TO: Members of Troy City Council
FROM: Lori Grigg Bluhm, City Attorney LGB
Julie Quinlan Dufrane, Assistant City Attorney JQD
DATE: May 8, 2013
SUBJECT: Daniel Katayama v. City of Troy

Enclosed please find a copy of a lawsuit that was recently filed against the City of Troy by Daniel Katayama. This lawsuit has been assigned to the Honorable Judge Lita Popke of the Wayne County Circuit Court.

Mr. Katayama claims that the city violated the Freedom of Information Act ("FOIA"), MCL 15.231, *et seq.* By way of background, Mr. Katayama was arrested by a Troy police officer on March 20, 2013 for his second drunk driving offense. On March 26, 2013, Mr. Katayama's criminal defense attorney filed a request, under the Freedom of Information Act, seeking certain documents and things, including the police report, search warrant, and audio and video recordings of Mr. Katayama's arrest. Two days later, the police department sent a letter to the attorney denying his request for information citing the fact that the matter was still under investigation. On April 4, 2013, Mr. Katayama's attorney filed this lawsuit, demanding $500 in damages, plus attorney fees and costs, and punitive damages. He claims that the documents he requested are not exempt under FOIA.

The City Attorney's Office will commence its defense of this litigation by filing an Answer to the Complaint on behalf of the City of. A Motion for Summary Disposition may also be filed, if it is warranted, in an effort to avoid costly and protracted discovery in this matter. A proposed resolution authorizing legal representation is provided for your consideration.

PROPOSED RESOLUTION:

RESOLVED, that the City Attorney is hereby authorized and directed to represent the City of Troy in any and all claims and damages in the matter of *Daniel K. Katayama v. City of Troy (Oakland County Circuit Court Case No. 13-004515-CZ)*. Furthermore, the City Attorney is authorized to pay necessary costs and expenses and to retain any necessary expert witnesses to adequately represent the City.

STATE OF MICHIGAN THIRD JUDICIAL CIRCUIT WAYNE COUNTY	SUMMONS AND RETURN OF SERVICE	CASE NO. 13-004515-CZ

2 Woodward Ave., Detroit MI 48226

Court Telephone No. 313-224-2953

THIS CASE IS ASSIGNED TO JUDGE Lita Masini Popke **Bar Number: 35686**

Plaintiff		Defendant
KATAYAMA, DANIEL K.	v	CITY OF TROY
Plaintiff's Attorney William J. Maze, P-56406 38777 6 Mile Rd Ste 110 Livonia, MI 48152-2660		**Defendant's Attorney**

CASE FILING FEE	JURY FEE
[X] Case Filing Fee - $150.00	[ ] Jury Fee - $85.00

ISSUED	THIS SUMMONS EXPIRES	DEPUTY COUNTY CLERK
4/ 4/2013	7/ 4/2013	Deborah Bynum

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

CATHY M. GARRETT - WAYNE COUNTY CLERK

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 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.

X 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.

__ 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 circuit court involving the family or family members of the parties has been previously filed in _____ Court.

The docket number and assigned judge of the civil/domestic relations action are:

Docket No.	Judge	Bar No.

The action [ ] remains [ ] is no longer pending.

I declare that the complaint information above and attached is true to the best of my information, knowledge, and belief.

April 4, 2013

Date

/s/ William J. Maze

Signature of attorney/plaintiff

COMPLAINT IS STATED ON ATTACHED PAGES. EXHIBITS ARE ATTACHED IF REQUIRED BY COURT RULE.

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.

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STATE OF MICHIGAN
IN THE WAYNE COUNTY CIRCUIT COURT

DANIEL K. KATAYAMA
Plaintiff,

Case No. 13-_____ CZ

vs.

CITY OF TROY
Defendant.

MAZE LEGAL GROUP, PC
William J. Maze (P56406)
Attorneys for Plaintiff
38777 Six Mile Road, Ste 110
Livonia, Michigan 48152
Tel: (734) 591-0100
Cell: (734) 740-1900
Fax: (734) 591-0101

COMPLAINT

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

NOW COMES the Plaintiff, DANIEL K. KATAYAMA, by and through his attorneys, the MAZE LEGAL GROUP, PC, by William Maze, and for the Complaint against Defendant, CITY OF TROY, states as follows:

1. Plaintiff, DANIEL K. KATAYAMA, is an Illinois resident with his principal place of business in Livonia, Michigan.

2. At all relevant times, Mr. Katayama was not serving a sentence of imprisonment in a state or county correctional facility in this state or any other state, or in a federal correctional facility.

3. Defendant, CITY OF TROY, is a public body of the State of Michigan.

4. Mr. Katayama seeks production of particular documents, public records and writings under

the Michigan Freedom of Information Act, Public Act 442 of 1976.

5. Jurisdiction is proper based upon the nature of the claims raised herein.

6. This Court has jurisdiction over this action pursuant to Public Act 442 of 1976, MCLA 15.231 et seq., commonly known as the Freedom of Information Act (herein the Act).

7. Venue is proper in this case based upon the statutory provisions contained in MCL 15.240(4).

8. Defendant is a public body under MCL 15.232(d).

9. It is the public policy of this State that all persons, except those persons incarcerated in state or local correctional facilities, 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***.

10. Mr. Katayama served a FOIA through his attorney on the City of Troy FOIA Coordinator and the City of Troy Police Department by fax on March 26, 2013, that requested access to certain documents pursuant to the Freedom of Information Act, attached hereto as Exhibit 1.

11. The Defendant received the request on the following business day per MCL 15.235(1).

12. The requested documents detailed in the attached FOIA are part of the "public record" under MCL 15.232(e) as they are "prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created."

13. The requested documents are writings as defined under MCL 15.232(h).

14. The requested documents are not exempt from disclosure under section 13 of the Act.

15. Mr. Katayama, pursuant to the Freedom of Information Act, is entitled to the release of all

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non-exempt records and writings requested within five (5) working days from the date of the request.

16. Defendant responded to the FOIA request on March 28, 2013, refusing to release the public records. See Exhibit 2.

17. Defendant claims that the public records are exempt from disclosure because, "This police report is an open, active investigation. As such, no information is releasable at this time. Any questions, please contact Detective Harrison at 248.524.3361."

18. The claimed exemption addresses only the police report, purporting to claim that the materials are exempt under an exemption that does not exist under MCL 15.243.

19. The FOIA denial fails to address any valid or legitimate reason for exempting the search warrant and affidavit, the in-car video and audio, the stationhouse video and audio, and the other recordings.

20. Upon receipt of the FOIA denial, a call was placed to Detective Harrison consistent with the directives contained in the correspondence without reply from Detective Harrison.

21. Historically, the Defendant has continuously and repeatedly attempted to thwart the Act by making frivolous claims that materials are exempt. See, for example, *Evening News Association v Troy*, 417 Mich 481 (1983), *Lawrence v City of Troy*, 2012 Mich App LEXIS 592 (Unpublished Feb. 14, 2012), *Seyler v City of Troy and City of Troy Police Dept.*, 2011 Mich App LEXIS 1955 (Unpublished November 8, 2011), *Lawrence v City of Troy*, 2009 Mich App LEXIS 1398 (Unpublished June 23, 2009). [Unpublished opinions attached.]

22. Defendant has repeatedly issued illegal generic, blanket denials that have been unlawful since it's first appellate case involving the City of Troy back in 1983.

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23. The claimed exemptions set forth by Defendant are not valid exemptions under MCL 15.243.

24. Defendant may be attempting to claim that the materials are exempt under MCL 15.243(1)(b)(i), which is identical to the failed attempt to employ generic denials in *Evening News Association v Troy*, supra.

25. An exemption under MCL 15.243(1)(b)(i) is based upon the following:

> (1) A public body may exempt from disclosure as a public record under this act any of the following:
>
> . . . .
>
> (b) Investigating records compiled for law enforcement purposes, but only to the extent that disclosure as a public record would do any of the following:
>
> (i) Interfere with law enforcement proceedings.

26. MCL 15.243(1)(b)(i) does not justify non-disclosure in the immediate case.

27. MCL 15.243(1)(b)(i) does not apply to in-car videos and audio, stationhouse video and audio, 911 recordings, and radio dispatch recordings because those records are not investigating records compiled for law enforcement purposes.

28. No legitimate claim could be raised by Defendant to suggest that releasing the police report, search warrant, or search warrant affidavit pertaining to Mr. Katayama could possibly interfere with law enforcement proceedings.

29. There is nothing secret contained in the records sought by Mr. Katayama.

30. There are no confidential informants mentioned or referenced in the records sought by Mr. Katayama.

31. There is no sensitive law enforcement techniques that would be revealed by the documents sought by Mr. Katayama.

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32. Nothing from the requested records could be used to compromise an ongoing law enforcement investigation.

33. Defendant has the burden of proving exemptions. *Swickard v Wayne County Medical Examiner* 438 Mich 536 (1991).

34. Defendant cannot prove that the materials sought in this case are exempt.

35. To the extent that any portion of the requested documents might be exempt, Defendant has made no effort to redact the exempt materials from the non-exempt, thus violating the Act.

36. Rather than separate exempt from non-exempt materials, Defendant has issued a generic, blanket denial. *Evening News Association v Troy*, supra.

37. The Defendant's generic, blanket denial is prohibited by the Act. *Id.*

38. No valid reason or exemption exists for failing to disclose the documents, public records and writings.

39. The police reports, videos, and audio recordings all contain highly relevant materials to show whether the public body's employee(s) was/were performing official duties properly on a given date and would be informative as to whether the department and/or its officers are properly performing its core function. It is arguable that government transparency through the FOIA regarding the misconduct of law enforcement officers would increase public confidence in law enforcement.

40. Mr. Katayama is entitled to the requested documents detailed in the FOIA directed at the Defendant.

41. Mr. Katayama is entitled to, and requests, damages pursuant to the Act.

42. Mr. Katayama is entitled to, and requests, costs and attorney fees incurred in this action

pursuant to the Act.

WHEREFORE, Plaintiff, DANIEL K. KATAYAMA, requests that this Court enter Judgment against Defendant, CITY OF TROY, ordering that:

A. The Defendant be compelled to provide Plaintiff with the requested information, and allow Plaintiff to inspect all nonexempt portions of the requested information;

B. The Defendant arbitrarily and capriciously violated the Freedom of Information Act, awarding Plaintiff $500.00 in punitive damages for Defendant's failure to comply with the Freedom of Information Act, plus attorney's fees, costs, and disbursements in this action as provided by law;

C. This matter be expedited as provided by law;

D. Such additional relief as may be deemed just and proper be granted to Plaintiff.

William J. Maze
Attorneys for Plaintiff
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(734) 591-0100

Dated: April 3, 2013

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