TO: Members of the Troy City Council
FROM: Lori Grigg Bluhm, City Attorney
DATE: September 25, 2007
SUBJECT: Mario's of Troy v. City of Troy

Attorney William S. Stern has been hired by several of the businesses that were impacted by the June 28, 2007 gas main break that occurred at the John R. and Maple Road intersection. These businesses include Mario's of Troy, Inc., Bottle & Cork Wine Shop, Inc., Diya's Inc., and Clark Gas Station. Mr. Stern has assisted these businesses in evaluating a possible business interruption lawsuit against the party or parties who are responsible for the gas main break. As you recall, AT & T hit the gas main during the installation of its telecommunications equipment in the City's Right of Way. The gas main was staked by SMP, an independent contractor for Miss DIG. There is some discrepancy between the identified gas main location in the field and the gas main location, as found on the records from Consumers Power.

In the investigation of this matter, attorney Stern filed a Freedom of Information Act (FOIA) request with the Troy Police Department. Although he did receive a timely and complete response to his FOIA request, he still filed a FOIA lawsuit against the City, seeking additional information. A copy of the lawsuit is attached for your review.

Immediately after receiving the lawsuit, we immediately contacted Plaintiffs' attorney to resolve this matter without the necessity of the FOIA lawsuit. Once we discovered the documents that he was searching for, we were able to provide him with these additional public documents, which went beyond the scope of his FOIA request. In exchange, attorney Stern agreed to voluntarily dismiss the FOIA lawsuit against the City.

On September 12, 2007, the City received a copy of the Order of Dismissal, which is attached for your review. The case is now closed.

Please let me know if you have any questions about this matter.

To re-order this form, call (517) 337-1211
Target Information Management, Inc.
Approved, SCAO

Original - Court
1st copy - Defendant

07-084945-CZ

OAKLAND COUNTY JUDGE STEVEN N. ANDREWS
MARIOS OF TRO V TROY CITY

STATE OF MICHIGAN JUDICIAL DISTRICT 6th JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS AND COMPLAINT

Court address 1200 Telegraph, Pontiac, MI

Court telephone no.

Plaintiff name(s), address(es), and telephone no(s).	v	Defendant name(s), address(es), and telephone no(s).
Mario's of Troy, Inc., Bottle & Cork Wine Shop, Inc. Diya's, Inc., and Clark Gas Station		City of Troy
Plaintiff attorney, bar no., address, and telephone no. William S. Stern (P27395) 24750 Lahser Rd. Southfield, MI 48033 (248) 353-9400		

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 to file an answer with the court and serve a copy on the other party or to take other lawful action (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.

Issued	This summons expires	Court clerk
8-9-07	11-08-07	RUTH JOHNSON

*This summons is invalid unless served on or before its expiration date.

COMPLAINT ***Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.***

Family Division Cases

☐ There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.

☐ An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in _____ Court.

The action ☐ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.

General Civil Cases

☒ 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 _____ Court.

The action ☐ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.

VENUE

Plaintiff(s) residence (include city, township, or village)	Defendant(s) residence (include city, township, or village)
Place where action arose or business conducted: Troy	

August 7, 2007
Date

Signature of attorney/plaintiff

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you to fully participate in court proceedings, please contact the court immediately to make arrangements.

07-084945-CZ
OAKLAND COUNTY JUDGE STEVEN N. ANDREWS
MARIOS OF TRO V TROY CITY

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

MARIO'S OF TROY, INC.,
BOTTLE & CORK WINE SHOP, INC.,
DIYA'S, INC., CLARK GAS STATION,

'07 NOV -9 A9:45

Plaintiffs

Case No.
Hon.

-vs-

CITY OF TROY,

Defendant.
_____/

COMPLAINT FOR RELEASE OF RECORDS UNDER FREEDOM OF INFORMATION ACT

NOW COME the Plaintiffs, by and through their attorney, WILLIAM S. STERN, and for their causes of action against the Defendant, states:

1. The Plaintiffs are businesses located in the City of Troy, Michigan.

2. The Defendant is a municipal corporation existing in Oakland County, Michigan.

3. This matter is brought under the Freedom of Information Act being incorporated under Michigan Compiled Laws MCL 15.231 et seq.

4. A gas leak occurred in the vicinity of the Plaintiffs' business establishments on or about June 28, 2007.

5. The gas leak forced the closure of the businesses for one or more days causing the businesses to lose income for that period of time.

6. It was the understanding of the Plaintiffs that the gas leak occurred when digging took place that hit a gas line.

7. The Plaintiffs desire to obtain public records to determine the responsible party for the gas leak.

8. On July 10, 2007, a formal request was made in writing under the Freedom of Information Act to obtain a copy of the police report so that the Plaintiffs could determine who was responsible for hitting the gas line.

9. The City of Troy, in writing, provided the Plaintiffs with a perfunctory report omitting from the report any indication as to the responsible party and stating as a reason for its refusal to provide the information that the information was of a "personal nature where the public disclosure of the information would constitute a clearly unwarranted invasion of the individual's privacy". The Plaintiffs cannot imagine any right of privacy that may exist under these circumstances.

10. It appears to the Plaintiffs that the City of Troy is engaging in an obstruction of information in order to protect the party responsible for the gas leak.

11. MCL 15.240(1)(b) allows the Plaintiffs to commence this action in the Circuit Court to compel the public bodies disclosure of the public records requested.

12. Furthermore, the Freedom of Information Act allows and requires an award of reasonable attorney's fees, costs and disbursements in a situation where the public body fails to give the information that it should supply.

13. The Plaintiffs are requesting an award of attorney's fees, costs and other disbursements due to the failure of the City of Troy to provide the information that should be clearly public knowledge.

WHEREFORE, the Plaintiffs request that this Honorable Court enter an Order requiring the City of Troy to provide the complete police report and investigation concerning the gas leak that took place on or about June 28, 2007 in the vicinity of Maple and John R in Troy, Michigan (15 Mile and John R) and to enter an award of costs, attorney's fees and other disbursements pursuant to the statute.

BY: _____
WILLIAM S. STERN (P27396)
Attorney for Plaintiffs
24750 Lahser
Southfield, MI 48033
(248) 353-9400

Dated: August 7, 2007

Approved, SCAO

RECEIVED FOR FILING
OAKLAND COUNTY CLERK
2007 AUG 31 P 2:01
BY: DEPUTY COUNTY CLERK

Original - Court
1st copy - Applicant
07-084945-CZ

JUDGE STEVEN N. ANDREWS
MARIOS OF TRO V TROY CITY

STATE OF MICHIGAN
6th JUDICIAL DISTRICT
JUDICIAL CIRCUIT
COUNTY PROBATE

DISMISSAL

Court address
1200 N. Telegraph Rd., Pontiac, MI

Court telephone no.

Plaintiff name(s) and address(es)		Defendant name(s) and address(es)
Mario's of Troy, Inc. Bottle & Cork Wine Shop, Inc. Diya's, Inc., and Clark Gas Station	v	City of Troy 500 W. Big Beaver Rd. Troy, MI 48084
Plaintiff's attorney, bar no., address, and telephone no. William S. Stern (P27396) 24750 Lasher Rd. Southfield, MI 480033 (248)353-9400		Defendant's attorney, bar no., address, and telephone no. Lori Grigg Bluhm (P46908) 500 W. Big Beaver Rd. Troy, MI 48084 (248) 524-3320

☑ **NOTICE OF DISMISSAL BY PLAINTIFF**

1. Plaintiff/Attorney for plaintiff files this notice of dismissal of this case ☑ with ☐ without prejudice as to:
   ☑ all defendants.
   ☐ the following defendant(s): _____
2. I certify, under penalty of contempt, that:
   a. This notice is the first dismissal filed by the plaintiff based upon or including the same claim against the defendant.
   b. All costs of filing and service have been paid.
   c. **No answer or motion has been served upon the plaintiff by the defendant** as of the date of this notice.
   d. A copy of this notice has been provided to the appearing defendant/attorney by ☑ mail ☐ personal service.

8/23/07
Date

Plaintiff/Attorney signature

☐ **STIPULATION TO DISMISS**

I stipulate to the dismissal of this case ☐ with ☐ without prejudice as to:
☐ all parties.
☐ the following parties: _____

Date

Plaintiff/Attorney signature

Date

Defendant/Attorney signature

☑ **ORDER TO DISMISS**

IT IS ORDERED this case is dismissed ☑ with ☐ without prejudice. Conditions, if any: _____

AUG 29 2007
Date

STEVEN N. ANDREWS
Judge

Bar no.

A TRUE COPY
RUTH JOHNSON
Oakland County Clerk - Register of Deeds
By: _____

MC 09 (6/97) **DISMISSAL**

MCR 2.504