



TO: Members of Troy City Council
FROM: Lori Grigg Bluhm, City Attorney
Susan M. Lancaster, Assistant City Attorney
DATE: December 9, 2008
SUBJECT: Frank Lawrence v. City of Troy

Oakland County Circuit Court Judge Andrews has dismissed the lawsuit filed by Frank Lawrence against the City of Troy. In his attached opinion, Judge Andrews ruled that the City did not violate the Freedom of Information Act. Frank Lawrence filed a Freedom of Information Act request, seeking information from the police department that was relevant to a civil infraction ticket issued to his brother, Thomas Lawrence. The City denied the request, since it was perceived as a circumvention of the prohibition against discovery in civil infraction actions, as set forth in Michigan Court Rule 2.302 (A). In addition, Mr. Lawrence's Freedom of Information request sought several items that were exempt from disclosure under the Freedom of Information Act.

Since the case was a Freedom of Information Act challenge, it was decided at a very early date after the filing, without the necessity of going through the discovery process. Judge Andrews' dismissal of the case is a final order, although it is always possible that Mr. Lawrence will appeal the decision or ask for reconsideration. Upon information and belief, there is a pending case in the 52-4 district court, challenging the civil infraction tickets issued to Thomas Lawrence. This pending action may have some bearing on whether or not an appeal is taken. A claim of appeal must be filed on or before December 22, 2008.

We will update you if there is any subsequent activity in this matter. In the meantime, please let us know if you have any questions.

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

FRANK LAWRENCE, JR.

Plaintiff,

-vs-

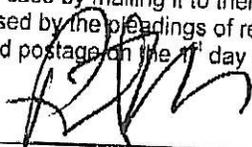
Case No. 08-095176-CZ
Hon. Steven N. Andrews

CITY OF TROY,

Defendant.

FRANK LAWRENCE, JR.
Plaintiff in pro per
941 Westview Road
Bloomfield Hills, MI 48304

CITY OF TROY-CITY ATTORNEY'S OFFICE
Lori Grigg Bluhm (P46908)
Susan M. Lancaster (P33168)
Attorneys for Defendant
500 West Big Beaver Road
Troy, MI 48084

Proof of Service
I certify that a copy of the above instrument was served upon the attorneys of record or the parties not represented by counsel in the above case by mailing it to their addresses as disclosed by the pleadings of record with prepaid postage on the 1st day of December, 2008.

P. Menna

OPINION AND ORDER

At a session of said Court, held in the Court House, in the City of Pontiac, Oakland County, Michigan, this 1st day of December, 2008.

PRESENT: THE HONORABLE STEVEN N. ANDREWS, Circuit Judge

This matter is before the Court on Plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(9) and (10) and Defendant's motion for summary disposition pursuant to MCR 2.116(I)(2). The Court dispenses with oral argument. MCR 2.119(E)(3).

Plaintiff filed this action against Defendant City of Troy alleging violations of the Michigan Freedom of Information Act (FOIA), MCL 15.231 *et seq.*, arising out of his FOIA request submitted to the Troy Police Department. Plaintiff's FOIA request sought information regarding the traffic stop of Plaintiff's brother, Thomas Lawrence, who was issued a two-count civil infraction ticket on October 4, 2008 by Troy Police Officer Strong.

Particularly, Plaintiff sought the full names of the police officers involved in the traffic stop, video and audio tapes of the traffic stop, radio transmissions guidelines, goals and quotas regarding traffic stops in any given time period, and any records regarding disciplinary proceedings for the police officers involved in the traffic stop (Plaintiff's Exhibit 2: FOIA request).

In his motion for summary disposition, Plaintiff argues that there is no lawful basis for Defendant City's refusal to produce the records. Plaintiff argues that Defendant's refusal to do so was frivolous, as Plaintiff did not seek information of a personal nature. Plaintiff contends that the City's denial letter cited a non-existent statute, did not specify with particularity the reasons for denial, and did not separate exempt from non-exempt information (and release the non-exempt records). Plaintiff contends that the ongoing civil action exception is not applicable, citing *Taylor v Lansing Board of Water and Light*, 272 Mich App 200; 725 NW2d 84 (2006). And, Plaintiff's brother did not cause Plaintiff to submit the FOIA request; it was Plaintiff's idea. Plaintiff maintains that he did not seek embarrassing information or records of a personal nature. Plaintiff argues that because the City's denial of his FOIA request was arbitrary and capricious, Plaintiff is entitled to damages.

In response, Defendant moves for summary disposition under MCR 2.116(l)(2). Defendant notes initially that the "non-existent" statute actually only provided incorrect capitalization in its citation to MCL 15.243(1)(d), as (D); Defendant argues that there is nothing arbitrary or capricious about this typographical error.

Defendant counters that its denial of Plaintiff's FOIA request was specifically and properly denied under MCL 15.243(1)(d). Moreover, a letter was sent to Plaintiff explaining the City's position regarding discovery requests submitted as FOIA requests. Defendant City contends that it was justified in sending the denial letter (Defendant's Exhibit B).

First, the information sought by Plaintiff appears to be Plaintiff's attempt at a circumvention of discovery preclusion in civil infraction actions, MCR 2.302(A)(3). Defendant submits that the two citations issued to Thomas Lawrence are both civil infractions: first, no proof of insurance carries a mandatory court fine of \$25.00 with proof of insurance and a mandatory \$145.00 fine without proof of insurance. Second, failure to change address on driver's license carries a fine of \$100.00. Defendant maintains that the Secretary of State does not abstract points for either charge, and that a defendant is entitled to set the matter for hearing and by doing so has access to a court to argue any discovery motion allowed under the Michigan Court Rules and case law.

Defendant City argues that Plaintiff's motion for summary disposition should be denied because the information requested by Plaintiff's FOIA request was otherwise exempt: First, Defendant maintains that the police report and other documentation concerning the matter do not contain the name of the second officer

on the scene. Second, Defendant contends that the video and audio tapes and radio transmissions of the traffic stop are exempt from public disclosure because they would constitute an unwarranted invasion of an individual's privacy, *Michigan Federation of Teachers and School Related Personnel, AFT AFF-CIO v University of Michigan*, 481 Mich 657; 753 NW2d 28 (2008). The information sought by Plaintiff regarding audible information between an officer and police dispatch frequently contains transmissions of private and confidential information such as witness names and addresses, VIN numbers, plate numbers and social security numbers. In this regard, Defendant City avers that such information is only supplied to defendants or their attorneys who complete a Discovery Request Video/Audio Tape Order Form (Defendant's Exhibit D). Defendant maintains that in civil infraction cases, video and audio tapes are never supplied to members of the public. Third, guidelines, goals and quotas regarding traffic stops in any given time period are exempt from disclosure under MCL 15.243(1)(t)(v) and (vi). Fourth, disciplinary records of the police officers are exempt from release under MCL 15.243(1)(t)(ix).

The FOIA is an act requiring full disclosure of public records unless a statutory exemption precludes the disclosure of information. *Messenger v Consumer & Industry Services*, 238 Mich App 524, 531; 606 NW2d 38 (1999); MCL 15.243(1)(d). When a public body refuses to disclose a requested document under the act, and the requester sues to compel disclosure, the public body bears the burden of proving that the refusal was justified under the act. MCL 15.240(1). Our Supreme Court has consistently recognized that the FOIA is a "disclosure statute." *State Employees Ass'n v Dep't of Management & Budget*, 428 Mich 104, 109; 404 NW2d 606 (1987).

The FOIA does not require that information be recorded; it only gives a right of access to records in existence. *Bredemeier v Kentwood Bd of Ed*, 95 Mich App 767, 771; 291 NW2d 199 (1980). The nonexistence of a record is a defense for the failure to produce or allow access to the record. *Hartzell v Mayville Community School District*, 183 Mich App 782; 455 NW2d 411 (1990).

Here, Defendant City's response to Plaintiff's request noted that the request sought information regarding a civil infraction (traffic ticket) pending with the City, and instructed Plaintiff to direct his request to either the City Attorney's Office or the Oakland County Prosecutor's Office (Defendant's Exhibit B). The City's letter also informed Plaintiff that a denial can be appealed to the Troy City Manager (*Id.*). Plaintiff did not avail himself of the opportunity to appeal the denial of his request, but instead filed this lawsuit.

In any case, it appears that the denial was proper. Plaintiff's request sought information regarding his brother's pending civil infraction citations. Under MCR 2.303(A)(3), discovery is not permitted in civil infraction actions. Plaintiff's FOIA request appears to be his attempt to circumvent this discovery preclusion, and to obtain information beyond that allowed by Michigan Court Rules and outside of the court forum.

Notwithstanding, the information sought by Plaintiff is otherwise exempt. MCL 15.243(1)(b) provides an exemption for investigating records compiled for law enforcement purposes, to the extent that disclosure as a public record interferes with law enforcement proceedings and would constitute an unwarranted invasion of personal privacy. Here, the information sought implicates personal information of

officers and witnesses, and police investigation techniques and guidelines.

Accordingly, Plaintiff is not entitled to damages based on his claim of "arbitrary and capricious" acts.

WHEREFORE IT IS HEREBY ORDERED that Plaintiff's motion for summary disposition is denied.

IT IS FURTHER ORDERED that Defendant's motion for summary disposition is granted pursuant to MCR 2.116(1)(2).

This Order resolves all pending claims and closes this case. MCR 2.602

STEVEN N. ANDREWS

STEVEN N. ANDREWS, Circuit Judge

A TRUE COPY
RUTH JOHNSON
Oakland County Clerk / Register of Deeds
By: [Signature]
Deputy