

Received for Filing Oakland County Clerk 2013 JUL 16 PM 04:03

PROOF OF SERVICE

SUMMONS AND COMPLAINT

Case No. 2013-135000-CZ

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

CERTIFICATE/AFFIDAVIT OF SERVICE/NONSERVICE

OFFICER CERTIFICATE

OR

AFFIDAVIT OF PROCESS SERVER

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)

Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)

- I served personally a copy of the summons and complaint,
- I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint,

together with _____
List all documents served with the Summons and Complaint

_____ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

- I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

I declare that the statements above are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Mileage fee	Total fee
\$		\$	\$

Signature
 Stephen A. Cohen (D71534)
 Name (type or print)
 Attorney
 Title

Subscribed and sworn to before me on _____, _____ County, Michigan.
Date

My commission expires: _____ Signature: _____
Date Deputy court clerk/Notary public

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with _____
Attachments

_____ on _____
Day, date, time

_____ on behalf of _____
Signature

**STATE OF MICHIGAN
OAKLAND COUNTY CIRCUIT COURT**

Asset Management Consultants of
Virginia, Inc., a Virginia Corporation,
Plaintiff,

Case No.:

Hon.:

v.

City of Troy, a municipal corporation,
Defendant

LANGNAS & ASSOCIATES, P.C.
Michael D. Langnas (P42357)
Stephen N. Cohen (P71534)
Attorneys for Plaintiff
24359 Northwestern Highway, Suite 200
Southfield, MI 48075
(248) 356-7100

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

COMPLAINT

Plaintiff, Asset Management Consultants of Virginia, Inc., ("Asset Management"), by
its attorneys, Langnas & Associates, P.C., states as follows for its complaint against the City
of Troy ("Troy"):

INTRODUCTION

1. This is an action to enforce the Michigan Freedom of Information Act (FOIA), MCL §
15.231 *et seq.*

VENUE AND JURISDICTION

2. Plaintiff restates and incorporates by reference the allegations in the preceding
paragraphs as though fully set forth herein.
3. Plaintiff, Asset Management, is a corporation incorporated under the laws of the State
of Virginia.

LANGNAS & ASSOCIATES, P.C.
Attorneys and Counselors
24359 Northwestern Highway,
Suite 200
Southfield, MI 48075

Tel: (248) 356-7100
Fax: (248) 356-0716

4. Defendant, Troy, is a municipal corporation with offices in the City of Troy, Michigan, in Oakland County.
5. Defendant, Troy, is a "public body" under MCL § 15.232(d).
6. Jurisdiction is proper under MCL § 15.240(1)(b), as the public body (Troy) made a final determination denying Plaintiff's FOIA Request in its entirety.
7. Venue is proper under MCL § 15.240(4), as Troy's offices are located in Oakland County, and based on information and belief, the public records sought to be disclosed are located in Oakland County.

GENERAL ALLEGATIONS

8. Plaintiff restates and incorporates by reference the allegations in the preceding paragraphs as though fully set forth herein.
9. On May 2, 2013, Plaintiff (via counsel) made a request under Michigan's Freedom of Information Act to the City of Troy.
10. Plaintiff's request consisted of the official form that the City of Troy provided for such requests, together with a letter which more fully described the public records being sought. See: **Exhibit 1** (FOIA Request, May 2, 2013).
11. Plaintiff's FOIA Request sought the following two types of public records:
 - a. Records that track active cash bonds, deposits and escrows collected for private-sector construction assurance; and
 - b. Listings of outstanding municipal-issued checks over 180 days old that have not been cashed or turned over to the state as unclaimed property.
12. By a letter dated May 8, 2013, the City of Troy denied Plaintiff's FOIA Request.
13. The City of Troy relied on four theories to justify its denial of Plaintiff's FOIA Request, claiming that:

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- a. The core purpose of the FOIA is the understanding of the operations or activities of government, and disclosure of the documents requested by Plaintiff would not foster such core purpose;
 - b. The information requested is for "commercial use purposes only";
 - c. The FOIA provides that a public body is not required to make a compilation, summary or report of information; and
 - d. The public records are exempt under parts (a), (d), (e), and (m) of MCL § 15.243(1). See: **Exhibit 2** (Denial of FOIA Request, May 8, 2013).
14. On May 22, 2013, Plaintiff appealed the denial of its FOIA Request to the City of Troy's City Manager, pursuant to MCL § 15.240(1)(a). See: **Exhibit 3** (Appeal of Denial of FOIA Request, May 22, 2013).
15. By a letter dated June 14, 2013, the City of Troy's City Manager denied Plaintiff's appeal. See: **Exhibit 4** (Denial of Appeal, June 14, 2013).
16. Plaintiff has attempted to obtain the requested public records without court intervention on two previous occasions:
- a. A FOIA Request of June 15, 2011 – which was denied – followed by a request for reconsideration on July 25, 2011, which was also denied; and
 - b. A second FOIA Request of May 14, 2012 – which was again denied – followed by another request to reconsider, which was again denied. Plaintiff then sent a response to the City of Troy's Refusal to reconsider, which was unsuccessful.

COUNT I – VIOLATION OF MICHIGAN'S FREEDOM OF INFORMATION ACT

17. Plaintiff restates and incorporates by reference the allegations in the preceding paragraphs as though fully set forth herein.

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18. Defendant, City of Troy, is a "public body" as defined by MCL § 15.232(d)(iii).
19. The FOIA Request of May 2, 2013 seeks only "public records" as defined by MCL § 15.232(e).
20. The FOIA Request described the public record sufficiently to enable the City of Troy to find the public record.
21. The plain language MCL § 15.233(1) provides that all public records may be inspected, copied, or received, "except as expressly provided in section 13 [MCL § 15.243]".
22. MCL § 15.243 does not contain an exemption for requests made for "commercial purposes", and therefore Plaintiff's FOIA Request cannot be denied on this ground.
23. MCL § 15.243 does not contain an exemption for requests that do not satisfy the core purpose of the FOIA, and therefore Plaintiff's FOIA Request cannot be denied on this ground.
24. Plaintiff's FOIA Request did not specify or request the disclosure of any newly created summary, compilation, or report, and even if such information can be provided in the form of a summary, compilation, or report, the City of Troy has alternative ways of disclosing such information.
25. Plaintiff's FOIA Request did not seek disclosure of information of a personal nature.
26. Even if a portion of the records that Plaintiff seeks did contain information of a personal nature, disclosure would not constitute a clearly unwarranted invasion of an individual's privacy.
27. The public records sought by Plaintiff are not exempt from disclosure by statute, and the City of Troy's denial of Plaintiff's FOIA cites no such statute.

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28. The public records sought by Plaintiff are not exempt from disclosure under MCL § 15.243(1)(e), since the public records were never exempt in the first place, and therefore there were no "considerations originally giving rise to the exempt nature of the public record."
29. The public records sought by Plaintiff are not exempt from disclosure under the "frank communication exemption", provided by MCL § 15.243(1)(m).
30. The City of Troy has the burden of proving that an exemption exists in order to deny a FOIA Request.
31. The City of Troy has not satisfied its burden of proving an exemption in any of its denials of Plaintiff's FOIA Request.

WHEREFORE, Plaintiff, Asset Management Consultants of Virginia, Inc., respectfully requests that this Court enter an order consistent with the following:

- a. Compelling disclosure of all of the public records sought in Plaintiff's FOIA Request of May 2, 2013.
- b. Declaring the nondisclosure of the requested documents to be a violation of the FOIA.
- c. Awarding Plaintiff all actual and reasonable attorney fees, as required by MCL § 15.240(6).
- d. Awarding any such other relief as the Court deems appropriate.

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Respectfully submitted,

/s/Michael D. Langnas

Michael D. Langnas (P42357)

Attorney for Plaintiff

24359 Northwestern Highway, Suite 200

Southfield, MI 48075

(248) 356-7100

Dated: July 10, 2013

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EXHIBIT 1

CITY OF TROY MICHIGAN REQUEST FOR COPIES OF PUBLIC RECORDS

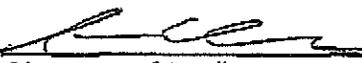
TO THE CITY OF TROY, MICHIGAN:

I HEREBY REQUEST COPY/COPIES OF PUBLIC RECORDS, AS FOLLOWS:

Number of Copies	Description of Public Record
1	Requesting a copy of a record, as it is maintained, that tracks active cash bonds, deposits and escrows collected for private-sector construction assurance.
1	Requesting a copy of a listing of outstanding municipal-issued checks over 180 days old that have not been cashed or turned over to the state as unclaimed property
	**PLEASE SEE ATTACHED

PLEASE PROVIDE MY REQUEST IN THE FOLLOWING FORMAT:

Second preference PAPER COPIES
 First preference ELECTRONIC (CD, DISK)
 LABELS



 Signature of Applicant

Stephen N. Cohen, Esq.

 Print Name

24359 Northwestern Highway, Suite 200, Southfield, MI 48075

 Address (Street, City, State and Zip Code)

(248) 356-7100

 Phone Number

5/2/13

 Date

LANGNAS & ASSOCIATES

A PROFESSIONAL CORPORATION

Attorneys and Counselors

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Of Counsel
CHRISTOPHER M. SEIKALY

MOE R. MILLER (1912-1992)

May 2, 2013

Ms. Aileen Bittner
City Clerk – City of Troy
500 W. Big Beaver Road
Troy, MI 48084

Re: Request for Public Records Pursuant to the Freedom of Information Act

Dear Ms. Bittner:

Please be advised that this firm represents Asset Management Consultants (“AMC”).

As a supplement to the “City of Troy Michigan Request for Copies of Public Records”, I would like to more thoroughly explain the public records that I am requesting:

For purposes of this Request, “City of Troy” or “City” refers to the City of Troy, together with any agencies of the City of Troy that are public bodies, as defined by MCL § 15.232(d).

First Request:¹

I am requesting any financial spreadsheet, ledger or other record of the active cash and cash-convertible sureties and escrow accounts maintained by the City of Troy for financial instruments posted or deposited with the City of Troy by companies and persons to ensure completion of private-sector residential and commercial construction projects. I am requesting only open accounts for the cash and cash-convertible sureties, stale-dated checks, deposits, and other securities that have not been refunded to the payee. I do not seek records of non-negotiable third-party sureties (such as letters of credit or bonds), the release of which will not restore money to AMC’s clients’ accounts.

The records that I seek should contain such specific identifiers as:

1. Deposit date and amount
2. Purpose of deposit
3. Project block and lot number

¹ “First Request” refers to the first request that is listed on the Request Form “[r]equesting a copy of a record, as it is maintained, that tracks active cash bonds, deposits and escrows collected for private-sector construction assurances.”

4. Escrow tract number
5. Escrow account number
6. Bond account number
7. Depositor name and address
8. Project number name and address
9. Project parcel map number
10. Project permit number
11. Bond number
12. Check/warrant number

Second Request:²

I also seek a record of all outstanding municipal checks, warrants and vouchers (the pre-escheat checks list), over 180 days old that have not yet been cashed or otherwise negotiated, or have become stale dated. I do not seek records of uncashed or stale dated payroll checks, child support checks, or any other checks not made to municipal vendors.

The records that I seek should contain such specific identifiers as:

1. Uncashed/stale dated check number
2. Amount
3. Date
4. Names of the payor and payee

Please advise me by telephone, fax or e-mail of your estimate of any costs associated with your fulfillment of this Request prior to your incurring same. If you have questions regarding this Request, please do not hesitate to contact me at your convenience.

Sincerely,



Stephen N. Cohen, Esq.

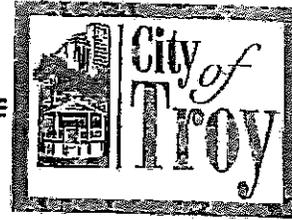
/ms

² "Second Request" refers to the second request that is listed on the Request Form "[r]equesting a copy of a listing of outstanding municipal-issued checks over 180 days old that have not been cashed or turned over to the state as unclaimed property."

EXHIBIT 2

500 W. Big Beaver
Troy, MI 48084
(248) 524-3300

The City of Tomorrow...



...Today

May 8, 2013

Stephen N. Cohen, Esq.
Langnas & Associates
24359 Northwestern Hwy., Ste. 200
Southfield MI 48075

Re: Freedom of Information Act Request dated May 6, 2013
for Asset Management Consultants

Dear Mr. Cohen:

Your Freedom of Information Act request has been denied as a request for public information for a commercial purpose.

Case law provides that that the core purpose of the FOIA is not fostered by the disclosure of information accumulated in a public body's files, that reveals nothing about an agency's own conduct. Rather, the core purpose of the FOIA is the understanding of the operations or activities of government. *Kocher v. Department of Treasury*, 241 Mich App 378 (2000). The information you requested is for commercial use purposes only. Therefore, the City of Troy does not have to provide that information under FOIA. Further, FOIA provides that a public body is not required to make a compilation, summary or report of information. MCL 15.233 (4).

You have a right to appeal this denial to the City Manager, City of Troy, 500 W. Big Beaver Road, Troy, Michigan 48084 by submitting a written appeal and stating the reasons for the reversal of the denial.

Sincerely,

CITY OF TROY
OFFICE OF THE CITY CLERK

M. Aileen Bittner

M. Aileen Bittner, CMC
City Clerk

cc: City Attorney
City Manager

City of Troy Freedom of Information Act - Response

Dear Stephen N. Cohen, Esq. Date May 8, 2013

FOIA # 2013-101

In response to your inquiry of May 6, 2013
requesting:

Copy of record that tracks active cash bonds, deposits & escrows. Copy of outstanding municipal issued checks over 180 days old not turned over to the State as unclaimed property.

We have taken action as indicated below. Please note that if your request for information has been denied, we have indicated the appropriate provisions under State Law P.A. 442(1976), which defines such information as exempt.

1	<input type="checkbox"/>	Requested material attached.
2	<input type="checkbox"/>	Extension of 10 days
3	<input type="checkbox"/>	Copying costs are estimated to be: \$ _____
	<input type="checkbox"/>	Bill enclosed.
	<input type="checkbox"/>	A Good Faith deposit is required at this time. Make check payable to: City of Troy in the amount of: \$ _____
	<input type="checkbox"/>	The requested material is attached. Some of the information you requested does not exist.
4	<input type="checkbox"/>	FOIA does not require a public body to make a compilation, summary or report of information (Section 3, Paragraph 4)
	<input type="checkbox"/>	The Public Record does not exist.
5A	<input type="checkbox"/>	Part of the requested material is attached. Material denied is due to exemptions as Public Record as defined by State Law.
5B	<input checked="" type="checkbox"/>	The requested material is denied in full due to exemption as Public Record as defined by State Law.

A description of the denied record is attached. Those exemptions in State Law which are applicable to the City of Troy are listed below as enumerated under Section 13, Paragraph 1 of the Act. Check indicates exemption invoked in denial of material. See back of form for specific provisions.

<input checked="" type="checkbox"/>	a	<input checked="" type="checkbox"/>	d	<input checked="" type="checkbox"/>	e	<input type="checkbox"/>	f
<input type="checkbox"/>	g	<input type="checkbox"/>	i	<input checked="" type="checkbox"/>	m	<input checked="" type="checkbox"/>	OTHER

SEE REVERSE SIDE FOR A FULL EXPLANATION OF YOUR RIGHT TO SEEK JUDICIAL REVIEW.

Sincerely,

M. Aileen Bittner

City of Troy City Clerk
FOIA Coordinator

EXEMPTIONS UNDER P.A. 442, SECTION 13, PARAGRAPH 1, AS INDICATED IN ITEM 5 ON THE FRONT OF FORM INCLUDE:

- a. Information of a personal nature where the public disclosure of the information would constitute a clearly unwarranted invasion of the individual's privacy.
- d. Records or information specifically described and exempted from disclosure by Statute.
- e. A public record or information described in this Section which is furnished by the public body originally compiling, preparing or receiving the record or information to a public officer of public body in connections with the performance of the duties of that public officer or public body, if the considerations originally giving rise to the exempt nature of the public record remains applicable.
- f. Trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy if:
 - i. The information is submitted upon a promise of confidentiality by the public body.
 - ii. The promise of confidentiality is authorized by the chief administrative officer of the public body or by an elected official at the time the promise is made.
 - iii. A description of the information is recorded by the public body within a reasonable time after it has been submitted, maintained in a central place within the public body, and made available to a person upon request. This subdivision shall not apply to information submitted as required by law or as a condition of receiving a governmental contract, license, or other benefit.
- g. Information or records subject to the Attorney Client Privilege.
- i. A bid or proposal by a person to enter into a contract or agreement, until the time for the public opening of bids or proposals, or if a public opening is not to be conducted, until the time for receipt of bids or proposals has expired.
- m. Communications and notes within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action.

Other:

RIGHT TO APPEAL AND JUDICIAL REVIEW:

ACT 442, P.A. 1976, SECTION 10 ESTABLISHES THE REQUESTING PERSON'S RIGHT TO JUDICIAL REVIEW IN THE EVENT THAT PUBLIC BODY MAKES A FINAL DETERMINATION TO DENY ALL OR A PORTION OF A REQUEST. THE REQUESTING PERSON MAY COMMENCE AN ACTION IN THE CIRCUIT COURT TO COMPEL DISCLOSURE OF THE PUBLIC RECORDS. AN ACTION UNDER THIS SECTION ARISING FROM THE DENIAL OF AN ORAL REQUEST MAY NOT BE COMMENCED UNLESS THE REQUESTING PERSON CONFIRMS THE ORAL REQUEST IN WRITING NOT LESS THAN 5 DAYS BEFORE THE COMMENCEMENT OF THE ACTION. IF A PERSON ASSERTING THE RIGHT TO INFORMATION UNDER THIS ACT PREVAILS IN ALL OR A PORTION OF THE COURT ACTION, THE COURT SHALL AWARD AN APPROPRIATE AMOUNT TOWARD REASONABLE ATTORNEY'S FEES, COSTS AND DISBURSEMENTS. IN ADDITION, THE COURT MAY AWARD PUNITIVE DAMAGES IN THE AMOUNT OF \$500.00 TO THE PERSON SEEKING ACCESS TO THE PUBLIC RECORDS. IN ADDITION TO THE RIGHTS DESCRIBED ABOVE, YOU MAY ALSO FILE A WRITTEN APPEAL OF A DETERMINATION TO DENY ALL OR A PORTION OF A REQUEST BY DIRECTING THE APPEAL TO THE CITY OF TROY CITY MANAGER. SUCH AN APPEAL MUST SPECIFICALLY STATE THE WORD "APPEAL" AND IDENTIFY THE REASON OR REASONS FOR REVERSAL OF THE DISCLOSURE DENIAL.

EXHIBIT 3

LANGNAS & ASSOCIATES

A PROFESSIONAL CORPORATION

Attorneys and Counselors

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Of Counsel
CHRISTOPHER M. SEIKALY

MOE R. MILLER (1812-1992)

May 22, 2013

Mr. Brian Kischnick
City Manager – City of Troy
500 W. Big Beaver Road
Troy, MI 48084

Re: **Appeal of Denial of FOIA Request**

Dear Mr. Kischnick:

I write to appeal the City's May 8, 2013 denial of our FOIA Request dated May 2, 2013 pursuant to MCL § 15.240(1)(a).

I. INTRODUCTION

Our FOIA Request seeks disclosure of public records that are not specifically exempt from disclosure under MCL § 15.243(1), and are therefore required to be disclosed. The City Clerk contends that the public records are not required to be disclosed for four reasons:

1. The Request was for "public information for a commercial purpose";
2. Disclosure of the requested information would "reveal nothing about the agency's own conduct" (and therefore is not in line with the purpose of the FOIA);
3. A public body is not required to make a compilation, summary or report of information.
4. The information is exempt under Sections (a), (d), (e) and (m) of the MCL § 15.243(1).

As we will show below, none of the exemptions claimed by the City Clerk apply to the FOIA Request of May 2, 2013, and therefore the requested documents must be disclosed pursuant to MCL § 15.223(1).

II. DISCLOSURE OF PUBLIC RECORDS

The Michigan Freedom of Information Act ("FOIA") provides that "*Except as expressly provided in section 13*, upon providing a public body's FOIA coordinator with a written request that describes the public record sufficiently to enable the public body to find the public record, a person has a right to inspect, copy, or receive copies of the requested public record of the public body." MCL § 15.233(1) (emphasis added). The plain language of this statute clearly requires that

a public record be disclosed unless it is expressly exempt, under Section 13 (MCL § 15.243(1)). As the case law makes clear, this interpretation of the statute is unmistakable.

“All public records are subject to full disclosure under the act *unless the material is specifically exempt under § 13.*” *Swickard v. Wayne County Medical Examiner*, 438 Mich. 536 (1991) (emphasis added).

The FOIA “is a prodisclosure act. All public records are subject to full disclosure unless they are clearly exempt. If a request is ‘sufficient’ to allow the public body to find a nonexempt record, the record must be disclosed.” *Coblentz v. City of Novi*, 475 Mich. 558, 572-73 (2006) (internal citations omitted).

“On its express terms, the FOIA is a prodisclosure statute, and the exemptions stated in § 13 are narrowly construed. The burden of proof rests on the party asserting the exemption.” *The Herald Co. v. City of Bay City*, 463 Mich. 111, 119 (2000) (internal citations omitted).

III. THE CITY OF TROY’S POSITION

a. Commercial Purposes

MCL § 15.243(1) does not contain an exemption for requests made for commercial purposes, and therefore this is not a valid exemption. Under *The Herald Co.*, the party asserting the exemption has the burden of proving such exemption.

The City of Troy has not satisfied its burden of proving an exemption based on “commercial purposes”, as the exemption is not specifically listed in MCL § 15.243(1). Additionally, the City Clerk’s denial letter does not cite any case law that would support any such exemption. As will be discussed below, *Korcher v. Department of Treasury* only focused on the “personal privacy” exemption, and does not create a “commercial purposes” exemption. Thus, the FOIA Request cannot be denied on such grounds.

b. The Purpose of the FOIA

The City of Troy relies on *Korcher v. Department of Treasury*, 241 Mich. App. 378 (2000) to support its position that the FOIA Request of May 2, 2013 may be denied, as disclosure of the requested information would reveal nothing about the agency’s own conduct, and therefore does not satisfy the core purpose of the FOIA. However, MCL § 15.243(1) does not contain any such exemption. Thus, the FOIA Request may not be denied on such grounds.

As all of the case law shows, the “purpose” of the FOIA is only considered when determining whether the personal privacy exemption of MCL § 15.243(1)(a) applies. To satisfy this exemption, the public body must first show that the information sought is of a “personal nature”. It then must prove that disclosure of such information would constitute a clearly unwarranted invasion of privacy. In determining whether disclosure would constitute a clearly unwarranted invasion of privacy, the courts have used a balancing test, balancing the “public interest in disclosure against the interest Congress intended the exemption to protect.” *Mager v. State of Michigan*, 460 Mich. 134, 145 (1999). It is only at this point that the “purpose” of the FOIA enters the equation.

In *Korcher*, the court was focused on whether or not the “personal privacy” exemption of MCL § 15.243(1)(a) applied. When relying on the personal privacy exemption, “two factors must exist to exempt information from public exposure. First, the information sought must be of a ‘personal nature,’ and second, the disclosure of such information must constitute ‘clearly unwarranted’ invasion of privacy.” *Mager v. State of Michigan*, 460 Mich. 134, 140 (1999).

For the purpose of the FOIA to have any bearing on the present Request, it first must be determined that the information sought is of a “personal nature.” The Michigan Supreme Court has created a clear definition of “personal nature”:

we conclude that information is of a personal nature if it reveals intimate or embarrassing details of an individual’s private life. We evaluate this standard in terms of ‘the customs, mores, or ordinary views of the community...

Mager at 142 (quoting *Bradley v. Board of Education of the Saranac Community Schools*, 455 Mich. 285 (1997)).

It is difficult to see how a request of “a financial spreadsheet, ledger or other record...” can reveal intimate or embarrassing details of an individual’s life. Because the Request clearly does not seek information that is of a personal nature, step two (determining whether disclosure of such information would constitute a clearly unwarranted invasion of privacy) of the analysis is unnecessary.

The City of Troy’s application of *Korcher* is flawed, as a reading of the opinion makes clear: “in evaluating whether a request for information lies within the scope of a FOIA exemption that bars disclosure when it would amount to an invasion of privacy that is to some degree unwarranted, a court must balance the public interest in disclosure against the interest Congress intended the exemption to protect. *Korcher* at 381-82 (emphasis added). This shows that the court was focusing solely on the personal privacy exemption of MCL § 15.243(1)(a).

c. Compilation, Summary or Report

The City Clerk stated that “a public body is not required to make a compilation, summary or report of information.” We do not dispute this aspect of the FOIA, but the Request of May 2, 2013 does not request a compilation, summary or report.

In *The Herald Co., v. City of Bay City*, 463 Mich. 111, the Michigan Supreme Court held that a public body cannot deny a FOIA request under the “compilation, summary or report” exemption if the Request does not require disclosure of any such document and the public body has alternative ways to disclose the information:

Plaintiff’s request did not specify or require the disclosure of any document, newly created or otherwise, from the city. It simply asked for information. Under the FOIA, the city could have satisfied the request in several different ways. It could have allowed plaintiff access to the public records containing the information, it could have allowed plaintiff to copy the public records containing the information, or it could have provided

plaintiff with copies of the public records containing the information. It is true that the request also could have been satisfied by the city's creation of a new public record, but plaintiff did not request creation of such a record, and the fact that the city had no obligation to create a record says nothing about its obligation to satisfy plaintiff's request in some other manner as required by the FOIA.

The Herald Co. at 122.

In our Request of May 2, 2013, we did not specify or request the disclosure of any newly created document, but simply asked for information. This information could have been provided in any number of ways. Thus, our Request cannot be denied on these grounds.

d. Other Listed Exemptions

The City of Troy's denial letter of May 8, 2013 also listed four specific exemptions from MCL § 15.243(1), but did not contain any specific explanations of how each exemption applied to this specific Request.

i. MCL § 15.243(1)(a) – Personal Information

As discussed above, The City of Troy bears the burden of proving that the information sought is of a personal nature, in that it "reveals intimate or embarrassing details of an individual's private life." *Mager* at 142. The City has not made any such statements, and it appears impossible that requests for information such as "financial spreadsheets" and "outstanding municipal checks" can be considered to reveal such personal information.

ii. MCL § 15.243(1)(d) – Information Exempted by Statute

MCL § 15.243(1)(d) provides an exemption for "records or information specifically described and exempted from disclosure by statute."

As discussed above, all exemptions are narrowly construed, and the public body has the burden of proving any such exemption. *The Herald Co.*, at 119. In this case, The City of Troy has not even cited a specific statute that could potentially exempt disclosure of the requested information, and the Requesting Party knows of no such statute.

iii. MCL § 15.243(1)(e) – Public Records Furnished to Other Public Body or Officer

MCR § 15.243(1)(e) exempts from disclosure documents that have been furnished to another public body or officer, as long as "the considerations originally giving rise to the exempt nature of the public record remain applicable."

The City of Troy has not proven that any documents requested are exempt from disclosure, and likewise has not proven that any such documents furnished to a public body or public officer are exempt from disclosure.

iv. MCL § 15.243(1)(m) – Communications Within Public Body of an Advisory Nature

In *Bukowski v. City of Detroit*, 478 Mich. 268, 274-75 (2007), the Michigan Supreme Court held that there are four characteristics of the "frank communication exemption" (which is what MCL § 15.243(a)(m) is known as):

1. "The public body seeking to withhold the document bears the burden of establishing the exemption."
2. "The public record sought to be withheld from disclosure must meet the three-part statutory definition of a 'frank communication'" These three parts are as follows:
 - a. It is a communication or not of an advisory nature made within a public body or between public bodies;
 - b. It covers other than purely factual material; and
 - c. It is preliminary to a final agency determination of policy or action.
3. "[I]f the public record qualifies as a 'frank communication,' the trial court must engage in the balancing test and determine if the public interest in encouraging frank communication clearly outweighs the public interest in disclosure"; and
4. "[I]f the trial court determines that the frank communication should not be disclosed, the FOIA still requires the trial court to redact the exempt material and disclose the purely factual material within the document."

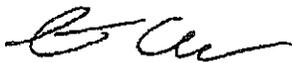
In this case, The City of Troy merely checked a box to claim that the frank communication exemption applies. It clearly did not satisfy its burden of proving that the exemption applies. Even if The City did make some specific statement regarding this exemption, it cannot show that the documents requested contain information 1) of an advisory nature; and 2) that is not purely factual. If The City of Troy is somehow able to show that the documents contain some non-factual information, it is still required to disclose the factual information.

Because The City of Troy has not satisfied its burden of proving that the frank communication exemption applies, our Request cannot be denied on these grounds.

IV. CONCLUSION

In light of the above analysis of the statutory and case law, we sincerely hope you will reverse The City of Troy's denial of our FOIA Request of May 2, 2013. Please do not hesitate to call me if you have any questions or would like to discuss the matter directly.

Sincerely,



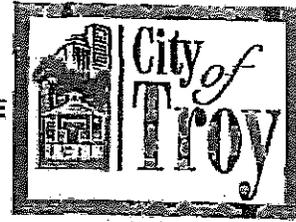
Stephen N. Cohen

/ms

EXHIBIT 4

500 W. Big Beaver
Troy, MI 48084
(248) 524-3300

The City of Tomorrow...



...Today

June 14, 2013

Mr. Stephen Cohen
Langnas & Associates
24359 Northwestern Hwy., Ste. 200
Southfield, MI 48075

Re: FOIA Request #2013-101

Dear Mr. Cohen:

The City has received your letter appealing our May 8, 2013 denial of your client's Freedom of Information Act (FOIA) request. Although you have challenged each of the exemptions relied upon by the City in denying the request, I am not persuaded by your arguments.

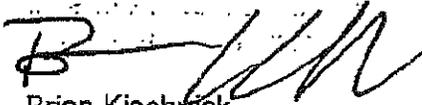
The City has provided your client with the means to obtain the information requested using Open Troy, located on the City website: <http://troymi.gov/Government/Dashboard>. Open Troy contains the City check register, along with a myriad of financial information pertinent to your client's FOIA request.

The requested information is for the sole purpose of furthering your client's commercial enterprise, which is not within the core purpose of FOIA. The core purpose of FOIA is to allow the public to understand the operations or activities of government. Your client is asking the City to subsidize their commercial enterprise, which is prohibited by our Charter.

Under Michigan law, there is a right to challenge a FOIA appeal in the Oakland County Circuit Court, pursuant to MCLA 15.240(1)(b). Under the state statute, costs may be awarded in any such action if you were to ultimately prevail.

Sincerely,

OFFICE OF THE CITY MANAGER


Brian Kischrick
City Manager

cc: Aileen Bittner, City Clerk