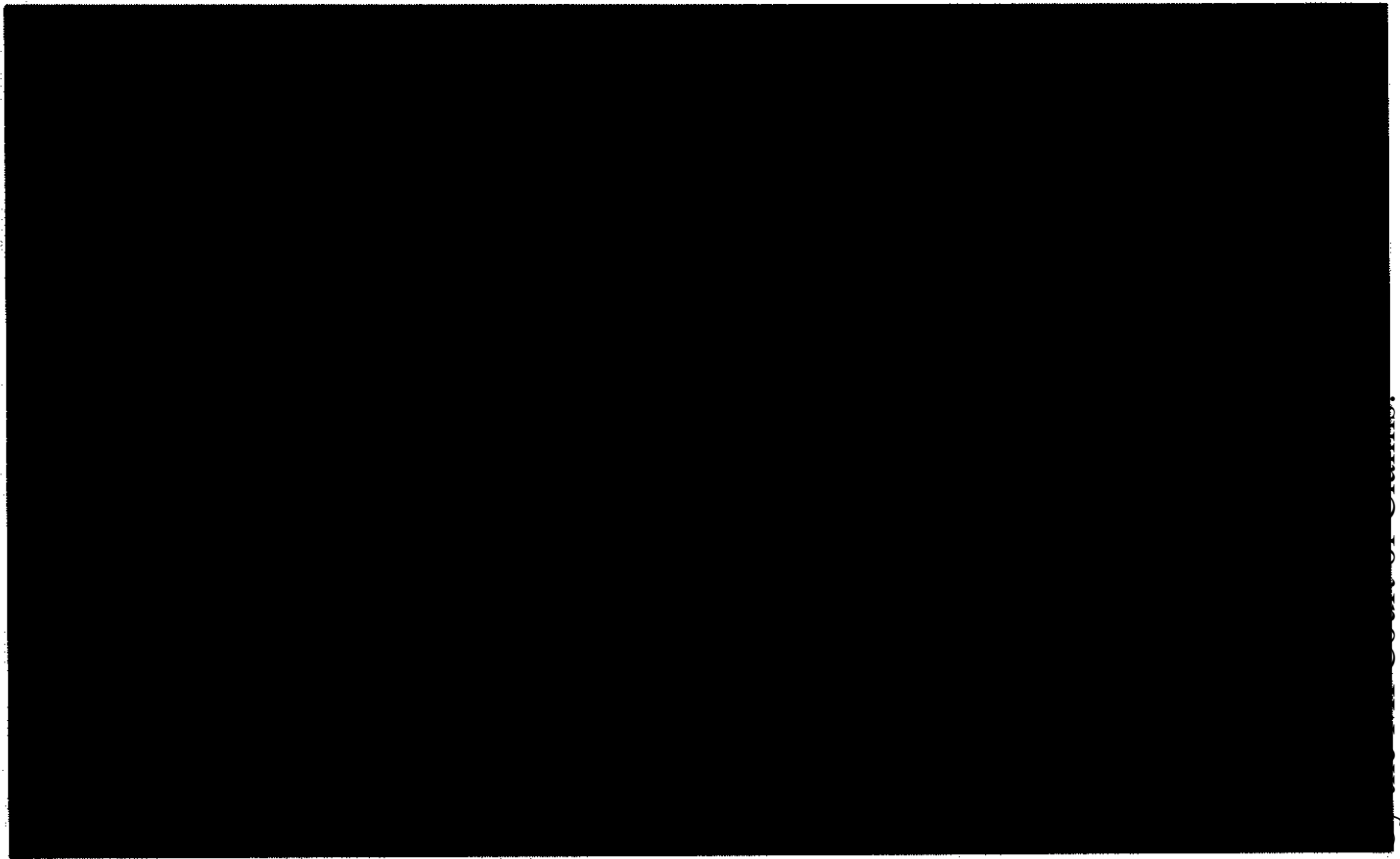
From: Stephen Hsu [REDACTED]
Sent: Tuesday, June 16, 2020 9:47 AM
To: Guerrant, Emily; Stanley, Samuel
Cc: Zeig, Michael; Woo, Melissa; Sullivan, Teresa
Subject: correction to LSJ article

Hi Emily and Sam,

I would like to send this important correction to the LSJ regarding their article of 6/15. But I wanted to check with you before sending it – perhaps it would be [REDACTED]

Steve

#####



Senior Vice President for Research and Innovation
Professor of Theoretical Physics
Michigan State University

[REDACTED]
Appointments: [REDACTED]

Document received

From: Zeig, Michael
Sent: Tuesday, June 16, 2020 7:46 AM
To: Stanley, Samuel
Subject: RE: Stephen Hsu concerns

Free right now or looks like after morning meeting works too.

From: Stanley, Samuel [REDACTED]
Sent: Tuesday, June 16, 2020 2:59 AM
To: Zeig, Michael [REDACTED]
Subject: Fwd: Stephen Hsu concerns

Let's discuss today. Sam

Sent from my iPhone

Begin forwarded message:

From: "Knake, Renee" [REDACTED]
Date: June 15, 2020 at 12:42:05 AM EDT
To: "Stanley, Samuel" [REDACTED]
Cc: "Byrum, Dianne" [REDACTED]; "Foster, Melanie" [REDACTED]; "Mosallam, Brian" [REDACTED]; "Kelly, Dan" [REDACTED]; "Scott, Brianna" [REDACTED]; "Ferguson, Joel" [REDACTED]; "Tebay, Kelly" [REDACTED]; "Barr, Nakia" [REDACTED]; "Quinn, Brian" [REDACTED]
Subject: Fw: Stephen Hsu concerns

Dear President Stanley,

The information contained in the email below, along with that from another [REDACTED] who wrote to us this evening, includes additional content that [REDACTED] I think [REDACTED]

Best,
Renee

Renee Knake
Trustee, Michigan State University

From: [REDACTED]
Sent: Monday, June 15, 2020 8:28 PM
To: Samuel L. Stanley Jr., M.D., President [REDACTED]; Byrum, Dianne [REDACTED]; Foster, Melanie [REDACTED]; Knake, Renee [REDACTED]; Scott, [REDACTED]

Document received by the MI Court of Claims.

From: Mosallam, Brian
Sent: Tuesday, June 16, 2020 5:03 AM
To: Knake, Renee
CC: Stanley, Samuel; Byrum, Dianne; Foster, Melanie; Kelly, Dan; Scott, Brianna; Ferguson, Joel; Tebay, Kelly; Barr, Nakia; Quinn, Brian
Subject: Re: Stephen Hsu concerns

Good morning,
[REDACTED]

Brian Mosallam
Trustee
Michigan State University

On Jun 16, 2020, at 12:42 AM, Knake, Renee [REDACTED] wrote:

Dear President Stanley,

The information contained in the email below, along with that from [REDACTED] who wrote to us this evening, includes additional content that [REDACTED]

[REDACTED] think [REDACTED]

Best,
Renee

Renee Knake
Trustee, Michigan State University

From: [REDACTED]
Sent: Monday, June 15, 2020 8:28 PM
To: Samuel L. Stanley Jr., M.D., President [REDACTED]; Byrum, Dianne [REDACTED]; Foster, Melanie [REDACTED]; Knake, Renee [REDACTED]; Scott, Brianna [REDACTED]; Ferguson, Joel [REDACTED]; Kelly, Dan [REDACTED]; Mosallam, Brian [REDACTED]; Tebay, Kelly [REDACTED]; Barr, Nakia [REDACTED]; Chesney, Meredith [REDACTED]
Subject: Stephen Hsu concerns

Hi everyone,

I am an [REDACTED] at MSU and I am writing to you because of my concerns of having Stephen Hsu working in this university. If someone who thinks that a person of color, or a woman is less intelligent, I am pretty sure that is called racism and sexism. If you have not seen what the Graduate

From: Guerrant, Emily
Sent: Monday, June 15, 2020 12:52 PM
To: Stanley, Samuel
Subject: Fwd: Remove Steve Hsu Immediately
Attachments: Hsu and leadership

Get Outlook for IOS

From: Board Of Trustees <trustees@msu.edu>
Sent: Monday, June 15, 2020 11:54 AM
To: Guerrant, Emily
Cc: Vandebosch, Jacqueline
Subject: FW: Remove Steve Hsu Immediately

Hi Emily,

[REDACTED]

Thanks.
Jackie

From: [REDACTED]
Sent: Friday, June 12, 2020 3:13 PM
To: Board Of Trustees <trustees@msu.edu>
Subject: Remove Steve Hsu Immediately

Dear MSU Board of Trustees,

My name is [REDACTED] and I am [REDACTED] here at MSU. I have recently become aware of a very damaging individual named Steve (or Steven) Hsu who was appointed to the position of Senior Vice President for Research and Graduate studies by the board of trustees. Mr. Hsu is a proponent of racially and sexually derived differences in test scores, human intellect, and brain morphology, all of which are epithets of historic scientific racism and sexism that any first-year STEM student is educated about here at MSU. He is also a proponent of "intellect" based eugenics based on testing and supposed genetic traits. None of these views are supported by the scientific community and are, in fact, largely condemned as antiquated, racist conclusions based on misinterpretations of scientific data and poor methodologies.

If you doubt my claims above, please see the *numerous* resources provided by MSU's Graduate Employee Union via this twitter link which cites his public studies, interviews, and blog posts: <https://twitter.com/GradEmpUnion/status/1270829003130261504>. What is the larger scientific community to think of the status of MSU's research when the man largely in charge of its oversight and funding has [REDACTED]

[REDACTED] Finally, please also see the open letter to Michigan State University which has been signed by 272

From: Stanley, Samuel
Sent: Thursday, June 11, 2020 1:55 PM
To: Guerrant, Emily
Subject: Re: [REDACTED]

[REDACTED]

[Get Outlook for iOS](#)

From: Guerrant, Emily <[REDACTED]>
Sent: Thursday, June 11, 2020 1:53:56 PM
To: Stanley, Samuel <[REDACTED]>
Subject: RE: [REDACTED]

No, [REDACTED]

[REDACTED]

From: Stanley, Samuel <[REDACTED]>
Sent: Thursday, June 11, 2020 1:42 PM
To: Guerrant, Emily <emilyg@msu.edu>
Subject: Re: [REDACTED]

[REDACTED]

Sent from my iPhone

On Jun 11, 2020, at 1:33 PM, Guerrant, Emily <[REDACTED]> wrote:

I have two media inquiries today on the GEU tweets and calls for his removal. The social media chatter is continuing on this topic and growing since last night.

[REDACTED] but we never had any media outreach and [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



<image001.png>

Emily Gerkin Guerrant

Vice President and University Spokesperson

408 West Circle Dr., Room 401B | East Lansing, MI 48824

Office: 517.355.3843 | Cell: [REDACTED]

Email: [REDACTED]

<image002.png>

From: Wilbur, Kathleen
Sent: Friday, May 15, 2020 7:29 PM
To: Stanley, Samuel
Cc: Hsu, Stephen; Guerrant, Emily; Quinn, Brian
Subject: [REDACTED]

[REDACTED]

Sent from my iPhone

Document received by the MI Court of Claims.

From: Hunt, Paul
Sent: Tuesday, May 5, 2020 4:04 PM
To: Stanley, Samuel; Hsu, Stephen
Cc: Bauer, Wolfgang; Kempel, Leo; Kriser, Lynn; Quinn, Brian; Udpa, Satish; VanAntwerp Shaw, Melanie; Verboncoeur, John
Subject: Confidential / Review of [REDACTED] Project & MoU

President Stanley & Senior Vice President Hsu,

Attached, please find an enhanced version of an MoU draft between Michigan State University and [REDACTED]

[http://www.\[REDACTED\].com](http://www.[REDACTED].com),

The MoU envisions a proposed pilot project to [REDACTED] as suggested by [REDACTED] and the leadership of the MSU College of Engineering. The revised MoU has been reviewed by [REDACTED] leadership, and is acceptable to them. The enhanced MoU has also been reviewed by Ms. Lynn Kriser, Esq. and Ms. Melanie VanAntwerp Shaw, Esq., in the Office of the General Counsel, and reflects their comments as well as my own. (The principal enhancements to the MoU may be found in the final three bullet points in Section II, plus the penultimate bullet point in Section III.)

[REDACTED] Within the Export Controls & Trade Sanctions (ECTS) Office, Ms. Jamie Haberichter, Esq., has checked Lexis-Nexus and other databases, and she reports having found no litigation involving the firm. Additionally, Mr. Rhett Butler of ECTS has checked the names of [REDACTED] officers in Federal restricted parties screening databases, and he too reports having found no matches.

[REDACTED] Please do not hesitate to contact me if you desire additional information.

Sincerely,

From: Charles Ofria [REDACTED]
Sent: Wednesday, March 4, 2020 10:26 AM
To: Office of the Provost, MSU; Sullivan, Teresa
Cc: Lenski, Richard; Goodman, Erik; Pennock, Robert; Holekamp, Kay; Samuel L. Stanley Jr., M.D., President
Subject: Funding concern / disagreement with VP Hsu
Attachments: Signed Commitment from VP Hsu- Memorandum 5_20_14BEACON STC Renewal Proposal scanned2014_05_28_14_18_57.pdf; BEACON-Related funding - March 2020.xlsx; Year11FundingRequestSolicitation.pdf

Provost Sullivan,

I am the director and lead PI of the BEACON Center for the Study of Evolution in Action (a \$48 million NSF STC). The co-PI's on this project are CC'd, as is President Stanley.

I provide more information below, but the basic issue is that VP Hsu is [REDACTED] regarding promised internal funding to BEACON that he made as an MSU commitment to the NSF. We would like to speak with you about this matter. I am concerned that these actions [REDACTED] among the 68 MSU faculty that are active participants in BEACON. Moreover, I am worried about [REDACTED]

Here are the details:

We are currently in year ten of the BEACON project and are supposed to shift over to internal MSU funding as of this summer. During the renewal of BEACON five years ago, a major component was the sustainability of the Center post-NSF funding. To support this effort, VP Hsu wrote an MSU commitment letter that I've attached. Now that it is time for MSU to provide the funding, Dr. Hsu [REDACTED]

Here is the relevant paragraph from the commitment letter:

Beginning in 2020, MSU will sustain BEACON's staffing and core operations with \$224,000/year for at least two years, and an additional \$750,000/year to seed fund research projects. This latter amount, based on projected BEACON-related funding of \$7.5 million in 2019-20, will scale commensurate with BEACON's performance in externally funded research at MSU in the post-STC period. Both commitments are extendable to at least 2025 so long as BEACON's external funding continues at a level near \$10 million/year.

BEACON has helped generate over \$32 million in currently-active funding at MSU (over \$9 million/year - spreadsheet attached), plus an addition \$12.7 million in gifts or bequests to support the center. Dr. Hsu claims that none of this funding should count; he wants to only count money that starts after BEACON ends, and thus claims we have \$0 in BEACON-related funding at this time. This position is [REDACTED] including what was presented to the NSF, both verbally and in writing. Deans Kempel and Duxbury have tried to argue on our behalf, and seem to [REDACTED]

I am especially frustrated because I had a meeting with Dr Hsu on November 26, 2019 to ensure that everything was going fine with the internal support, see if he had any specific requests for how the money was given out, and make sure that I could make commitments to staff and put out the call for internal funding requests. He assured me everything was fine and said that we'd have a better idea on how to most effectively give out the money to continue to promote

successful grant activity. At that point we assembled and sent out the call for proposals (which have since been submitted and we are supposed to soon provide funding results). I've also attached that call.

On December 9th, Dr. Hsu's office asked us how the internal funding commitment was supposed to be split up between parties. We were never privy to such information and assumed his office had taken care of such details before signing the commitment letter to the NSF. We didn't hear anything else over the holidays, but then on January 22nd the VP's office requested a meeting to talk about the BEACON commitment. Since he wanted Deans Kempel and Duxbury at this meeting it took a while to schedule and we finally had it last week (Feb 26th). It was only the day before the meeting that I was finally able to even get an agenda about the topics and found out that Dr. Hsu was trying to cut our funding so substantially.

When the meeting time arose, I came with two of my co-PIs (Drs. Richard Lenski and Kay Holekamp) and was told that the VP wanted to speak with me and the deans privately. I insisted that they stay and was glad that I did, since the meeting was basically VP Hsu [REDACTED] a substantially reduced amount of funding. He also insisted that the conversation he had with Erik Goodman (the BEACON director at the time of the renewal) fully reflected his view on the process and that since I wasn't there I couldn't argue otherwise. At the time I pushed back that I was at the meeting where this agreement was presented to the NSF, which DID reflect our view on the matter. When I finally did talk with Dr. Goodman after the meeting he very clearly confirmed that the first two years of funding were supposed to be at \$750k of research funds per year (plus \$224k for operating costs), with any adjustments occurring after that based on BEACON-related research productivity.

This issue has become [REDACTED] As I've talked with others in the BEACON leadership about the current situation, several people [REDACTED]

[REDACTED] I've convinced everyone to hold off until we talk with you, but funding decisions need to be made for our internal BEACON awards on March 24th, so we're pressed up against a deadline. [REDACTED]

In any case, we would very much appreciate being able to have a meeting with you in the near future to figure out the best way to proceed. We need your assistance in getting this commitment honored as soon as possible.

Thank you,

Dr. Charles Ofria
Professor of Computer Science & Engineering
President, International Society for Artificial Life
Director, BEACON Center for the Study of Evolution in Action
Michigan State University
<http://www.cse.msu.edu/~ofria/> (517 884-2562)

EXHIBIT C

FOIA

From: Skorup, Jarrett <Skorup@mackinac.org>
Sent: Friday, June 26, 2020 2:50 PM
To: FOIA
Subject: FOIA - Stephen Hsu

FOIA: Michigan State University

June 26, 2020

FOIA REQUEST FOR EMAILS ABOUT STEPHEN HSU

To Whom It May Concern:

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.

- Any emails to or from the president of Michigan State University that mention "Hsu" from Feb. 1, 2020 to June 26, 2020.

Please send the materials requested to the attention of Jarrett Skorup at the following address, fax number, or via e-mail at skorup@mackinac.org<<mailto:skorup@mackinac.org>>.

Mackinac Center for Public Policy
P.O. Box 568
Midland, MI 48640
Fax: 989-631-0964
Phone: 989-631-0900
Jarrett Skorup
Mackinac Center

Jarrett Skorup
Director of Marketing and Communications
Mackinac Center for Public Policy
www.mackinac.org
989-631-0900

EXHIBIT D

FOIA

From: FOIA
Sent: Tuesday, July 7, 2020 12:34 PM
To: skorup@mackinac.org
Subject: Your FOIA Request to MSU
Attachments: FOIA fee and deposit notice skorup MSUF035320.pdf

Michigan State University
Freedom of Information Act Office
408 W. Circle Drive
Room 1, Olds Hall
East Lansing, MI 48824
517-353-3929/telephone
517-353-1794/fax
foia@msu.edu

FOIA

From: FOIA
Sent: Tuesday, July 7, 2020 12:38 PM
To: Goll, Amanda; Guerrant, Emily; Kindraka, Melody; Olsen, Daniel; Zeig, Michael
Cc: Nelson, Rebecca
Subject: FYI FOIA Fee & Deposit Notice -- MSUF035320/SKORUP Mackinac Center for Public Policy
Attachments: FOIA fee and deposit notice skorup MSUF035320.pdf; FOIA request skorup MSUF035320.pdf

The attached FOIA fee and deposit notice was sent to the requester today via email.

Michigan State University
Freedom of Information Act Office
408 W. Circle Drive
Room 1, Olds Hall
East Lansing, MI 48824
517-353-3929/telephone
517-353-1794/fax
foia@msu.edu

MICHIGAN STATE
UNIVERSITY

DATE: July 7, 2020

TO: Jarrett Skorup
Director of Marketing and Communications
Mackinac Center for Public Policy
skorup@mackinac.org

FROM: Rebecca Nelson, Director and Freedom of Information Act (FOIA) Officer
Michigan State University FOIA Office *Rebecca Nelson*

SUBJECT: FOIA Fee and Deposit Notice

This is written with regard to the FOIA request that you emailed to this Office on June 26, 2020.

The processing of your request thus far has involved significant labor. We estimate that searching for, gathering, and reviewing records responsive to your request to determine if information exempt from public disclosure under the Michigan Freedom of Information Act (MIFOIA), must be separated from that which is not exempt, will require upwards of six (6) hours, incurring fees likely to exceed \$230.00. Fees will not be waived since failure to charge same would result in unreasonably high costs to the University. An itemization of this estimate accompanies this letter. This serves as an approximation only, and does not guarantee or limit the final, total fees which may be incurred and assessed. Therefore, pursuant to Section 4(2) of the MIFOIA, we require that you remit a deposit prior to our further processing your request. Should you remit the required deposit, we anticipate responding to your request on or before six (6) weeks from the date the deposit is received.

If you wish to pursue the processing of your request, and pay the fees incurred, please send a check made payable to "Michigan State University" in the amount of \$115.00 to the Freedom of Information Act Office, 408 West Circle Drive, Room 1 Olds Hall, or notify us in writing if you wish to modify or withdraw your request. The University will not process your request until a deposit is received by our Office. Moreover, Section 4(14) of the MIFOIA requires that the deposit be received no later than Monday, August 24, 2020, or your request will be considered abandoned, and processing of it no longer required. Should you have any questions regarding fees, please contact us. Pursuant to Section 4(4) of the MIFOIA, the University's procedures and guidelines for processing MIFOIA requests can be found at <http://foia.msu.edu>.

Attachment
MSUF035320



**FREEDOM OF
INFORMATION ACT
OFFICE**

**Michigan State
University**

408 West Circle Drive
Room 1 Olds Hall
East Lansing, MI 48824
517-353-3929
Fax: 517-353-1794
foia@msu.edu
<http://foia.msu.edu>

MSU FOIA FEE ESTIMATE ITEMIZATION FORM -- July 7, 2020 -- Skorup FOIA Request MSUF035320

<i>Category of Costs/Description</i>	<i>Hourly Wage</i>	<i>Benefits % Multiplier Used</i>	<i>Hourly Wage with Benefits</i>	<i>Estimated Time (Hours)</i>	<i>Amount</i>
4 (1) (a) Searching for, locating and examining responsive records <i>[Shall not charge more than the hourly wage of lowest-paid employee capable of searching for, locating and examining the public records in the particular instance regardless of whether that person is available or who actually performs the labor; labor costs shall be estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down.]</i>	\$28.95	40%	\$40.53	3	\$121.59
4 (1) (b) Review directly associated with the separating and deleting of exempt from nonexempt information <i>[For services performed by an employee of the public body, the public body shall not charge more than the hourly wage of its lowest-paid employee capable of separating and deleting exempt information from nonexempt information in the particular instance as provided in section 14, regardless of whether that person is available or who actually performs the labor. If a public body does not employ a person capable of separating and deleting exempt information from nonexempt information as determined by the public body's FOIA coordinator, it may treat necessary contracted labor costs used for the separating and deleting of exempt information from nonexempt information in the same manner as employee labor costs if it clearly notes the name of the contracted person or firm on this itemization. Total labor costs calculated under this subdivision for contracted labor costs shall not exceed an amount equal to 6 times the state minimum hourly wage rate. Labor costs under this subdivision shall be estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down.]</i>	\$21.29	40%	\$29.81	3.75	\$111.79
4 (1) (c) Nonpaper physical media costs <i>[The actual and most reasonably economical cost of the computer discs, computer tapes, or other digital or similar media. The requestor may stipulate that public records be provided on nonpaper physical media, electronically mailed, or otherwise electronically provided in lieu of paper copies. This subdivision does not apply if public body lacks the technological capability necessary to provide records on the particular nonpaper physical media stipulated in the particular instance.]</i>					
4 (1) (d) Cost of paper copies <i>[Actual total incremental cost of necessary duplication or publication, not including labor. The cost of paper copies shall be calculated as a total cost per sheet of paper, itemized to show both cost per sheet and number of sheets provided. The fee shall not exceed 10 cents per sheet of paper for copies of public records made on 8-1/2- by 11-inch paper or 8-1/2- by 14-inch paper. A public body shall utilize the most economical means available, including double-sided printing, if cost saving and available.]</i>					
4 (1) (e) Duplication or publication, including making paper copies, making digital copies, or transferring digital public records to be given to the requestor on nonpaper physical media or through the internet or other electronic means as stipulated by the requestor <i>[Shall not charge more than the hourly wage of lowest-paid employee capable of necessary duplication or publication in the particular instance, regardless of whether that person is available or who actually performs the labor.; labor costs under this subdivision shall be estimated and charged in time increments of the public body's choosing, with all partial time increments rounded down.]</i>					
4 (1) (f) Cost of mailing <i>[Actual cost of mailing, for sending the public records in a reasonably economical and justifiable manner; shall not charge more for expedited shipping or insurance unless stipulated by requestor, but may charge for the least expensive form of postal delivery confirmation when mailing public records.]</i>					
ESTIMATE TOTAL					\$233.38
FEE DEPOSIT REQUIRED					\$115.00

When calculating labor costs under (1) (a), (b) or (e), fee components shall be itemized in a manner that expresses both the hourly wage and the number of hours charged. The public body may also add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits if it clearly notes the percentage multiplier used. Subject to the 50% limitation, the public body shall not charge more than the actual cost of fringe benefits, and overtime wages shall not be used in calculating the cost of fringe benefits. Overtime wages shall not be included in the calculation of labor costs unless overtime is specifically stipulated by the requestor and clearly noted in this detailed itemization.

Document received by the MI Court of Claims.

EXHIBIT E

FOIA

From: FOIA
Sent: Monday, August 31, 2020 7:58 PM
To: skorup@mackinac.org
Subject: Your FOIA Request to MSU
Attachments: FOIA fee and deposit notice skorup MSUF035320 follow-up.pdf

Michigan State University
Freedom of Information Act Office
408 W. Circle Drive
Room 1, Olds Hall
East Lansing, MI 48824
517-353-3929/telephone
517-353-1794/fax
foia@msu.edu

FOIA

From: FOIA
Sent: Monday, August 31, 2020 8:04 PM
To: Guerrant, Emily; Kindraka, Melody; Olsen, Daniel; Zeig, Michael
Cc: Nelson, Rebecca
Subject: FYI FOIA Fee & Deposit Notice Follow-up -- MSUF035320/SKORUP Mackinac Center for Public Policy
Attachments: FOIA fee and deposit notice skorup MSUF035320 follow-up.pdf; FOIA request skorup MSUF035320.pdf

The attached FOIA fee and deposit notice follow-up was sent to the requester today via email.

Michigan State University
Freedom of Information Act Office
408 W. Circle Drive
Room 1, Olds Hall
East Lansing, MI 48824
517-353-3929/telephone
517-353-1794/fax
foia@msu.edu

MICHIGAN STATE
UNIVERSITY

DATE: August 31, 2020

TO: Jarrett Skorup
Director of Marketing and Communications
Mackinac Center for Public Policy
skorup@mackinac.org

FROM: Rebecca Nelson, Director and Freedom of Information Act (FOIA) Officer
Michigan State University FOIA Office

Rebecca Nelson

SUBJECT: FOIA Fee and Deposit Notice Follow-up -- Record Volume Update

On June 26, 2020, you emailed a FOIA request to this Office for "Any emails to or from the president of Michigan State University that mention 'Hsu' from Feb. 1, 2020 to June 26, 2020." On July 20th, in response to our July 7th \$230.00 fee estimate, this Office received a \$115.00 fee deposit for the processing of your request.

The searching for and gathering of records responsive to your request has concluded, and the volume of those records is significantly greater than estimated. Record review to separate information exempt from public disclosure under the Michigan Freedom of Information Act (MIFOIA), from that which is not exempt, has begun. The foregoing processing has reached the initial six hour estimate, and hundreds of pages of emails have yet to be reviewed. Given that fees incurred have reached the initial \$230.00 estimate, we write to ask if you wish to proceed with the processing of your request, or halt the processing and receive only the records reviewed thus far. If you wish to halt the processing of your request, please advise us in writing, and we will finalize the records reviewed to date, and send them to you along with an invoice billing you for the balance of fees owed.



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Room 1 Olds Hall
East Lansing, MI 48824
517-353-3929
Fax: 517-353-1794
foia@msu.edu
<http://foia.msu.edu>

If, instead, you wish to pursue the processing of all of the remaining records you seek, the following estimate is provided. Completing the processing of your request will involve significant labor; we estimate upwards of eleven (11) hours will be required, incurring fees likely to exceed \$350.00; this is in addition to the initial \$230.00 fee estimate, and the fees incurred to date. In completing the processing of your request, fees will not be waived since failure to charge same would result in unreasonably high costs to the University. An itemization of this estimate accompanies this letter. This serves as an approximation only, and does not guarantee or limit the final, total fees which may be incurred and assessed. Therefore, pursuant to Section 4(2) of the MIFOIA, we require that you remit an additional deposit prior to our completing the processing of your request. Should you remit the required deposit, we anticipate responding on or before eight weeks (8) from the date the deposit is received.

If you wish to pursue the processing of all records responsive to your request, and pay the fees incurred, please send a check made payable to "Michigan State University" in the amount of \$175.00 to the Freedom of Information Act Office, 408 West Circle Drive, Room 1 Olds Hall. The University will not complete the processing of the remaining records you seek until a deposit is received by our Office. Moreover, Section 4(14) of the MIFOIA requires that the deposit be received no later than Monday, October 19, 2020, or your request pertaining to the remaining records will be considered abandoned, and processing of it no longer required. Should you have any questions regarding fees, please contact us. Pursuant to Section 4(4) of the MIFOIA, the University's procedures and guidelines for processing MIFOIA requests can be found at <http://foia.msu.edu>.

Attachment
MSUF035320

MSU FOIA FEE ESTIMATE ITEMIZATION FORM -- August 31, 2020 -- Skorup FOIA Request MSUF035320 -- follow-up; additional fee estimate

Category of Costs/Description	Hourly Wage	Benefits % Multiplier Used	Hourly Wage with Benefits	Estimated Time (Hours)	Amount
4 (1) (a) Searching for, locating and examining responsive records [Shall not charge more than the hourly wage of lowest-paid employee capable of searching for, locating and examining the public records in the particular instance regardless of whether that person is available or who actually performs the labor; labor costs shall be estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down.]					
4 (1) (b) Review directly associated with the separating and deleting of exempt from nonexempt information [For services performed by an employee of the public body, the public body shall not charge more than the hourly wage of its lowest-paid employee capable of separating and deleting exempt information from nonexempt information in the particular instance as provided in section 14, regardless of whether that person is available or who actually performs the labor. If a public body does not employ a person capable of separating and deleting exempt information from nonexempt information as determined by the public body's FOIA coordinator, it may treat necessary contracted labor costs used for the separating and deleting of exempt information from nonexempt information in the same manner as employee labor costs if it clearly notes the name of the contracted person or firm on this itemization. Total labor costs calculated under this subdivision for contracted labor costs shall not exceed an amount equal to 6 times the state minimum hourly wage rate. Labor costs under this subdivision shall be estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down.]	\$21.29	40%	\$29.81	11.75	\$350.27
4 (1) (c) Nonpaper physical media costs [The actual and most reasonably economical cost of the computer discs, computer tapes, or other digital or similar media. The requestor may stipulate that public records be provided on nonpaper physical media, electronically mailed, or otherwise electronically provided in lieu of paper copies. This subdivision does not apply if public body lacks the technological capability necessary to provide records on the particular nonpaper physical media stipulated in the particular instance.]					
4 (1) (d) Cost of paper copies [Actual total incremental cost of necessary duplication or publication, not including labor. The cost of paper copies shall be calculated as a total cost per sheet of paper, itemized to show both cost per sheet and number of sheets provided. The fee shall not exceed 10 cents per sheet of paper for copies of public records made on 8-1/2- by 11-inch paper or 8-1/2- by 14-inch paper. A public body shall utilize the most economical means available, including double-sided printing, if cost saving and available.]					
4 (1) (e) Duplication or publication, including making paper copies, making digital copies, or transferring digital public records to be given to the requestor on nonpaper physical media or through the internet or other electronic means as stipulated by the requestor [Shall not charge more than the hourly wage of lowest-paid employee capable of necessary duplication or publication in the particular instance, regardless of whether that person is available or who actually performs the labor.; labor costs under this subdivision shall be estimated and charged in time increments of the public body's choosing, with all partial time increments rounded down.]					
4 (1) (f) Cost of mailing [Actual cost of mailing, for sending the public records in a reasonably economical and justifiable manner; shall not charge more for expedited shipping or insurance unless stipulated by requestor, but may charge for the least expensive form of postal delivery confirmation when mailing public records.]					

ESTIMATE TOTAL

\$350.27

REQUIRED

\$175.00

When calculating labor costs under (1) (a), (b) or (e), fee components shall be itemized in a manner that expresses both the hourly wage and the number of hours charged. The public body may also add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits if it clearly notes the percentage multiplier used. Subject to the 50% limitation, the public body shall not charge more than the actual cost of fringe benefits, and overtime wages shall not be used in calculating the cost of fringe benefits. Overtime wages shall not be included in the calculation of labor costs unless overtime is specifically stipulated by the requestor and clearly noted in this detailed itemization.

Document received by the MI Court of Claims.

EXHIBIT F

FOIA

From: FOIA
Sent: Wednesday, November 4, 2020 6:22 PM
To: skorup@mackinac.org
Subject: Your FOIA Request to MSU
Attachments: FOIA response skorup MSUF035320.pdf

Michigan State University
Freedom of Information Act Office
408 W. Circle Drive
Room 1, Olds Hall
East Lansing, MI 48824
517-353-3929/telephone
517-353-1794/fax
foia@msu.edu

FOIA

From: FOIA
Sent: Wednesday, November 4, 2020 6:25 PM
To: Zeig, Michael
Cc: Nelson, Rebecca
Subject: FYI FOIA Response -- MSUF035320/SKORUP Mackinac Center for Public Policy
Attachments: FOIA response skorup MSUF035320.pdf; FOIA request skorup MSUF035320.pdf

The attached FOIA response was sent to the requester today via email.

Michigan State University
Freedom of Information Act Office
408 W. Circle Drive
Room 1, Olds Hall
East Lansing, MI 48824
517-353-3929/telephone
517-353-1794/fax
foia@msu.edu

MICHIGAN STATE
UNIVERSITY

DATE: November 4, 2020

TO: Jarrett Skorup
Director of Marketing and Communications
Mackinac Center for Public Policy
skorup@mackinac.org

FROM: Rebecca Nelson, Director and Freedom of Information Act (FOIA) Officer
Michigan State University FOIA Office *Rebecca Nelson*

SUBJECT: FOIA Response

This is written in response to the FOIA request that you emailed to this Office on June 26, 2020, and for the processing of which this Office received fee deposits on July 20, 2020, and September 9, 2020.

Your request is granted with regard to information that is not exempt from public disclosure under the Michigan Freedom of Information Act (MIFOIA). That said, given the University's current alternate working arrangements, necessitated by extraordinary community health concerns, record processing times are extending beyond typically anticipated dates. Nevertheless, please be assured that we are working diligently to process your request as quickly as possible, and expect to send to you records or another update on or before Friday, December 4, 2020. We apologize for any inconvenience this unavoidable delay may cause.

The MIFOIA provides that when a public body denies all or a portion of a request, the requester may do one of the following: (1) submit an appeal of the determination to the head of the public body; or (2) commence a civil action in the court of claims to compel the public body's disclosure of the records. If you wish to seek judicial review of any denial, you must do so within 180 days of the date of this letter. If the court of claims orders disclosure of all or a portion of the public record(s) to which you have been denied access, you may receive attorneys' fees and, in certain circumstances, damages under the MIFOIA. Should you choose to file an appeal with the University regarding this response to your request, you must submit a written communication to this Office expressly stating that it is an "appeal" of this response. In your appeal, please state what records you believe should have been disclosed to you. You must also state the reasons you believe any denial of your MIFOIA request should be reversed. This Office will arrange for the processing and review of your appeal. Pursuant to Section 4(4) of the MIFOIA, the University's procedures and guidelines for processing MIFOIA requests can be found at <http://foia.msu.edu>.

MSUF035320



**FREEDOM OF
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OFFICE**

**Michigan State
University**

408 West Circle Drive
Room 1 Olds Hall
East Lansing, MI 48824
517-353-3929
Fax: 517-353-1794
foia@msu.edu
<http://foia.msu.edu>

EXHIBIT G

FOIA

From: FOIA
Sent: Friday, December 4, 2020 11:52 AM
To: skorup@mackinac.org
Subject: Your FOIA Request to MSU
Attachments: FOIA response skorup MSUF035320 status notice.pdf

Michigan State University
Freedom of Information Act Office
408 W. Circle Drive
Room 1, Olds Hall
East Lansing, MI 48824
517-353-3929/telephone
517-353-1794/fax
foia@msu.edu

FOIA

From: FOIA
Sent: Friday, December 4, 2020 11:53 AM
To: Guerrant, Emily; Kindraka, Melody; Olsen, Daniel; Zeig, Michael
Cc: Nelson, Rebecca
Subject: FYI FOIA Response -- MSUF035320/SKORUP Mackinac Center for Public Policy
Attachments: FOIA response skorup MSUF035320 status notice.pdf; FOIA request skorup MSUF035320.pdf

The attached FOIA response was sent to the requester today via email.

Michigan State University
Freedom of Information Act Office
408 W. Circle Drive
Room 1, Olds Hall
East Lansing, MI 48824
517-353-3929/telephone
517-353-1794/fax
foia@msu.edu

MICHIGAN STATE
UNIVERSITY

DATE: December 4, 2020

TO: Jarrett Skorup
Director of Marketing and Communications
Mackinac Center for Public Policy
skorup@mackinac.org

FROM: Rebecca Nelson, Director and Freedom of Information Act (FOIA) Officer
Michigan State University FOIA Office *Rebecca Nelson*

SUBJECT: FOIA Response Status Notice

This is written as follow-up to our November 4, 2020, response to the FOIA request that you emailed to this Office on June 26, 2020, and for the processing of which this Office received fee deposits on July 20, 2020, and September 9, 2020.

As we previously advised, your request is granted with regard to information that is not exempt from public disclosure under the Michigan Freedom of Information Act (MIFOIA). Please know that we continue to process records responsive to your request as expeditiously as possible. Nevertheless, given the University's current alternate working arrangements, necessitated by extraordinary community health concerns, record processing times are extending beyond typically anticipated dates. At this time, we expect to send to you records or another update on or before Wednesday, December 23, 2020. We apologize for any inconvenience this unavoidably extended response time may cause; fees assessed will be adjusted in consideration of the delay.

The MIFOIA provides that when a public body denies all or a portion of a request, the requester may do one of the following: (1) submit an appeal of the determination to the head of the public body; or (2) commence a civil action in the court of claims to compel the public body's disclosure of the records. If you wish to seek judicial review of any denial, you must do so within 180 days of the date of this letter. If the court of claims orders disclosure of all or a portion of the public record(s) to which you have been denied access, you may receive attorneys' fees and, in certain circumstances, damages under the MIFOIA. Should you choose to file an appeal with the University regarding this response to your request, you must submit a written communication to this Office expressly stating that it is an "appeal" of this response. In your appeal, please state what records you believe should have been disclosed to you. You must also state the reasons you believe any denial of your MIFOIA request should be reversed. This Office will arrange for the processing and review of your appeal. Pursuant to Section 4(4) of the MIFOIA, the University's procedures and guidelines for processing MIFOIA requests can be found at <http://foia.msu.edu>.

MSUF035320



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**Michigan State
University**

408 West Circle Drive
Room 1 Olds Hall
East Lansing, MI 48824
517-353-3929
Fax: 517-353-1794
foia@msu.edu
<http://foia.msu.edu>

EXHIBIT H

FOIA

From: FOIA
Sent: Wednesday, December 23, 2020 2:10 PM
To: skorup@mackinac.org
Subject: Your FOIA Request to MSU
Attachments: FOIA response skorup MSUF035320.pdf

Michigan State University
Freedom of Information Act Office
408 W. Circle Drive
Room 1, Olds Hall
East Lansing, MI 48824
517-353-3929/telephone
517-353-1794/fax
foia@msu.edu

FOIA

From: FOIA
Sent: Wednesday, December 23, 2020 2:13 PM
To: Abt, Uriel; Guerrant, Emily; Kindraka, Melody; Olsen, Daniel; Zeig, Michael
Cc: Nelson, Rebecca; Kittel, Jacquelynn
Subject: FYI FOIA Response -- MSUF035320/SKORUP Mackinac Center for Public Policy
Attachments: FOIA response skorup MSUF035320.pdf; FOIA request skorup MSUF035320.pdf

The attached FOIA response was sent to the requester today via email.

Michigan State University
Freedom of Information Act Office
408 W. Circle Drive
Room 1, Olds Hall
East Lansing, MI 48824
517-353-3929/telephone
517-353-1794/fax
foia@msu.edu

MICHIGAN STATE
UNIVERSITY

DATE: December 23, 2020

TO: Jarrett Skorup
Director of Marketing and Communications
Mackinac Center for Public Policy
skorup@mackinac.org

FROM: Rebecca Nelson, Director and Freedom of Information Act (FOIA) Officer
Michigan State University FOIA Office *Rebecca Nelson*

SUBJECT: FOIA Response

On June 26, 2020, you emailed to this Office your expansive FOIA request for "Any emails to or from the president of Michigan State University that mention 'Hsu' from Feb. 1, 2020 to June 26, 2020." On July 7th, we sent to you a notice advising that significant labor would be involved in processing your request, and that a fee deposit would be required to proceed. On July 20th, this Office received your fee deposit. On August 31st, we sent to you a letter advising that records identified as responsive to your request were significantly greater in volume than originally anticipated; that significantly greater labor would be involved in processing those records; that an additional fee deposit would be required to proceed; and that we anticipated responding on or before eight weeks from the date the additional deposit was received. That response date was estimated in compliance with Section 4(8) of the Michigan Freedom of Information Act (MIFOIA), which provides that "The response must 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 public policy under section 1 and the nature of the request in the particular instance."

On September 9th, this Office received your additional fee deposit. On November 4th, eight weeks from the date we received your additional deposit, we wrote to you that while your request was granted to the extent information is not exempt from public disclosure, processing times were extending beyond typically anticipated dates due to current alternate working arrangements necessitated by extraordinary community health concerns. We also advised that we expected to respond to you with records on or before December 4th. On December 4th, we wrote to you that we were continuing to process your request as expeditiously as possible; that for the same reasons stated in our November 4th letter, additional time was required; that we expected to respond to you with records on or before December 23rd; and that in consideration of the unavoidable inconvenience the delay was causing, a fee adjustment would be made. Accordingly, we write to you the following response.



**FREEDOM OF
INFORMATION ACT
OFFICE**

**Michigan State
University**

408 West Circle Drive
Room 1 Olds Hall
East Lansing, MI 48824
517-353-3929
Fax: 517-353-1794
foia@msu.edu
<http://foia.msu.edu>

Records responsive to your request accompany this letter. Identifying information pertaining to certain individuals, personal email addresses, personal cellular telephone numbers, and certain other personal data have been redacted, and five (5) pages of personal information have been withheld pursuant to one or both of Sections 13(1)(a) and 13(2) of the MIFOIA. Section 13(1)(a) provides for the withholding of "Information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy." Section 13(2) requires the withholding of information that, if released, would prevent the public body from complying with 20 U.S.C. 1232g, the Family Educational Rights and Privacy Act (FERPA). Nine (9) pages consisting of personal information pertaining to a student have been withheld under one or more of Sections 13(1)(a), (b)(iii), and 13(2). Section 13(1)(b) provides for the withholding of "Investigating records compiled for law enforcement purposes, but only to the extent that disclosure as a public record would do any of the following...(iii) Constitute an unwarranted invasion of personal privacy." University signatures, email addresses, netIDs, and a telephone number have been redacted under one or more of Sections 13(1)(u), (y), and (z), which allow for the withholding of information related to the ongoing security of a public body. Certain other information has been redacted under one or more of Sections 13(1)(g), (h), and (m). Sections 13(1)(g) and (h) provide for the withholding of information or records subject to the attorney-client privilege and attorney work-product doctrine, respectively. Section 13(1)(m) provides for the withholding of "Communications and notes within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action." Lastly, nine (9) pages have been withheld under Sections 13(1)(g) and/or (h).

The MIFOIA provides that when a public body denies all or a portion of a request, the requester may do one of the following: (1) submit an appeal of the determination to the head of the public body; or (2) commence a civil action in the court of claims to compel the public body's disclosure of the records. If you wish to seek judicial review of any denial, you must do so within 180 days of the date of this letter. If the court of claims orders disclosure of all or a portion of the public record(s) to which you have been denied access, you may receive attorneys' fees and, in certain circumstances, damages under the MIFOIA. Should you choose to file an appeal with the University regarding this response to your request, you must submit a written communication to this Office expressly stating that it is an "appeal" of this response. In your appeal, please state what records you believe should have been disclosed to you. You must also state the reasons you believe any denial of your MIFOIA request should be reversed. This Office will arrange for the processing and review of your appeal.

In processing your request, a significant amount of labor was required to search for, gather, and review the responsive records to separate information exempt from disclosure from that which is not exempt. Nevertheless, in consideration of the previously noted unavoidable delay in providing the attached records to you, fees for processing your request are hereby waived. Your fee deposit checks will be returned to you via U.S. first class mail. Pursuant to Section 4(4) of the MIFOIA, the University's procedures and guidelines for processing MIFOIA requests can be found at <http://foia.msu.edu>.

Attachments
MSUF035320

EXHIBIT I

**STATE OF MICHIGAN
IN THE COURT OF CLAIMS**

Mackinac Center for Public Policy,

Plaintiff,

v.

Michigan State University,

Defendant.

Case No. 21-00011-MZ

Hon. Elizabeth L. Gleicher

AFFIDAVIT OF TOM SIU

1. I make this affidavit based on my personal knowledge. I am competent to testify under oath to the facts stated in this affidavit if called upon to do so.

2. I am currently the Chief Information Security Officer for Michigan State University. In that capacity, I am responsible for MSU's university-wide information security strategy and oversee MSU's Security Engineering, Security Operations, Incident Response, and Governance, Risk and Compliance teams with MSU's Information Security department.

3. MSU owns and operates information systems and information technology resources that accessible through the public internet. This puts MSU at risk of cyber-attack through the public internet.

4. Two key attack methods include attempts to access IT services through compromised accounts, and by malicious email messages sent to MSU email accounts.

5. MSU has observed pre-ransomware attacks using the initial vector of a "targeted email" campaign.

6. MSU email addresses also serve as the userIDs MSU community members use to access certain IT functions.

7. For these reasons, it is a core practice of MSU's operational security to restrict its email address directory to MSU users.

8. Although individual MSU users may choose to disclose their own MSU email addresses, eliminating unnecessary dissemination of MSU emails addresses reduces the risk of cyber-attack.

Thomas
Siu

Digitally signed by
Thomas Siu
Date: 2021.11.12
11:27:38 -05'00'



Tom Siu

Subscribed and sworn to before me
on Nov. 12, 2021



Notary Public, _____ County, MI
My Commission Expires: _____

ROBIN STECHSCHULTE
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF SHIAWASSEE
My Commission Expires August 28, 2027
Acting in the County of Ingham