

STATE OF MICHIGAN
IN THE SUPREME COURT

STATE NEWS,

Plaintiff-Appellee,

Supreme Court No.: 133682

Court of Appeals No.: 271433

V

Circuit Court No.: 06-000674-CZ

MICHIGAN STATE UNIVERSITY,

Defendant-Appellant.

**AMICUS CURIAE BRIEF OF THE PROSECUTING ATTORNEYS
ASSOCIATION OF MICHIGAN, THE MICHIGAN SHERIFFS' ASSOCIATION,
AND THE MICHIGAN ASSOCIATION OF CHIEFS OF POLICE IN SUPPORT
OF MICHIGAN STATE UNIVERSITY**

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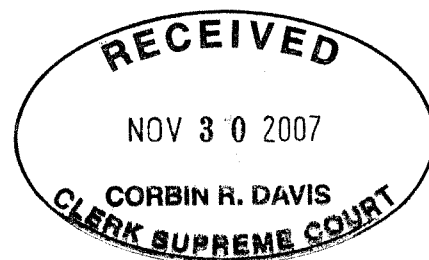


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STATEMENT OF QUESTIONS INVOLVED

I. WHETHER THE MICHIGAN COURT OF APPEALS ERRED BY GIVING THE TRIAL COURT IMPROPER INSTRUCTIONS TO APPLY ON REMAND REGARDING THE GENERAL PRIVACY AND LAW-ENFORCEMENT-PRIVACY EXEMPTIONS?

Defendant-Appellant says, "Yes."

Plaintiff-Appellee says, "No."

Amicus Curiae says, "Yes."

II. WHERE INFORMATION FROM A POLICE REPORT IS EXEMPT FROM FOIA DISCLOSURES PURSUANT TO THE LAW-ENFORCEMENT-PRIVACY AND GENERAL-PRIVACY EXEMPTIONS, DOES THE CONTEMPORANEOUS OR SUBSEQUENT PUBLISHING OF ALL OR SOME OF THE EXEMPT INFORMATION CHANGE THE APPLICABILITY OF THE EXEMPTIONS?

Defendant-Appellant says, "No."

Plaintiff-Appellee says, "Yes."

Amicus Curiae says, "No."

STATEMENT OF APPELLATE JURISDICTION

The Amicus Curiae adopt the statement of appellate jurisdiction of Michigan State University in its Application for Leave to Appeal.

STATEMENT OF FACTS

The Amicus Curiae adopt the statement of facts of Michigan State University in its Application for Leave to Appeal.

ARGUMENTS

Under FOIA's requirements, Michigan State University must disclose public records that are not specifically exempt. MCL 15.233(1). Under the law-enforcement-purpose exemption, Michigan State University does not have to disclose "[i]nvestigating 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. (ii) Deprive a person of the right to a fair trial or impartial administrative adjudication. (iii) Constitute an unwarranted invasion of personal privacy. . . ." MCL 15.243(b). Under the general-privacy exemption, Michigan State University does not have to disclose "[i]nformation of a personal nature if public disclosure of the information would constitute a *clearly* unwarranted invasion of an individual's privacy." MCL 15.243(1)(a) (emphasis added). By codifying such exemptions, the legislature indicated that some government affairs should be shielded from view because of significant public policy considerations. *Herald Co. Inc v Eastern Michigan Univ Bd of Regents*, 475 Mich 463, 472 (2006). The burden is on the defendant to show a viable defense once a request has been made under the act and denied by the defendant. *Detroit News, Inc v Detroit*, 185 Mich App 296, 300 (1990).

When the parties challenge the factual findings of the trial court, this Court reviews for clear error; however, when it is the trial court's discretion, not its factual findings that are at issue, this court reviews for an abuse of discretion the result of which is outside the principled range of outcomes. *Herald Co. Inc v Eastern Michigan Univ Bd of Regents*, *supra*, 467.

I. THE MICHIGAN COURT OF APPEALS ERRED BY GIVING THE TRIAL COURT IMPROPER INSTRUCTIONS TO APPLY ON REMAND REGARDING THE PRIVACY AND LAW-ENFORCEMENT-PRIVACY EXEMPTIONS.

A. The Michigan Court of Appeals erred when it instructed that public bodies must prove with certainty that the release of personal information would be an unwarranted invasion of privacy under the law-enforcement-privacy exemption or a clearly unwarranted invasion of privacy under the privacy exemption.

Contrary to the Court of Appeals' opinion, when a public body denies a FOIA request pursuant to the law-enforcement-privacy or general-privacy exemption and provides justification for that denial, the public body does not have to show with absolute certainty that disclosure would constitute an unwarranted or clearly unwarranted invasion of privacy. See *State News v Michigan State University*, 274 Mich App 558, 574-75 (2007). In fact, a public body can justify invoking an exemption in three different ways: 1) by offering a complete and particularized justification of the facts and the use of exemptions; 2) allowing the court to perform an in camera hearing to determine if a particularized justification for the use of the exemption exists; or 3) giving plaintiff's counsel in camera access to the documents. *Evening News Ass'n v City of Troy*, 417 Mich 481, 516 (1983).

It is not possible, as the Court of Appeals asserts in its opinion, for any public body to prove with absolute certainty what will happen in the future.¹ *State*

¹ Even though this Court only certified discussion regarding the privacy exemption and the law-enforcement-privacy exemption, this holds true for other aspects of the law enforcement exemption. It is not possible for a public body to definitively prove that release of information will interfere with law enforcement proceedings or will result in Defendant's trial being unfair. However, a public body can certainly set forth facts showing that there is a reasonable probability

News v Michigan State University, 274 Mich App 558, 574-75 (2007). However, public bodies can certainly be expected to show to a reasonable probability that disclosure will result in an unwarranted invasion of privacy. For example, in *Mager v Dep't of State Police*, 460 Mich 134 (1999), a case addressing the privacy exemption, a public body denied a FOIA request for the names, addresses, and phone numbers of persons with pistol safety certificates. This Court held that the public body properly denied the request and that the information was exempt from disclosure under the privacy exemption. The Court reasoned that:

[K]nowledge that a household contains firearms *may* make that household a target of thieves, and thus endanger its occupants. As the state police warned in the application filed in this Court, 'Disclosure under the FOIA to the world at large of the names and addresses of citizens who possess registered handguns would create a virtual shopping list for anyone bent on the theft on handguns, interested, for malicious reasons, in the identities and addresses of who own handguns, and whatever else the criminal mind might evoke.' [*Id.* at 143. (emphasis added).]

When this Court evaluated applicability of the privacy exemption in *Mager*, it did not require that the trial court find with certainty that release of the information *would* cause a clearly unwarranted invasion of privacy, only that it *may*. The Court did not require certainty, only a probability that an unwarranted invasion of privacy could occur.² The Michigan Court of Appeals erred by

for such an occurrence so that the trial court can find that the exemption applies. Michigan State University provided all information that can reasonably be expected under the exemptions.

² *Mager* addressed the general-privacy exemption, which requires that a public body show there would be a *clearly* unwarranted invasion of privacy. The law-enforcement privacy exemption has a less demanding burden because public bodies only have to show that the invasion of privacy would be unwarranted.

instructing the trial court that a public body must predict the future with certainty in order to exempt materials from disclosure under the privacy exemptions.

B. The Michigan Court of Appeals erred when it instructed the trial court that it was required to perform an in camera review of the materials that are exempt under the privacy and law-enforcement-privacy exemptions.

A trial court has the discretion to decide when an in camera review of a document claimed as exempt is required. See *Vaughn v United States*, 936 F 2d 862, 868 (6th Cir. 1991). The Michigan Court of Appeals erred when it instructed the trial court, on remand, to conduct an in camera review of the exempt document. This Court recently explained in *Herald Co. Inc v Eastern Michigan Univ Bd of Regents*, *supra*, 482, that courts can review the denial of a FOIA request in the following three ways: 1) by obtaining a complete, particularized justification; 2) conducting an in camera hearing; or 3) by allowing the plaintiff's attorney in camera access to the exempt information³ While it is true that where a public body is "reluctant or antagonistic" with regard to a FOIA disclosure, an in camera review may be the best option for evaluating whether information is exempt, MSU's mere denial of a FOIA request does not make MSU "reluctant or antagonistic." See *Evening News Ass'n v City of Troy*, 417 Mich 481, 516 (1983). Thus, based on law from this Court, the trial court was not required to conduct an in camera review of the exempt document.

Instead of an in camera review, affidavits are sufficient to establish the viability of an exemption. In *Vaughn v United States*, 936 F 2d 862, 868 (6th Cir. 1991), the Sixth Circuit Court of Appeals explained that in camera reviews for the purpose of determining whether a document is exempt "are neither favored nor necessary where other evidence provides adequate detail and justification." *Id.*

³ The Court of Appeals agreed with this characterization in its opinion. See *State News v Michigan State University*, 274 Mich App 558, 580-82 (2007).

at 869. Here, an in camera review would not be necessary or helpful because the affidavits offered by MSU describe the exempt material in as much detail as possible without actually revealing the exempt information. Courts do not require that affidavits contain so much detail that they actually reveal the information that the public body wishes to keep exempt. *Id.* at 866-67. The affidavits that Michigan State University submitted contained enough detail that the trial court could correctly find that the information in the police report was exempt.

Specifically, Chief Assistant Prosecutor, Linda Maloney's affidavit contained statements that: described the nature of the exempt documents and the information they contained; explained that there was an ongoing criminal investigation that involved information contained in the documents; explained that certain witnesses and victims were fearful of retaliation; and explained that public dissemination of inmate profiles would be an unwarranted invasion of privacy. Based on Chief Assistant Prosecutor Linda Maloney's affidavit and affidavits by Michigan State University's FOIA Officer, Ellen Armentrout, and Michigan State University's Chief of Police, Jim Dunlap, the trial judge stated:

I do recognize that with respect to this exemption there is a requirement of a particularized showing that it would interfere with law enforcement proceedings, or deprive a person of a right to a fair trial. And in this Court's view there has been a particularized showing by the Affidavit of the Chief Assistant Prosecutor and Chief Dunlap in that they have established that there is potential for retaliation, for witness names and addresses and other information about witnesses to be released. There is that potential. Witnesses do not get police reports and do not have that information available to them, and to release it to the public creates the possibility of retaliation by anyone who has an interest in retaliating.

Because the affidavits contained such detail, the trial court was within its discretion when it did not hold an in camera review of the police report. Neither Michigan nor Federal law requires greater particularity in order for a court to allow a public body to continue to invoke one of the FOIA exemptions, and the Court of Appeals erred in explaining otherwise.

II. CONTEMPORANEOUS OR SUBSEQUENT PUBLISHING OF ALL OR SOME OF THE EXEMPT INFORMATION IN A POLICE REPORT THAT IS EXEMPT FROM FOIA DISCLOSURES PURSUANT TO THE LAW-ENFORCEMENT-PRIVACY AND GENERAL-PRIVACY EXEMPTIONS DOES NOT CHANGE THE APPLICABILITY OF THE EXEMPTIONS.

In order for information to be exempt under the privacy exemption, that information must be personal in nature. This Court has defined information as “personal in nature if it reveals intimate or embarrassing details of an individual’s private life.” *Mager v Dep’t of State Police*, 460 Mich 134, 142 (1999). While the Court of Appeals agreed:

that being a victim of or witness to a crime may at least hypothetically, be as ‘personal’ as being involved in an automobile accident⁴ and that people linked with a crime, whether as a perpetrator, witness, or victim, have an interest in not sharing this information with the public. Further, releasing the identity and other personal information of the parties could make them potential targets for retaliation. [*State News v Michigan State University*, 274 Mich App 558, 578 (2007).]

However, the Court went on to explain that since some of the information was public, it was no longer “of a personal nature.” *Id.*

The applicability of the law enforcement and general-privacy exemptions does not hinge on whether the public is aware of some of the information contained in an exempt document, but on the nature of the information contained in the report. Under the general-privacy exemption, Michigan State University does not have to disclose “[i]nformation of a personal nature if public disclosure

⁴ Referring, as the Court of Appeals did, to *Larry S Baker, PC v Westland*, 245 Mich App 90, 95 (2001), a case dealing with disclosure of the names of individuals involved in automobile accidents.

of the information would constitute a *clearly* unwarranted invasion of an individual's privacy." MCL 15.243(1)(a) (emphasis added). Under the law-enforcement exemption, Michigan State University does not have to disclose "[i]nvestigating 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. (ii) Deprive a person of the right to a fair trial or impartial administrative adjudication. (iii) Constitute an unwarranted invasion of personal privacy. . . ." MCL 15.243(b).

Information is personal in nature under the privacy exemption if it "reveals intimate or embarrassing details of an individual's life. *Mager v Dep't of State Police*, 460 Mich 134, 146 (1999). However, contrary to any definition of what constitutes information that is personal in nature, the Court of Appeals in this case found that where information becomes a matter of public knowledge, it is no longer personal in nature. This leap is illogical for several reasons.

First, even when information of a personal nature becomes public, the individual to whom the information pertains to still holds a compelling interest in limiting disclosure. For example, in *United States Department of Defense v Federal Labor Relations Authority*, 510 US 487, 114 S Ct 1006, 127 L Ed 2d 325 (1994), the court found that non-union members had an important privacy interest in not disclosing their home addresses to the union even though that information was already available to the public in some form. The court reasoned that the union had a "virtually nonexistent FOIA-related interest in

disclosure” and “the employees’ interest in nondisclosure is not insubstantial.” *Id.* at 500.

Similarly, in this case, even though the State News claims that they already have some of the information contained in the police report, and some of the information in the police report may already be available to the public, the victims and witnesses have an interest in keeping their personal information private. Limited publication does not destroy the private nature of certain information. Also, like the union in *United States Department of Defense*, State News’s interest in disclosure is virtually nonexistent. State News explained that it wanted access to the police report so that it could “get both sides of the story[,]” and such motivation is not sufficient to overcome the private nature of the information contained in the police report because it does not establish that disclosure would shed light on government functions.

Second, where only a portion of the exempt, private information in a document becomes available to the public, the individuals to which the information pertains continue to hold a compelling interest in limiting disclosure of the remaining exempt portion of the document. An exempt document is not viewed in such a way that when a portion of the document becomes public the rest must follow. Michigan law does provide that redaction of exempt information is “appropriate whenever disclosure is discretionary. This means that a public body can redact any information that falls within an exemption of the FOIA.” *Bradley v Saranac Bd of Educ*, 455 Mich 285, 304 (1997). However, there is no authority in state or federal law for the assertion that once some of the exempt

material in a document becomes public, the rest of the exempt information must follow.

Third, where exempt information becomes public through a less than reliable or unknown source, a public body does not have to disclose the exempt information in its official and verifiable form. This holds especially true, where as here, the witnesses and victims fear retaliation, and the release of the information in a reliable form would jeopardize the parties' privacy in a way that gossip or information from an unreliable source would not. It would be easier for an individual with reliable information to retaliate than an individual acting only on gossip and conjecture. Thus, the inadvertent release of exempt, personal information in an unreliable form does not compel a public body to release information in a reliable form.

Lastly, it would place an undue burden on FOIA officers, and subsequently upon the courts if they were required to constantly reevaluate whether information had become public, and to what extent the information in the public eye was reliable. For example, in *Yourdan v Brown City Community Schs*, unpublished opinion per curiam of the Court of Appeals, decided Oct. 3, 2006 (Docket No. 260419), included as *Attachment 1*, the plaintiff alleged that a public body violated the FOIA when it failed to disclose information it discovered after it made a good faith effort to respond to a FOIA request. The court explained that:

[T]he Legislature did not expressly require a public body to disclose information that was discovered well after a good faith record search pursuant to an initial FOIA request. Because no such requirement exists, a public body is not required to verify whether documents discovered well after a FOIA request are within the

purview of any and all previously submitted FOIA requests because this requirement would unduly burden a public body. [*Id.* at 3-4.]


Likewise, it would be an unreasonable burden upon public bodies to require that they continuously monitor information that is exempt under either privacy exemption to determine whether the information has been subsequently published and to what extent the published information is reliable. Such a requirement would also be unreasonable because public bodies would have to constantly reevaluate past FOIA requests to see if newly published information fits within a past request.

RELIEF REQUESTED

WHEREFORE, Amicus Curiae respectfully requests that this Court reverse the decision by the Michigan Court of Appeals and reinstate the Ingham County Circuit Court's decision.

Respectfully submitted,

Dated: 11/30/07


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CERTIFICATE OF SERVICE

On 11/30/07, I served a copy of Amicus Curiae brief upon Hershel P. Fink Attorney for Plaintiff-Appellee and upon Theresa Kelley, attorney for Defendant-Appellant, by first class mail addressed to:

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


Lisa Renee Davis

STATE OF MICHIGAN
COURT OF APPEALS

DAVE YOURDAN,

Plaintiff-Appellant,

v

BROWN CITY COMMUNITY SCHOOLS,

Defendant-Appellee.

UNPUBLISHED

October 3, 2006

No. 260419

Sanilac Circuit Court

LC No. 04-029696-CZ

Before: Davis, P.J., and Cooper and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order of no cause of action following a bench trial. Because the record fails to persuade us that the trial court clearly erred in reaching its findings, we affirm.

This case arises out of two alleged violations of the Freedom of Information Act (FOIA), MCL 15.231 *et seq.* Pursuant to the FOIA, plaintiff submitted a record request with defendant seeking access to the minutes of all board meetings, all audits, and complete revenue information concerning defendant's day-care from 1995 to the then present time. Ultimately, plaintiff inspected defendant's public records on three separate occasions. Undisputed testimony provides that, during plaintiff's first record inspection, defendant's employee asked plaintiff to submit a separate, written FOIA request after plaintiff had asked her to make a copy of a document, but plaintiff refused and was later escorted out of the building by a police officer. Plaintiff filed suit alleging a violation of the FOIA shortly thereafter. While litigation was ongoing, the parties agreed to allow plaintiff to again inspect the requested public records, and plaintiff brought a copier for that inspection. During the second inspection, which occurred over three months after the first inspection, plaintiff asked about certain day-care revenue information to which one of defendant's employees responded that, if the information existed, defendant's day-care director was storing it. Shortly after the second inspection, defendant's employee inquired about the day-care information and determined that the information did exist. However, she did not immediately inform plaintiff that the information was found, and the information was first disclosed in a set of interrogatory answers sent to plaintiff about two months after the information was discovered. In a final inspection, plaintiff was able to review the requested day-care information. Following a bench trial, the trial court concluded that defendant did not violate the FOIA.

From the outset we note that defendant's agents, specifically charged with implementation of defendant's FOIA plan, were less than candid in their approach to plaintiff's inquiries. Defendant's agents did little, if anything, to assist plaintiff in his requests for information. However we also note that plaintiff's initial inquiry for records did not encompass some of the information that defendant's agents seemingly withheld. While our displeasure with the lack of professionalism exhibited by defendant through its agents gives us cause for concern, we are bound to review a trial court's findings of fact for clear error. *Meredith Corp v Flint*, 256 Mich App 703, 712; 671 NW2d 101 (2003). Thus, giving the trial court the deference the statute requires, we affirm its rulings.

We begin by reviewing the purpose of FOIA and its application to the facts presented in this matter. Unlike questions of fact, an issue of statutory interpretation is a question of law and is reviewed de novo. *Id.* at 711. The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature, and the Legislature is presumed to have intended the meaning it plainly expressed. *Linsell v Applied Handling, Inc*, 266 Mich App 1, 15; 697 NW2d 913 (2005). If statutory language is clear and unambiguous, then a court is required to apply the statute as written. *Id.* A court must derive the Legislature's intent from the language of the statute and not from missing language. *AFSCME v Detroit*, 468 Mich 388, 400; 662 NW2d 695 (2003).

The FOIA "was enacted to carry out this state's strong public policy favoring access to government information, recognizing the need for citizens to be informed so that they may fully participate in the democratic process and thereby hold public officials accountable for the manner in which they discharge their duties. MCL 15.231(2)_[r.]" *Thomas v New Baltimore*, 254 Mich App 196, 201; 657 NW2d 530 (2002). "Pursuant to the FOIA, a public body must disclose all public records not specifically exempt under the act. MCL 15.233(1)_[r.]" *Scharret v Berkley*, 249 Mich App 405, 411; 642 NW2d 685 (2002). Upon furnishing a sufficiently descriptive, written request, a person has the right to inspect, copy, or receive copies of a public record not exempt from disclosure. MCL 15.233(1). "Unless otherwise agreed to in writing, a public body must respond to a request for a public record within five business days after it receives the request, and the failure to so respond constitutes a final determination to deny the request. MCL 15.235(2) and (3)_[r.]" *Thomas, supra* at 201. Under MCL 15.240(1), after a public body makes a final determination to deny all or a portion of a request, the requesting party may submit a written appeal to the head of the public body or bring a circuit court action within 180 days after the denial to compel disclosure of the requested record.¹ A public body may limit a person's rights under the FOIA by creating reasonable rules to protect public records and to prevent excessive and unreasonable interference with the functions of the public body. MCL 15.233(3).

As to the alleged FOIA violations, plaintiff argues that the trial court clearly erred because defendant violated the FOIA on two separate instances: (1) when defendant's employee requested that plaintiff make a separate, written FOIA request during the first inspection regarding a document that he wanted copied and (2) when defendant failed to disclose that the

¹ Defendant does not allege that plaintiff improperly brought an action in the circuit court.

day-care revenue information including receipt books, deposit slips, and sign-in and sign-out sheets existed after they were discovered sometime following the second inspection.

As to the first alleged violation, we cannot conclude that the trial court clearly erred in finding no FOIA violation occurred when the court reasoned that, while plaintiff broadly requested access to defendant's audits from 1995 to the present, plaintiff did not specifically ask for a copy of a page from the 2000 to 2001 audit report. In relation to the trial court's reasoning, while a person is entitled to a copy of a public record under MCL 15.233(1), we cannot conclude that the trial court clearly erred by finding that it was reasonable for defendant's employee to ask plaintiff to create another FOIA request concerning the specific document he wanted copied. Such a finding eludes a finding of clear error because it was argued that such a request was to ensure that defendant would ultimately comply with plaintiff's request for copies. The fact that plaintiff admitted to making about 125 to 150 copies during the second inspection also supports such a finding. When examining the trial court's findings in conjunction with statute, specifically, MCL 15.233(3), which provides in part that "[a] public body may make reasonable rules necessary to protect its public records and to prevent excessive and unreasonable interference with the discharge of its functions,"² the statute clearly allows a public body to set reasonable rules concerning a request for copies during an inspection, which, in this case, included a separate, written FOIA request for copies to be made later. Moreover, while a public body is required to provide a reasonable opportunity to inspect records and to furnish a facility for taking notes or abstracts, MCL 15.233(3), a public body is not required to immediately make copies for a party during an inspection but is allowed a reasonable amount of time to make the requested copies as contemplated under § 3(3). Specifically, under § 3(3), upon receiving a FOIA request, a public body is required to furnish a reasonable facility to take notes but that subsection does not provide that a public body must make copies immediately when asked during an inspection. In this case, while plaintiff had only requested a copy of one document at that time, defendant's employee was not under a statutory duty to stop performing her ordinary tasks² that day each time defendant wanted a copy of a document.

As to the second alleged violation, plaintiff does not argue that defendant initially failed to make a good faith effort in searching for the requested records, but rather that defendant should have notified him when the day-care revenue information had been discovered because litigation was pending. However, nothing in the statute requires such a disclosure, and absent factual evidence of bad faith in searching for the documents, we are forced to conclude that the trial court did not clearly err in finding that defendant did not violate the FOIA concerning this alleged violation.

While the FOIA is a prodisclosure statute, *Krug v Ingham Co Sheriff's Office*, 264 Mich App 475, 482; 691 NW2d 50 (2004), the Legislature did not expressly require a public body to disclose information that was discovered well after a good faith record search pursuant to an

² Defendant's employee testified that while plaintiff was inspecting the records, she was preparing to deposit money into a bank, was answering phones, and had to stay at her desk because she was the only employee in the reception area.

initial FOIA request. Because no such requirement exists, a public body is not required to verify whether documents discovered well after a FOIA request are within the purview of any and all previously submitted FOIA requests because this requirement would unduly burden a public body. While this case is unique because relevant documents were discovered while litigation was ongoing, these factual circumstances do not modify a public body's limited duty to conduct an initial good faith search. After such a search has been conducted, a public body's duty concerning the existence of documents within the purview of a FOIA request is discharged. As a result, because legislative intent is determined from the language itself, *AFSCME, supra* at 400, and there is no language in the FOIA to require a public body to disclose that records do in fact exist if discovered well after a good faith search was conducted pursuant to a written FOIA request, the trial court did not clearly err in finding that no violation occurred. The record simply does not support a finding that defendant failed to make an initial good faith search for the requested records. The initial response from defendant's secretary was that they did not believe that a day-care center was being operated in the year in which plaintiff make the request for documents. Furthermore, defendant's secretary informed plaintiff that she had made a telephone call to a fellow employee to verify that information.

Because plaintiff's remaining arguments are premised on the above alleged errors, we need not further consider those arguments.

Affirmed.

/s/ Alton T. Davis
/s/ Jessica R. Cooper
/s/ Stephen L. Borrello