



TO: Mayor and Members of Troy City Council
FROM: Lori Grigg Bluhm, City Attorney
Susan M. Lancaster, Assistant City Attorney
DATE: October 13, 2008
SUBJECT: Frank Lawrence v. City of Troy

Enclosed please find a copy of a lawsuit filed by Frank Lawrence against the City of Troy. Mr. Lawrence is the brother of Thomas Lawrence, who was issued a civil infraction traffic citation on October 4, 2008 for "no proof of insurance" and "failure to change address on driver's license". Frank Lawrence filed a Freedom of Information Act request with the Troy Police Department asking for a number of items, including but not limited to: all video recordings, radio transmissions, records and the officer's disciplinary file (if any).

Thomas Lawrence has a pending civil infraction case in the 52-4 District Court. Under Michigan Court Rule 2.302 (A)(3), discovery is not permitted in civil infraction actions. Similarly, discovery in other cases in the 52-4 District Court is also limited. It is for this reason, and also since we believe that a prosecutor is entitled to at least the same information as a defendant, that the Troy Police Department routinely deny FOIA requests seeking to circumvent the Michigan Court Rule limiting discovery. In the Police Department's standard denial letter, the requesting party is referred to the prosecutor for the requested information. The prosecutor is then privy to the request, and also can submit any dispute over the right to the requested information to the District Court Judge. As with all FOIA denial letters, the standard denial/ referral to the prosecutor letter sets forth MCL 15.243(1)(d) as the basis for the claimed FOIA exemption, as well as the right to an appeal of the denial.

Instead of filing an appeal, Mr. Lawrence instead filed this lawsuit against the City. In his complaint, he erroneously juxtaposes the citation, and then claims that no such citation exists. He also claims that he is entitled to all of his requested information.

Although only MCL 15.243(1)(d) was set forth in the denial letter, there are several other applicable exemptions. For example, there is a specific FOIA exemption applicable to personnel records of police officers. This is due, in part, since police officers receive an inordinate amount of complaints, due to "dissatisfied customers."

Our office will assume defense of this lawsuit absent objection from City Council. Please let us know if we can provide additional information.



RECEIVED
CLERK

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

SEP 17 2008 9:19

FRANK LAWRENCE,

Plaintiff,

v.

CITY OF TROY,

Defendant.

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


Frank Lawrence

Frank Lawrence
941 Westview Road
Bloomfield Hills, MI 48304
(248) 722-2560

FREEDOM OF INFORMATION ACT COMPLAINT

NOW COMES Plaintiff, FRANK LAWRENCE, and for his complaint against Defendant CITY OF TROY, Plaintiff states:

PARTIES, JURISDICTION AND VENUE

1. This matter arises under the Michigan Freedom of Information Act, MCL § 15.231, *et seq.* ("FOIA") and the Constitution of the State of Michigan.
2. Plaintiff, Frank Lawrence, is a resident of Bloomfield Hills, Oakland County, Michigan.
3. Defendant, City of Troy, is a public body as defined in MCL § 15.232(d)(iii).
4. This Court has jurisdiction over the subject matter of this complaint pursuant to the FOIA and venue is proper in this county, pursuant to MCL § 15.240(4).

GENERAL ALLEGATIONS

5. Plaintiff incorporates herein by reference each of the preceding paragraphs.
6. Pursuant to MCL § 15.233, Plaintiff, as a member of the public, has the right to inspect, copy, or receive copies of public records of a public body.
7. On or about October 4, 2008, Plaintiff exercised his statutory right under the FOIA to request an inspection of specified records from Defendant. Attached hereto as Exhibit 1 is Plaintiff's FOIA demand.
8. On or about October 6, 2008, Defendant denied Plaintiff's request, specifically citing "MCLA 15.234(1)(D)", a statute that does not exist under Michigan law. Attached hereto as Exhibit 2 is Defendant's denial of Plaintiff's FOIA demand.
9. Defendant's October 6, 2008 denial of Plaintiff's FOIA request, attached hereto as Exhibit 2, inappropriately advises Plaintiff to direct his FOIA request to "the Troy City Attorney's Office or the Oakland County Prosecutor's Office", when in fact Plaintiff's FOIA request was properly addressed and received pursuant to MCL § 15.232(b)(ii) and MCL § 15.235(1).
10. The October 6, 2008 denial of Plaintiff's FOIA demand, attached hereto as Exhibit 2, constitutes a final administrative denial pursuant to MCL § 15.240(1)(b).
11. The justifications provided by Defendant to support its refusal to produce the records are arbitrary and capricious, and indeed utterly frivolous.
12. Because the justifications provided by Defendant to support its refusal to produce the records are arbitrary and capricious, Plaintiff is entitled to damages from the Defendant pursuant to MCL § 15.240(7), for its wrongful refusal to produce records under the FOIA.
13. The records requested in Plaintiff's FOIA request are public records subject to the FOIA.

14. No exemption recognized under the FOIA applies to the Plaintiff's requests and if any did exist, Defendant waived those exemptions by refusing to provide particularized justifications for the exemptions claimed. Defendant also refused to separate the exempt and nonexempt materials.

15. MCL § 15.240(5) provides that actions commenced pursuant to the FOIA "shall be assigned for hearing and trial and for argument at the earliest practicable date and expedited in every way."

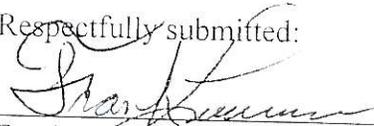
CONCLUSION AND RELIEF SOUGHT

WHEREFORE, Plaintiff prays that this Court:

1. Order an expedited hearing as required by MCL § 15.240(5);
2. Order Defendant to comply with Plaintiff's October 4, 2008 FOIA request (Exhibit 1) within 48 hours;
3. Award Plaintiff attorneys' fees, costs and disbursements pursuant to MCL § 15.240(6);
4. Award Plaintiff damages against the Defendant pursuant to MCL § 15.240(7) because Defendant has arbitrarily and capriciously violated the FOIA by denying Plaintiff the right to inspect, copy, or receive copies of a public record; and
5. Grant Plaintiff any other relief as this Court deems necessary and proper.

Dated: October 8, 2008

Respectfully submitted:


Frank Lawrence
941 Westview Road
Bloomfield Hills, MI 48304
(248) 722-2560

Exhibit

1

October 4, 2008

Frank Lawrence
941 Westview Road
Bloomfield Hills, MI 48304
(248) 722-2560

Troy Police Department
Freedom of Information Act Coordinator
500 West Big Beaver
Troy, MI 48084

Re: Freedom of Information Act Request

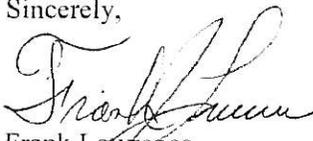
Dear Sir or Madam:

Today, on October 4, 2008, Thomas Lawrence, was issued traffic citation #733389. The citation appears to say that it was issued by Officer "Strong # 44".

Pursuant to the Michigan Freedom of Information Act, being Mich. Comp. Laws § 15.231 *et seq.*, I hereby invoke my right to inspect the following:

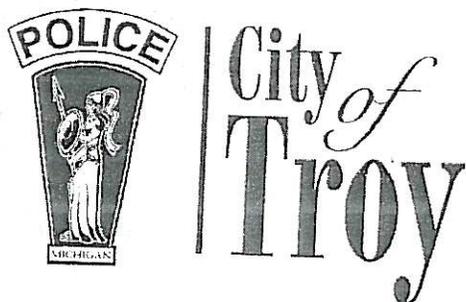
1. The full name of the officer who issued citation #733389. Please also include the full name of the second officer who was at the scene;
2. Any and all voice or video recordings of the time directly before, during, and after the citation was issued. This should include, but not be limited to, any voice or video records taken of Thomas Lawrence, as well as any voice or video records depicting one or both of the two officers described in # 1 above, directly before, during, and after the citation was issued;
3. Any and all radio, cellular or text transmissions between the two officers described in # 1 above, directly before, during, and after the citation was issued. This should include, but not limited to, any radio transmissions to the Troy Police Station;
4. Any records indicating that one or both of the officers described in # 1 above, between 6:00pm and 7:00pm, accessed or attempted to access information from a database operated by the Michigan Secretary of State as to whether Thomas Lawrence or his vehicle had valid insurance;
5. Any and all records that indicate whether one or both of the officers described in #1 above are subject to any guidelines, goals, or expectations as to how many traffic citations they must issue in a given period (i.e., a quota);
6. Any and all records relating to whether one or both of the officers described in #1 have ever been subject to any discipline or disciplinary proceedings for misconduct, misfeasance and/or malfeasance, including whether the officer(s) has ever been sued for official misconduct (i.e., civil rights claims under 42 U.S.C. §1983).

Sincerely,


Frank Lawrence

Exhibit

2



Charles T. Craft, Chief of Police
Troy Police Department
500 West Big Beaver Road
Troy, Michigan 48084

Records Sections
248-524-3437

October 6, 2008

Frank Lawrence
941 Westview Road
Bloomfield Hills, Michigan 48304

Re: Freedom of Information Request # 467
Troy v Thomas Lawrence
Ticket # 733389

Dear Mr. Lawrence,

The City of Troy Police Department has recently received your Freedom of Information Act request. Since that request is for reports or information related to a criminal charge or a civil infraction (traffic ticket) pending with the City of Troy, your letter should be directed to either the Troy City Attorney's Office or the Oakland County Prosecutor's Office, depending on which of those offices is prosecuting the matter.

We are denying your FOIA request as exempt under MCLA 15.243 (1)(D).

Written appeals of this denial can be addressed to Phil Nelson, City Manager, City of Troy, 500 W. Big Beaver Road, Troy, Michigan 48084.

Sincerely,

Troy Police Records *MD*
500 W. Big Beaver Road
Troy, Michigan 48084

cc: Susan M. Lancaster, Assistant City Attorney
City of Troy City Clerk