

STATE OF MICHIGAN
COURT OF CLAIMS

THE INVISIBLE INSTITUTE and
DETROIT METRO TIMES,

Plaintiffs,

v

Case No. 23-000168-MB

MICHIGAN STATE POLICE,

Hon. Christopher P. Yates

Defendant.

OPINION AND ORDER GRANTING SUMMARY DISPOSITION TO DEFENDANT

In this action under the Freedom of Information Act (FOIA), MCL 15.231 *et seq.*, the Court entered an order awarding summary disposition in part to Defendant Michigan State Police (MSP), but calling for additional analysis to “consider the [FOIA] exemption claimed for the names of law enforcement officers whose licenses have not been revoked.” Specifically, defendant invoked the FOIA exemption stated in MCL 15.243(1)(s)(viii), which exempts from disclosure “public records of a law enforcement agency” if those records would “[i]dentify or provide a means of identifying a person as a law enforcement officer, agent, or informant.” But that exemption requires balancing to analyze whether “the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance[.]” Plaintiffs The Invisible Institute and Detroit Metro Times have asked for identifying information about active law-enforcement officers who are in good standing and a cohort that largely consists of retirees who presumably left active duty in good standing when they retired. Because the Court concludes that FOIA exemptions fit those two groups like a glove, the Court will grant defendant summary disposition of plaintiffs’ remaining claim.

I. FACTUAL BACKGROUND

In 2023, plaintiffs submitted a FOIA request asking defendant for “two categories of data regarding officer certifications by the Michigan Commission on Law Enforcement Standards[,]” commonly known as MCOLES. First, plaintiffs requested data on “[a]ll law enforcement officers who are actively certified as of the date of this request (or when the request is processed).” Second, plaintiffs asked defendant for data about “[a]ll law enforcement officers who have been decertified through revocations, voluntary surrenders, suspensions, or any other actions going back as far as possible.” Defendant asserted FOIA exemptions, and then plaintiffs appealed. On June 1, 2023, defendant sent plaintiffs a letter resolving their appeal by granting in part, and denying in part, the FOIA request submitted by plaintiffs.

Plaintiffs eventually filed this action on November 28, 2023, and the parties subsequently made progress trying to work out their differences. Defendant ultimately filed a motion requesting summary disposition under MCR 2.116(C)(10), and the Court took up that motion during a hearing conducted on April 9, 2024. After hearing from the competing parties, the Court awarded partial summary disposition to defendant, but reserved ruling on the applicability of the FOIA exemption set forth in MCL 15.243(1)(s)(viii). After the Court memorialized its ruling in an order issued on April 10, 2024, the parties submitted closing briefs addressing the remaining issues in the case.¹

In defendant’s brief, defendant invokes two separate FOIA exemptions for two categories of law-enforcement officers. That is, defendant cites the exemption in MCL 15.243(1)(s)(viii) for

¹ Although the Court had suggested an evidentiary hearing to address the remaining FOIA issues, both sides instead chose to conduct discovery and then submit supplemental briefs that include the information obtained during discovery. The Court acceded to that approach by signing a stipulated order to that effect on November 5, 2024.

active law-enforcement officers, and invokes the exemption for personal information set forth in MCL 15.243(1)(a) for retired law-enforcement officers. In contrast, plaintiffs emphasize the need for public disclosure “for a database called the National Police Index, which is used by journalists to report on police misconduct as officers move between agencies and departments,” and “within and between states.” Although defendant has commendably already turned over the names of all the officers no longer serving in a law-enforcement capacity because their licenses were revoked, plaintiffs want sufficient information to provide a complete picture of the situation in Michigan. Therefore, plaintiffs insist that defendant “has failed to carry its burden of showing that the public interest in disclosure is outweighed by any public interest in nondisclosure.” The Court must now resolve the remaining issues raised by the competing parties.

II. LEGAL ANALYSIS

The Court’s legal analysis must begin with the language of FOIA, which “provides that ‘a person’ has a right to inspect, copy, or receive public records upon providing a written request to the FOIA coordinator of the public body.” *Detroit Free Press, Inc v City of Southfield*, 269 Mich App 275, 290; 713 NW2d 28 (2005). “Under FOIA, a public body must disclose all public records that are not specifically exempt under the act.” *Hopkins v Duncan Twp*, 294 Mich App 401, 409; 812 NW2d 27 (2011). “The FOIA exemptions [listed in MCL 15.243] signal particular instances where the policy of offering the public full and complete information about government operations is overcome by a more significant policy interest favoring nondisclosure.” *Herald Co v Eastern Mich Univ Bd of Regents*, 475 Mich 463, 472; 719 NW2d 19 (2006). “The burden of proof is on the party claiming exemption from disclosure,” and “[e]xemptions must be interpreted narrowly.” *The Evening News Ass’n v City of Troy*, 417 Mich 481, 503; 339 NW2d 421 (1983). Accordingly, defendant must shoulder the burden of establishing that the claimed FOIA exemptions apply.

Defendant has cited two separate FOIA exemptions. Specifically, defendant has invoked the exemption in MCL 15.243(1)(s)(viii) for active law-enforcement officers and the exemption in MCL 15.243(1)(a) for retired law-enforcement officers,² so the Court must separately consider the two different exemptions to determine whether defendant must provide public records relating to active law-enforcement officers and retired law enforcement officers.

A. ACTIVE LAW-ENFORCEMENT OFFICERS

Defendant asserts that the FOIA exemption in MCL 15.243(1)(s)(viii) shields information about active law-enforcement officers. That provision exempts from disclosure “public records of a law enforcement agency” if those records would “[i]dentify or provide a means of identifying a person as a law enforcement officer, agent, or informant.” But that exemption requires balancing to analyze whether “the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance[.]” Plaintiffs seem to acknowledge that the information they seek would identify or provide a means of identifying a person as a law-enforcement officer, but plaintiffs take the position that defendant has not met “its burden of showing that the public interest in disclosure is outweighed by any public interest in nondisclosure.” Consequently, the Court must balance the competing interests at issue here.

Defendant claims that “the public interest in disclosure cannot, as a matter of law, outweigh the public interest in nondisclosure where this particular instance involves the names of every law enforcement officer in this State.” Indeed, ruling for the plaintiffs in this case would render MCL

² Defendant describes that cohort as retirees, whereas plaintiffs identify the cohort as “decertified” former officers. In fact, the cohort includes former officers whose licenses are inactive, lapsed, or revoked. Because defendant has provided identifying information for those whose licenses were revoked, the remaining group consists largely, if not entirely, of former officers who have retired.

15.243(1)(s)(viii) a dead letter. Because “the Legislature intended the [FOIA] exemption in MCL 15.243(1)(s)(viii) to apply only to the identities of active law enforcement officers[.]” *Detroit Free Press*, 269 Mich App at 286, and plaintiffs demand identifying information about each active law-enforcement officer in the state, rejecting defendant’s reliance upon MCL 15.243(1)(s)(viii) in this case would subject every single active law-enforcement officer to precisely the concern underlying the exemption in MCL 15.243(1)(s)(viii). Accordingly, the Court concludes that the public interest in nondisclosure of identifying information about active law-enforcement officers is strong.

To offset the strong public interest in nondisclosure of identifying information about active law-enforcement officers, plaintiffs assert that “transparency about police bolsters public trust in the police and enables them to better serve the public; and disclosure of police officer names will enable more accurate reporting on police misconduct, which in turn helps police departments deal with and prevent misconduct.” To be sure, no free society wishes to be subjected to secret police, but plaintiffs concede that undercover law-enforcement officers should not be identified by FOIA, so plaintiffs recognize that the transparency they seek comes with significant risks to at least some law-enforcement officers. Moreover, any law-enforcement officer who is on duty can (and should) be readily identifiable by name and status, but transparency cannot be the paramount concern when officers are living their private lives while not on duty. Plaintiffs’ vision of transparency conflates the public and private lives of officers by subjecting them to identification throughout their daily activities, whether on the job or off the clock. Consequently, the Court concludes that plaintiffs’ claims about the public interest in disclosure of law-enforcement officers’ identifying information pale in comparison to defendant’s claims about the public interest in nondisclosure of identifying information. Hence, defendant can rely on the FOIA exemption in MCL 15.243(1)(s)(viii) to deny disclosure of identifying information about active law-enforcement officers.

B. RETIRED LAW-ENFORCEMENT OFFICERS

Defendant cannot rely on MCL 15.243(1)(s)(viii) to shield identifying information about retired law-enforcement officers. Our Court of Appeals has settled that matter, observing that “the absence of the modifier ‘retired’ in MCL 15.243(1)(s)(viii) indicates that the Legislature intended the exemption in MCL 15.243(1)(s)(viii) to apply only to the identities of active law-enforcement officers.” *Detroit Free Press*, 269 Mich App at 286. As a result, “providing the names of retirees . . . does not invoke the exemption in MCL 15.243(1)(s)(viii).” *Id.* Therefore, defendant relies on a different exemption – MCL 15.243(1)(a) – to shield identifying information about retired officers from public disclosure.

Under MCL 15.243(1)(a), “[a] public body may exempt from disclosure . . . [i]nformation of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual’s privacy.” Therefore, “the privacy exemption, as currently interpreted, has two prongs that the information sought to be withheld from disclosure must satisfy.” *Michigan Federation of Teachers v Univ of Michigan*, 481 Mich 657, 675; 753 NW2d 28 (2008). “First, the information must be ‘of a personal nature.’” *Id.* Second, “the public disclosure of that information ‘would constitute a clearly unwarranted invasion of an individual’s privacy.’” *Id.* The Court shall consider those two requirements in turn.

With respect to “information of a personal nature,” our Supreme Court has concluded “that intimate, embarrassing, private, *or* confidential information” satisfies that requirement. *Id.* at 676. Our Court of Appeals has observed that a retiree’s name “is not information of a personal nature.” *Detroit Free Press*, 269 Mich App at 282. “[B]ut this is true only to the extent that the name is not associated with any personal information about the person named.” *ESPN, Inc v Michigan State Univ*, 311 Mich App 662, 666; 876 NW2d 593 (2015). Accordingly, the issue is whether the status

of a retiree as a former law-enforcement officer constitutes “information of a personal nature,” *id.*, because such information is “private or confidential.” *Michigan Federation of Teachers*, 481 Mich at 676. For two reasons, the Court concludes that such information is “of a personal nature.” First, because our Legislature recognized the importance of protecting law-enforcement officers’ names when it enacted MCL 15.243(1)(s)(viii), the Legislature effectively decreed that such information is “private or confidential.” Although retired officers are not covered by that statute, *Detroit Free Press*, 269 Mich App at 286, the fact remains that our Legislature saw fit to provide an exemption that treats officers’ names as worthy of such protection from disclosure. Second, the evidence in the record establishes that most retired law-enforcement officers still have firearms.³ Our Supreme Court has stated that “gun ownership is information of a personal nature.” *Mager v Dep’t of State Police*, 460 Mich 134, 143; 595 NW2d 142 (1999). In light of the common practice of retired law-enforcement officers possessing firearms, their gun ownership is information of a personal nature, so the Court finds that the first requirement of MCL 15.243(1)(a) has been satisfied.

Next, the Court must decide whether disclosure of retired officers’ identifying information “would constitute a clearly unwarranted invasion of a person’s privacy,” as contemplated by MCL 15.243(1)(a). *Michigan Federation of Teachers*, 481 Mich at 675. In its analysis, the Court “must balance the public interest in disclosure against the interest the Legislature intended the exemption to protect.” *ESPN*, 311 Mich App at 669. “[T]he only relevant public interest in disclosure to be weighed in this balance is the extent to which disclosure would serve the core purpose of FOIA, which is contributing significantly to public understanding of the *operations or activities of the*

³ Because of the Michigan Retired Law Enforcement Officer’s Firearm Carry Act, MCL 28.511 *et seq.*, “a qualified retired law enforcement officer” may readily “be certified to carry a concealed firearm” under federal and state law.

government.” Id. “Requests for information on private citizens accumulated in government files that reveal little to nothing about the inner working of government will fail this balancing test” in almost all circumstances. *Id.* That outcome is dictated here. The retired law-enforcement officers whose licenses were not revoked fall into the category of private citizens. Their conduct does not provide any insight into the inner working of government, and the fact that their licenses were not revoked ensures that nothing in their backgrounds while they were law-enforcement officers offers any meaningful revelations about how rogue police officers prolong their careers. In addition, the fact that most retired officers possess guns fortifies the Court’s conclusion that the balancing test favors nondisclosure, rather than disclosure, of identifying information about retired officers. See *Mager*, 460 Mich at 144-146. As a result, the Court concludes that defendant can properly invoke the FOIA exemption set forth in MCL 15.243(1)(a) to shield identifying information about retired law-enforcement officers.

III. CONCLUSION

For the reasons stated in this opinion, the Court concludes that defendant is entitled to an award of summary disposition of plaintiff’s remaining FOIA claim because the exemption set forth in MCL 15.243(1)(s)(viii) applies to identifying information about active law-enforcement officers and the exemption in MCL 15.243(1)(a) applies to retired law-enforcement officers.

IT IS SO ORDERED.

This is a final order that resolves the last pending claim and closes the case.

Dated: May 1, 2026



Hon. Christopher P. Yates (P41017)
Judge, Court of Claims

