

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

PRISON LEGAL NEWS, a project
of the Human Rights Defense Center,
a Washington non-profit corporation,

Plaintiff,

-v-

Case No.

MICHIGAN DEPARTMENT OF
CORRECTIONS,

Defendant.

_____ /

COMPLAINT FOR ACCESS TO PUBLIC RECORDS

I. Introduction

1. The Plaintiff filed a request with the Defendant pursuant to the Michigan Freedom of Information Act, MCLA 15.231 *et seq.*, for certain records and requested a waiver of the costs of producing these public records pursuant to MCLA 15.234(1). In approving in part this request, the Defendant failed to address the Plaintiff's request for a waiver of those costs connected to the request since "PLN is a non-profit media entity reporting on criminal justice news and issues in its national monthly publication and on its website."

II. Parties

2. Plaintiff Prison Legal News (PLN) is a project of the Human Rights Defense Center, a Washington State 501(c)(3) non-profit corporation. Plaintiff is headquartered in the State of Washington, located at 2400 NW 80th Street PMB #148, Seattle, Washington 98117. PLN publishes a monthly journal entitled "Prison Legal News," which reports on criminal justice news and issues. PLN also publishes, sells and distributes books on a variety of

criminal justice, human rights and self-help issues. PLN further operates a website (www.prisonlegalnews.org) containing an extensive database of case law, verdicts, settlements, commentary, and other material related to these topics.

3. Defendant Michigan Department of Corrections (MDOC) is a state agency that is required to respond to requests for public records according to the provisions of MCLA 15.231 *et seq.*

III. Jurisdiction

4. Jurisdiction is proper in this Court pursuant to MCLA 15.240.

IV. Factual Support of the Claims

5. PLN is a legal journal that reports news and litigation concerning detention facilities.
6. PLN has published monthly since 1990 and has approximately 7,000 subscribers in all 50 states and internationally. PLN's subscribers include lawyers, journalists, judges, courts, public libraries and universities. PLN's estimated actual readership is approximately 80,000. Approximately eighty (80) percent of PLN subscribers are state and federal prisoners. PLN also maintains a website that has received more than 100,000 visitors a month.
7. PLN will contribute to the public interest and understanding of Michigan's prison operations and activities by analyzing and publishing the information obtained through this FOIA request in its print journal and on its website. Specifically, PLN will analyze how Michigan spends public tax dollars, will publicize facilities in which litigation has identified problems, and will test how well Michigan programs address inmate concerns.

8. On May 29, 2009, PLN Editor Paul Wright submitted on behalf of Plaintiff a written request to the FOIA Coordinator of the MDOC, see attached Exhibit 1, letter dated May 29, 2009.
9. In Exhibit 1, Plaintiff specifically requested a “waiver of all fees associated with this request,” and cited to MCLA 15.234(1). Plaintiff also explained to Defendant why it was entitled to a waiver of these fees and provided a citation to a case where a request for similar documents and a fees waiver had been granted.

I am also requesting a waiver of all fees associated with this request. The FOIA provides for fee waivers for both searches and copies where the "public body determines that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public record can be considered as primarily benefiting the general public." MCL § 15.234(1). PLN is a non-profit media entity reporting on criminal justice news and issues in its national monthly publication and on its website. The information being sought will further public understanding of MDOC operations. I note that the United States District Court for the District of Columbia determined that the same type of documents PLN sought from the Bureau of Prisons under the federal Freedom of Information Act were in the public interest and granted PLN a fee waiver. *See Prison Legal News v. Lappin*, 436 F.Supp.2d 17 (D.D.C. 2006). PLN should likewise receive a fee waiver from the MDOC.

Exhibit 1 at p. 1.

10. On June 4, 2009, Sergio Cacciani, FOIA Coordinator for Defendant, sent Mr. Wright a letter stating that Plaintiff’s request had been granted in part and denied in part. See attached Exhibit 2, letter dated June 4, 2009. The partial denial related to another set of documents that Plaintiff had requested and did not relate to the request for waiver of fees.
11. Instead of informing Plaintiff whether its fees waiver request was denied, Mr. Cacciani informed Plaintiff of the estimated costs to have the approved request produced and stated that once a check for one-half of the estimated costs was provided, the requested documents would be produced. *Id.* at p. 2.

12. A “Response to Request for Public Records-FOIA” was generated by Mr. Cacciani on June 5, 2009, see attached Exhibit 3, two pages, which also did not address the waiver of fees request.
13. Michigan FOIA provides that a public body may reduce or waive the fees for producing requested documents if the agency determines that this would “primarily benefit the public interest because searching for or furnishing copies of the public record can be considered as primarily benefiting the general public.” MCLCA 15.234(1). Defendant never made this determination as required by statute.
14. On July 17, 2009, General Counsel for HRDC wrote a letter to Mr. Cacciani. See attached Exhibit 4. In this letter, Defendant was informed that a determination had not been made as to the request for waiver of fees for production of the documents requested by the Plaintiff. As of the filing of this complaint, no response has been provided.
15. In this matter, Defendant’s refusal to address the waiver of fees request amounts to the failure to exercise the statutory discretion granted by MCLA 15.234(1). Defendant was required by statute to exercise its discretion and to determine whether Plaintiff met the statutory criteria for the granting of its waiver of fees request.
16. If the Defendant denies a waiver of fees request, it must provide a factual basis for such denial which would allow a court to determine whether the Defendant has or has not abused its discretionary authority. In this matter, Defendant has failed to provide any factual basis for its denial of the waiver of fees request submitted by the Plaintiff so that a court can determine whether its discretion was even exercised.
17. Pursuant to MCLA 15.235(1), Defendant was required to inform the Plaintiff whether its waiver of fees request was approved or denied and, if denied, the reasons why it had

determined that Plaintiff's waiver request would not "primarily benefit the public interest" Defendant failed to inform Plaintiff of the basis for its denial of Plaintiff's waiver of fees request.

18. Under the state FOIA, the public has a broad right to inspect government documents, and the general policy promoted is one of "full disclosure." ; MCLCA 15.231(2). This right to review documents promotes the public interest in good government. A public body's denial of a waiver of fees request pursuant to MCLA 15.234(1) should be reviewed with this laudable goal in mind, and such denials should be reversed whenever the public body's discretion is not reasonably exercised in a manner consistent with the overall purpose of Michigan's .

V. Relief

- a. Accept jurisdiction of this lawsuit.
- b. Declare that the Michigan FOIA was violated when Defendant failed to exercise its discretion and inform Plaintiff whether or not its waiver of fees request had been denied.
- c. Declare that the Michigan FOIA was violated when Defendant failed to provide a factual basis showing it had exercised its statutory discretion that Plaintiff's waiver of fees request would not "primarily benefit the public interest...."
- d. Find that Plaintiff is entitled to a waiver of fees since production of the requested documents would "primarily benefit the public interest", MCL 15.234(1).
- e. Order that the Defendant provides the requested record in electronic format as contained in the original request.
- f. Find that Plaintiff is entitled to an award of \$500 in punitive damages according to MCLA 15.240(7).

- g. Award attorney's fees and costs according to MCLA 15. 240(6).
- h. Grant such further relief as the Court may find just and proper.

DATED this _____ day of August, 2009.

Respectfully submitted,

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