

STATE OF MICHIGAN	SUMMONS	CASE NO.
JUDICIAL DISTRICT Court of Claims JUDICIAL CIRCUIT COUNTY PROBATE		22-000055-MZ
		Thomas C. Cameron

Court address
Hall of Justice 925. W. Ottawa St., PO Box 30185, Lansing, MI 48909

Court telephone no.
(517) 373-2252

Plaintiff's name(s), address(es), and telephone no(s). Mackinac Center for Public Policy
Plaintiff's attorney, bar no., address, and telephone no. Derk A. Wilcox (P66177) Mackinac Center Legal Foundation 140 West Main Street Midland, MI 48640 (989) 631-0900

v

Defendant's name(s), address(es), and telephone no(s). Michigan Economic Development Corporation 300 North Washington Square Lansing, MI 48913 (888) 522-0103

Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (form MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case

- There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.
- There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. I have separately filed a completed confidential case inventory (form MC 21) listing those cases.
- It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

- This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.
- MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).
- There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in this court, _____ Court, where it was given case number _____ and assigned to Judge _____.
- The action remains is no longer pending.

Summons section completed by court clerk.

SUMMONS



NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date April 26, 2022	Expiration date* July 26, 2022	Court clerk <i>Jerome W. Zimmer Jr.</i>
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*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

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PROOF OF SERVICE

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE

<input type="checkbox"/> OFFICER CERTIFICATE I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)	OR	<input type="checkbox"/> AFFIDAVIT OF PROCESS SERVER Being first duly sworn, I state that I am a legally competent adult, and I am not a party or an officer of a corporate party (MCR 2.103[A]), and that: (notarization required)
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- I served personally a copy of the summons and complaint,
 I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint,

together with _____
List all documents served with the summons and complaint

_____ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

- I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

I declare under the penalties of perjury that this proof of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee	
\$		\$	
Incorrect address fee	Miles traveled	Fee	TOTAL FEE
\$		\$	\$

 Signature

 Name (type or print)

 Title

Subscribed and sworn to before me on _____, _____ County, Michigan.
Date

My commission expires: _____ Signature: _____
Date Deputy court clerk/Notary public

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with _____
Attachments

_____ on _____
Day, date, time

_____ on behalf of _____
 Signature

RECEIVED by MCCOC 4/26/2022 2:07:40 PM

STATE OF MICHIGAN
COURT OF CLAIMS

THE MACKINAC CENTER FOR PUBLIC
POLICY,

Plaintiff,

v.

THE MICHIGAN ECONOMIC
DEVELOPMENT CORPORATION, a
government entity.

Defendant.

Case No.: 22- 000055-MZ -~~CZ~~

Hon. Thomas C. Cameron

Complaint

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

COMPLAINT

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

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

INTRODUCTION

The plaintiff, the Mackinac Center for Public Policy (the “Mackinac Center”) is a nonprofit organization dedicated to improving the quality of life for all Michigan residents by promoting sound solutions to state and local policy questions. To that end, the Mackinac Center routinely uses the Freedom of Information Act (“FOIA”) to obtain relevant documents from state and local governments.

This case deals with a matter of significant public interest, namely, the ability of Michigan’s citizens to accurately evaluate the Michigan Economic Development Corporation’s (MEDC’s) claims regarding the return on investment (ROI) for the well-known “Pure Michigan” tourism program. Although MEDC has made claims that the Pure Michigan program is a highly successful investment, it has nevertheless refused to produce the information needed for the public to more precisely evaluate these claims. Given the importance of citizens’ ability to understanding how the State is spending their tax dollars, such a lack of transparency is both unacceptable and illegal.

On November 6, 2020, Plaintiff, through its employee Michael LaFaive, submitted a FOIA request to the MEDC for the release of information relating to the Pure Michigan program. One of the items specifically sought by this request included “the input assumption worksheets¹ used by Tourism Economics and any related ‘direct, indirect, and induced impacts’ output produced directly from its modeling effort for the MEDC/MSF Strategic Marketing and Research Insights report ‘2019 Michigan Ad effectiveness Study’ and/or its ‘Economic Impact of Advertising-Generated Tourism in Michigan – 2018 report.’” The Mackinac Center later clarified portions of its request on November 19, 2020.

¹ Different inputs that provide a range of possible values and their associated output.

MEDC responded on February 1, 2021 by partially granting the Center's request. This response was legally deficient, as it cited MCL 15.243(1)(a) as an applicable exemption, but without specifying the information to which that exemption allegedly applied. Further, MEDC's response acknowledged that certain records did not exist, but without describing the portion of the Mackinac Center's request for which no responsive documents could be located.

In response, the Mackinac Center challenged MEDC's determination on February 23, 2021. The Center's communication stated, in part:

As with the aforementioned bullet points, I received no explanations for why I did not receive requested records relating to the following portions of my request: ... The input assumption worksheets used by Tourism Economics and any related "direct, indirect and induced impacts" output produced directly from its modeling effort for the MEDC/MSF Strategic Marketing and Research Insights report "2019 Michigan Ad Effectiveness Study," and/or its "Economic Impact of Advertising-Generated Tourism in Michigan – 2018" report.

With respect to the bullet immediately above, I also added: just "the input worksheets and related output. However, if Tourism Economics has not provided you with the above referenced worksheets/direct output, I would like to politely request that the MEDC ask Tourism Economics for these items for the state and Mackinac Center's behalf.

After additional correspondence with the MEDC, the Mackinac Center followed up with the MEDC once again, on March 31, 2021. MEDC acknowledged this correspondence on April 8, 2021, but still failed to produce the requested records. The Center again attempted to obtain input assumption worksheets on April 21, 2021, but to no avail. On May 28, 2021, the MEDC directed the Mackinac Center to Christopher Pike of Oxford Economics to obtain the requested records.

Mr. Pike and the Mackinac Center exchanged numerous correspondence in June and July of 2021, with the Center again requesting those records on August 3, 2021. The Center received no response, so it repeated its request on August 20, 2021. Again, the requested records were not produced. This request was repeated on January 18, 2022, once again unsuccessfully.

In light of the MEDCs failure to produce the records requested by the Center, Plaintiff brings this action against the MEDC. Neither the MEDC's refusal to release the requested records, nor its failure to request those records from Tourism Economics and other contractors, comport with Michigan law.

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff, the Mackinac Center for Public Policy (the "Mackinac Center"), is a Michigan nonprofit corporation headquartered in Midland County, Michigan.
2. Defendant, the Michigan Economic Development Corporation, is a government entity headquartered at 300 North Washington Square, Lansing, Ingham County, Michigan 48913.
3. Venue is proper pursuant to MCL 15.240(1)(b).
4. Pursuant to MCL 15.240(5), this action should be "assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way."
5. Pursuant to MCL 15.240(1)(b) and MCL 600.6419(1)(a), the court of claims has jurisdiction over this claim.

FACTUAL BACKGROUND

6. The Plaintiff hereby incorporates the preceding paragraphs as if fully restated herein.
7. On November 6, 2020, the Mackinac Center made a request for a number of records, including "The input assumption worksheets used by Tourism Economics² and any related 'direct, indirect and induced impacts' output produced directly from its modeling effort for the MEDC/MSF Strategic Marketing and Research Insights report '2019 Michigan Ad Effectiveness Study' and/or its 'Economic Impact of Advertising-Generated Tourism in Michigan – 2018' report." **Exhibit A, November 6, 2020 FOIA Request.**

² A third-party vendor not a party to this action.

8. After correspondence with MEDC, portions of the Center's request were clarified on November 19, 2020. **Exhibit B, November 19, 2020 Clarified Request.**
9. MEDC responded on February 1, 2021 by granting the Center's request in part. **Exhibit C, February 1, 2021 MEDC Response.**
10. Although MEDC's response cites MCL 15.243(1)(a) as an exemption, no information was provided as to what specific information fell within that exemption. *Id.* Similarly, the response stated that certain records were withheld on the basis that no documents existed, but without specifying which portion of the Center's request lacked responsive records. *Id.*
11. The Center challenged MEDC's response on the basis that the Corporation had failed to provide a legal and factual basis for withholding records. **Exhibit D, February 23, 2021 Mackinac Center Rebuttal.** In that response, the Center noted:

As with the aforementioned bullet points, I received no explanation for why I did not receive requested records relating to the following portions of my request: ...

The input assumption worksheets used by Tourism Economics and any related "direct, indirect and induced impacts" output produced directly from its modeling effort for the MEDC/MSF Strategic Marketing and Research Insights report "2019 Michigan Ad Effectiveness Study," and/or its "Economic Impact of Advertising-Generated Tourism in Michigan – 2018" report.

With respect to the bullet immediately above, I also added: just "the input worksheets and related output. However, if Tourism Economics has not provided you with the above referenced worksheets/direct output, I would like to politely request that the MEDC ask Tourism Economics for these items for the state and Mackinac Center's behalf."

12. After further correspondence with MEDC, the Center followed up again on March 31, 2021. **Exhibit E, March 31, 2021 Follow Up.** In this correspondence, the Center again noted that MEDC had failed to address the portion of the Center's request seeking input assumption worksheets. *Id.*

13. MEDC acknowledged this correspondence on April 8, 2021, but did not produce the requested records. **Exhibit F, April 8, 2021 Correspondence.**
14. The Mackinac Center again attempted to obtain the requested input assumptions on April 21, 2021, but did not receive a response. **Exhibit G, April 21, 2021 Correspondence.**
15. On May 28, 2021, the MEDC directed the Mackinac Center to Chris Pike of Oxford Economics to obtain the requested records. **Exhibit H, May 28, 2021 Correspondence.**
16. The Mackinac Center and Chris Pike exchanged a number of e-mails in June and July of 2021, but input assumption worksheets were not produced. On August 3, 2021, the Center again requested input assumption worksheets. **Exhibit I, August 3, 2021 Request.**
17. The Center did not receive a response, and reiterated its request on August 20, 2021. **Exhibit J, August 20, 2021 Follow Up.** The Center, again, did not receive the requested records.
18. A subsequent request on January 18, 2022 also did not result in the production of input assumption worksheets. **Exhibit K, January 18, 2022 Follow Up.**
19. On March 10, 2022, the Mackinac Center sent MEDC a demand letter for the production of records. **Exhibit L, March 10, 2022 Demand.** That demand went unanswered.
20. It has now been 536 days since the Mackinac Center made its initial request for input assumption worksheets and output produced from modeling efforts. Responsive records have not been produced, despite the Center's repeated attempts. In addition, no adequate legal explanation has been provided for why these records cannot be produced.

COUNT I: VIOLATIONS OF THE FREEDOM OF INFORMATION ACT

A. The MEDC's Failure to Specifically Respond to Plaintiff's Request Violates the Freedom of Information Act

21. The Plaintiff hereby incorporates the preceding paragraphs as if fully restated herein.
22. MCL 15.231(2) states:

It is the public policy of this state that all persons, except those persons incarcerated in state or local correctional facilities, are entitled to fully and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with this act. The people shall be informed so that they may participate in the democratic process.

23. The public body has the burden of proof in applying an exemption. MCL 15.235(5)(a)-(c); *MLive Media Group v City of Grand Rapids*, 321 Mich App 263, 271 (2017).
24. The FOIA is a pro-disclosure statute, and as a result, “exemptions to disclosure are to be narrowly construed.” *Swickard v Wayne County Medical Examiner*, 438 Mich 536, 544 (1991).
25. Here, the MEDC’s response alleged that portions of records had been redacted pursuant to MCL 15.243(1)(a), which exempts personal information the disclosure of which would constitute a clearly unwarranted invasion of privacy. **Exhibit C**.
26. In claiming that exemption, however, no explanation was offered as to what records, or portion of records, were exempt under that section. *Id*.
27. MCL 15.235 states “[a] written notice denying a request for a public record in whole or in part is a public body’s final determination to deny the request or a portion of that request. The written notice must contain...a description of a public record or information that is separated or deleted under Section 14, if a separation or deletion is made.”
28. MCL 15.244 requires a public body separating exempt and non-exempt material to “generally describe the material exempted unless that description would reveal the contents of the exempt information and thus defeat the purpose of the exemption.”
29. It remains unclear whether the MEDC is withholding the input assumptions and impact outputs requested by the Plaintiff under MCL 15.243(1)(a), another exemption, or no exemption at all. Plaintiff’s repeated attempts to obtain an answer to this question without relying on this Court have all failed.

30. Here, MEDC did not describe the information separated or deleted, thereby violating MCL 15.235 and MCL 15.244.

B. The MEDC's Failure to Request Records from Third-Party Contractors is an Independent Violation of FOIA.

31. The Plaintiff hereby incorporates the preceding paragraphs as if fully restated herein.

32. The MEDC is a public body created by the execution of an interlocal agreement between the Michigan Strategic Fund and various public entities, and is therefore a public body for purposes of MCL 15.232(h).

33. Given the MEDC's failure to specifically address Plaintiff's request for input assumptions and impact outputs, it is unclear whether the Corporation itself is in possession of that information. Upon information and belief, however, that information is either in the MEDC's direct possession, or in the possession of non-parties Tourism Economics, Oxford Economics, or another third-party contractor working at MEDC's direction.

34. MCL 15.232 defines a public record as "a writing prepared, owned, used, in the possession of, or retained by the public body in the performance of an official function, from the time it is created.

35. Thus, to the extent the MEDC used, or even merely owned, the input assumptions and impact outputs requested by the Mackinac Center, those records would be disclosable as public records under MCL 15.232(i).

36. If, however, those records were solely used, owned, possessed or retained by Tourism Economics or another third-party contractor in connection with calculations later provided to MEDC for the performance of one of MEDC's official functions, they would nevertheless still be public records subject to disclosure.

37. The input assumptions and impact outputs prepared for MEDC were used, prepared, or retained in the performance of an official MEDC function, namely, to study the alleged return on investment of the Pure Michigan program.
38. To the extent that a third-party contractor working for the MEDC possesses public records of the MEDC that may be responsive to Plaintiff's request, it is the MEDC's duty to locate and produce those records.
39. In preparing materials for MEDC's use, any third-party contractor was acting as MEDC's agent. Given this, a third-party contractor, even if not a public body itself, nevertheless stands in the shoes of the public body for purposes of FOIA. See, e.g. *In re Capuzzi Estate*, 470 Mich 399, 402 (2004) (holding "the agent stands in the shoes of the principle.").
40. Thus, even records prepared by a private party on behalf of MEDC for use in an official public function are therefore disclosable under FOIA.
41. The MEDC's failure to produce the records requested by Plaintiff therefore violated Plaintiff's rights as established by MCL 15.233(1).
42. Furthermore, to the extent that neither the MEDC, nor any of its third-party contractors are in possession of the information requested by the Center, the MEDC's failure to indicate as such nevertheless represents a violation of the FOIA as outlined in Count I(A), *supra*.

C. Statutory Damages

43. The Plaintiff hereby incorporates the preceding paragraphs as if fully restated herein.
44. In light of the above, the MEDC's improper response to Plaintiff's request is arbitrary and capricious under MCL 15.240(7), thereby subjecting the MEDC to a civil fine of \$1,000.00 payable to the general treasury and a separate \$1,000.00 to Plaintiff.

45. The MEDC's inappropriate application of the aforementioned exemptions constitutes a willful and intentional failure to comply under MCL 15.240b, thereby subjecting it to a civil fine of \$2,500.00 to \$7,500.00 payable to the state treasury.

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

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

RELIEF REQUESTED

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

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

Dated: April 26, 2022


Jarrett Skorup

Subscribed and sworn to by Jarrett Skorup before me on the twenty-sixth day of April, 2022.

Signature 

Notary Public, State of Michigan

County of Ingham

My Commission Expires: 07/29/2025

Acting in the County of Midland

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

MACKINAC CENTER
LEGAL FOUNDATION

April 22, 2022

Clerk of the Court of Claims
Hall of Justice
925 W. Ottawa St.
Lansing, MI 48909

RE: Written Claim per MCL 600.6431 against the Michigan Economic Development Corporation.

Dear Clerk:

This verified letter is to fulfill the requirements of MCL 600.6431(1) as a written notice against the Michigan Economic Development Corporation by the Mackinac Center, by and through its employee, Michael LaFaive. The nature of the claim is for delays and denials of a Freedom of Information Act ("FOIA") request which was initially filed by the Mackinac Center on November 6, 2020.

The Mackinac Center seeks complete fulfillment of this request, along with penalties, attorney fees, and other costs.

Sincerely,

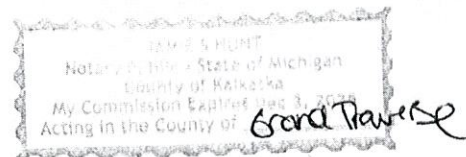
Michael LaFaive

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

Dated: April 22, 2022

Michael LaFaive
Michael LaFaive

Subscribed and sworn to by Michael LaFaive before me on the 22nd
day of April, 2022.
Signature [Signature]
Notary Public, State of Michigan
County of Kalamazoo
My Commission Expires: 12-03-2025
Acting in the County of Grand Traverse



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STATE OF MICHIGAN
COURT OF CLAIMS

Bundle Cover Sheet

Lower Court:	L Ct No.:	COC No.: TEMP-8YO6EEL4
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Case Title:
MACKINAC CENTER FOR PUBLIC POLICY v. MICHIGAN ECONOMIC DEVELOPM

Priority: NONE	Filing Option: File Only
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Filer Information

Filer
Derk Wilcox
140 West Main Street
Midland, MI 48640

Attorney
Derk Wilcox, 66177(MI)
140 West Main Street
Midland, MI 48640

wilcox@mackinac.org

wilcox@mackinac.org

Filing Summary

Filing Type	Filing Name	Fee
Summons and Complaint	2022.04.26 MEDC Complaint (verified)	\$150.00
	eFiling System Fee:	\$25.00
	NON-REFUNDABLE Automated Payment Service Fee:	\$5.25
	Total:	\$180.25

Alternate Payment Reason: None

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The document(s) listed above were electronically filed with the Michigan Court of Claims.

TEMP-8YO6EEL4-23473719

TrueFiling Case Initiation - Summons and Complaint

Case Title:

MACKINAC CENTER FOR PUBLIC POLICY

Case Type:

MZ

Case Description:

Other Damage Suits: All other claims not otherwise coded

Party 1 (Plaintiff)

Business: Mackinac Center for Public Policy **Phone:** (989) 631-0900

Address: 140 West Main Street

City: Midland **State:** Michigan **Zip:** 48640

Attorney(s) for Party 1

Name: Derk Wilcox **Bar Number:** P66177 **(Lead Counsel)**

Party 2 (Defendant)

Business: Michigan Economic Development Corporatio **Phone:** (888) 522-0103

Address: 300 North Washington Square

City: Lansing **State:** Michigan **Zip:** 48913

Party is Pro Se

STATE OF MICHIGAN
COURT OF CLAIMS

Bundle Cover Sheet

Lower Court:	L Ct No.:	COC No.: 22-000055-MZ
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Case Title:
MACKINAC CENTER FOR PUBLIC POLICY V. MICHIGAN ECONOMIC DEVELOPME

Priority: NONE	Filing Option: File Only
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Filer Information

Filer
Derk Wilcox
140 West Main Street
Midland, MI 48640

Attorney
Derk Wilcox, 66177(MI)
140 West Main Street
Midland, MI 48640

wilcox@mackinac.org

wilcox@mackinac.org

Filing Summary

Filing Type	Filing Name	Fee
Other	MC 01, Summons	\$0.00
Total:		\$0.00

Alternate Payment Reason: None

The document(s) listed above were electronically filed with the Michigan Court of Claims.

22-000055-MZ-23484341

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