

**STATE OF MICHIGAN**  
**COURT OF CLAIMS**

THE MACKINAC CENTER FOR  
PUBLIC POLICY,

Plaintiff,

v

THE BOARD OF REGENTS OF THE  
UNIVERSITY OF MICHIGAN,

Defendant.

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**OPINION AND ORDER**

Case No. 21-000026-MZ

Hon. Elizabeth L Gleicher

Pending before the Court in this action filed under the Freedom of Information Act is defendant's motion for summary disposition under MCR 2.116(C)(8). Defendant's motion is DENIED and pursuant to MCR 2.116(I)(2), judgment is entered in favor of plaintiff.

**I. BACKGROUND**

In January 2021, a representative of plaintiff Mackinac Center for Public Policy emailed a request under the Freedom of Information Act, MCL 15.231 *et seq.*, to defendant University of Michigan seeking:

The total gross salaries (base salary, OT, bonuses, etc.) for every employee working in the U-M Office for Institutional Equity for the 2019 and 2020 calendar years.

In a follow-up email, plaintiff clarified that the request included “the NAMES and total gross salaries[.]”<sup>1</sup>

The University granted the request in part, acknowledging that “The Michigan Freedom of Information Act requires a public university to provide salary information pertaining to its employees upon request.” The response continued, however, by denying the request in part, asserting that the information sought “contemplates forms of compensation not identified for disclosure by the Michigan FOIA and, thus, your request is denied in part pursuant to section 13(1)(a)<sup>2</sup> of the Michigan Freedom of Information Act, which allows the university to refrain from disclosing information that would constitute an unwarranted invasion of an individual’s privacy.”

The Mackinac Center appealed the University’s response. In denying the appeal, Liz Barry, a special counsel to the University President, enlarged on the grounds for the denial:

Additionally, MCL 15.243a requires an institution of higher education to make available to the public the “salary records” of an employee or other official of the institution of higher education. “Salary” has a plain English meaning that sets it apart from other forms of compensation. Well settled rules of statutory construction support the conclusion that by expressly identifying “salary” as the form of compensation that must be disclosed by public universities, the legislature has defined the scope of information subject to disclosure as not including forms of compensation other than salary. Therefore, MCL 15.243a has set an expectation around what information will be made public and what information an individual can reasonably expect to be kept private.

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<sup>1</sup> In addition to “base salaries,” this opinion also refers to overtime and bonus pay. The Court anticipates that additional forms of compensation are subsumed within the abbreviation “etc.” used in plaintiff’s FOIA request. The Court’s reference to overtime and bonus pay is not meant to exclude such other forms of compensation. As this opinion and order describe, all forms of employee compensation must be disclosed.

<sup>2</sup> MCL 15.243(1)(a).

The Mackinac Center filed suit in this Court contending that the University's determination "misapplie[d]" the privacy exemption.

The University has now filed a motion for summary disposition under MCR 2.116(C)(8), reiterating the objections to disclosure articulated in Ms. Barry's letter. Plaintiff's response brief seeks summary disposition in its favor under MCR 2.116(I)(2).

## II. ANALYSIS

Whether a public record is exempt from disclosure under the FOIA is generally a mixed question of fact and law. "However, when the facts are undisputed and reasonable minds could not differ, whether a public record is exempt under FOIA is a pure question of law for the court." *Rataj v City of Romulus*, 306 Mich App 735, 747-748; 858 NW2d 116 (2014). No facts remain in dispute in this case.

The Freedom of Information Act was adopted to promote "the public policy of this state that all persons . . . are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees . . . ." MCL 15.231(2). The core objective of the FOIA "is to provide the people of this state with full and complete information regarding the government's affairs . . . ." *Practical Political Consulting, Inc v Secretary of State*, 287 Mich App 434, 462; 789 NW2d 178 (2010).

MCL 15.243 "sets forth several exemptions to" a public body's "duty to disclose." *Manning v East Tawas*, 234 Mich App 244, 248; 593 NW2d 649 (1999), overruled on other grounds by *Speicher v Columbia Twp Bd of Trustees*, 497 Mich 125; 860 NW2d 51 (2014). "However, these exemptions must be construed narrowly, and the burden of proof rests with the party asserting an exemption." *Id.* (citations omitted). See also *Evening News Ass'n v City of*

*Troy*, 417 Mich 481, 503; 339 NW2d 421 (1983). “Under the FOIA, a public body must disclose all public records that are not specifically exempt under the act. MCL § 15.233(1).” *Nicita v Detroit*, 194 Mich App 657, 661; 487 NW2d 814 (1992).

The University raises three arguments in opposition to disclosure of employee compensation records other than “base salary” information. I address each in turn.

First, the University asserts that the plain language of MCL 15.243a requires that a public university reveal only the “base salaries” of its employees, and that it has already supplied this information. MCL 15.243a provides, in relevant part, that an “institution of higher education” established under the Michigan Constitution “shall upon request make available to the public *the salary records* of an employee or other official of the institution of higher education, school district, intermediate school district, or community college.” (Emphasis added). Citing several dictionaries, the University insists that “salary” means “fixed compensation paid regularly for services,” and does not include any other forms of compensation, such as bonuses over overtime pay.

Recourse to dictionary definitions of the word “salary” is unnecessary, in the Court’s view, for two reasons. First, the operative phrase is “salary records,” not simply the word “salary.” Second, the plain, everyday meaning of the phrase “salary records” encompasses more than merely a report of an employee’s “base salary.”

“[T]he meaning of statutory language, plain or not, depends on context.” *King v St Vincent's Hosp*, 502 US 215, 221; 112 S Ct 570; 116 L Ed2d 578 (1991). Focusing on the phrase “salary records” corresponds with a primary canon of construction: the individual, discrete words of a statute must be read holistically “with a view to their place in the overall statutory scheme.”

*Davis v Mich Dep't of Treasury*, 489 US 803, 809; 109 S Ct 1500; 103 L Ed2d 891 (1989). The “scheme” of the FOIA is public disclosure of the workings of government, including its expenditures. Public awareness of the full extent of governmental investment in a University of Michigan department serves the openness and transparency purposes of the Act.

In enacting MCL 15.243a, the Legislature mandated that public bodies make available the “salary records” of their employees, not simply their “salaries.” Construing this section in the light of the structure and purpose of the FOIA, it makes no sense that the Legislature intended to exempt bonuses, overtime pay, or other forms of employee compensation from otherwise discoverable “salary records.” And although dictionary definitions alone should not supersede everyday understandings of meaning, I note that the second definition of “salary” in Webster’s Third New International Dictionary is: “remuneration for services given.” *Webster’s Third New International Dictionary*.

In common parlance the phrase “salary *records*” refers to the data maintained by an employer reflecting the amount of money or other compensation disbursed to an employee in exchange for the employee’s work. For some employment settings, an employee’s compensation is limited to regular, fixed payment amounts often referred to as “salary.” In those settings, the employer’s “salary records” will include only that base salary information. Under other circumstances, however, an employee’s “salary” is commonly understood to include bonuses, overtime pay, and other forms of compensation, and the employer’s salary records incorporate those disbursements as well. Within the FOIA context, a broad construction of “salary records” comports with the statutory aims.

Next, the University contends that MCL 15.243(1)(a) permits a public body to exempt from disclosure “[i]nformation of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual’s privacy.” This exemption has two prongs. “First, the information must be ‘of a personal nature.’ Second, it must be the case that the public disclosure of that information would constitute a clearly unwarranted invasion of an individual’s privacy.” *Mich Federation of Teachers & Sch Related Personnel, AFT, AFL-CIO v Univ of Mich*, 481 Mich 657, 675; 753 NW2d 28 (2008).

Intimate, embarrassing, private, or confidential information is “of a personal nature.” *Id.* at 676. Home addresses, birth dates, and telephone numbers generally qualify as information of a personal nature. See *id.* But “[t]he names and salaries of the employees of [a] university are not ‘intimate details’ of a ‘highly personal’ nature.” *Penokie v Mich Tech Univ*, 93 Mich App 650, 663; 287 NW2d 304 (1979). “The precise manner of expenditure of public funds is simply not a private fact.” *Id.* And even assuming that the amount of an employee’s bonus or overtime pay could be considered “highly personal,” an invasion of an individual’s privacy is “clearly unwarranted” only when the interest in disclosure reveals “little or nothing about a governmental agency’s conduct” or does not “further the stated public policy undergirding the Michigan FOIA.” *Mich Federation of Teachers*, 481 Mich at 682. Exposure of the University’s salary, bonus and overtime pay decisions allows the taxpayers to learn how the people’s money was spent, fulfilling the policy objectives of the FOIA. See *Penokie*, 93 Mich App at 664. The University’s reliance on MCL 15.243(1)(a) is unavailing.

Finally, the University argues that disclosure of “salary records” including overtime and bonuses would violate Section 6103(a)(2) of the Internal Revenue Code. That provision states:

(a). General rule. – Returns and return information shall be confidential, and except as authorized by this title –

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(2) no officer or employee of any State ...

Shall disclose any return or return information obtained by him in any manner. [26 USC §6103(a).]

Plaintiff is not seeking “return information.” See 26 USC §6103(b)(2)(A)(stating that “return information” relates to the information collected by the Secretary of the Treasury for tax purposes). This argument is without merit.

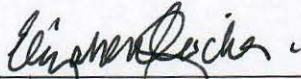
### III. CONCLUSION

IT IS HEREBY ORDERED that defendant’s motion for summary disposition is DENIED and summary disposition is GRANTED in favor of plaintiff. Defendant is ordered to provide plaintiff with all salary records of the employees of the University of Michigan Office of Institutional Equity for the 2019 and 2020 calendar years, including overtime pay, bonuses, and all other forms of monetary compensation.

IT IS HEREBY FURTHER ORDERED that plaintiff, having prevailed in full in this action to compel disclosure under FOIA and having requested fees in its complaint and briefing, is entitled to a mandatory award of reasonable attorney fees, costs, and disbursements under MCL 15.240(6). Plaintiff shall submit a bill of costs and reasonable fees within 21 days of the issuance of this opinion and order. Defendant shall have 21 days from service of the same to file any objections.

This is not a final order and it does not close the case.

Dated: July 12, 2021



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Elizabeth Gleicher, Judge  
Court of Claims