STATE OF MICHIGAN

COURT OF CLAIMS

STEVEN R. BUCHMAN, M.D.,

Plaintiff,

v

Case No. 25-000114-MZ

THE BOARD OF REGENTS OF THE UNIVERSITY OF MICHIGAN,

Hon. Christopher P. Yates

Defendant.
_____ /

OPINION AND ORDER GRANTING SUMMARY DISPOSITION TO DEFENDANT

Plaintiff Steven R. Buchman, M.D., an employee of the University of Michigan, filed this action against the Board of Regents of the University of Michigan pursuant to both the Michigan Freedom of Information Act (FOIA), MCL 15.231 *et seq.*, and the Bullard-Plawecki Employee Right to Know Act (Bullard-Plawecki), MCL 423.501 *et seq.* Plaintiff asserts that he submitted FOIA requests for his personnel records, then the University demanded a deposit which plaintiff paid, but the University denied the FOIA requests, citing the exemption in MCL 15.243(1)(v) for information relating to a civil action in which the requesting party and the public body are parties. Plaintiff characterizes that denial as a violation of FOIA and Bullard-Plawecki.

Defendant has moved for summary disposition under MCR 2.116(C)(10), contending that plaintiff's FOIA requests relate to a pending civil action between plaintiff and defendant, so the records plaintiff seeks are exempt from disclosure under MCL 15.243(1)(v). Further, defendant asserts that plaintiff never requested his personnel records pursuant to Bullard-Plawecki, and that a FOIA request cannot be deemed a request under Bullard-Plawecki. Beyond that, defendant states

that plaintiff was given his personnel records during discovery in the pending civil action.[1] This Court concludes that no FIOA violation occurred, and that plaintiff never requested his personnel records pursuant to Bullard-Plawecki, so such a request was never denied. Accordingly, the Court shall grant summary disposition to defendant.

I. FACTUAL BACKGROUND

In December 2021, plaintiff filed suit against defendant in the United States District Court for the Eastern District of Michigan in docket number 21-cv-13032, asserting claims of due process violations, breach of contract, and intentional torts arising from defendant's employment of, and disciplinary actions against, plaintiff. The case was dismissed by that court in June 2022.

On July 14, 2023, plaintiff filed suit against defendant in Washtenaw Circuit Court, but the case was transferred to the Court of Claims and assigned docket number 23-000118-MK. Plaintiff alleged claims of breach of contract, breach of fiduciary and public duties, intentional infliction of emotional distress, retaliation, and age discrimination stemming from what plaintiff characterized as defendant's "effort to remove him from the hospital" and suspension of his clinical privileges because he went to the medical school's "leadership to report concerning administrative practices."

On December 14, 2023, plaintiff sent a lengthy e-mail to numerous recipients associated with defendant that, among other things, inquired about the status of his employment as a professor at the University's medical school. Plaintiff asked to be provided with various records, and part of his e-mail requested that the University's FOIA official and general counsel treat his request for documents—including production of "proper notice of suspension, [and] a copy of the complaint

[1] As discussed further, the record neither confirms nor refutes that assertion.

made against" him—as a FOIA request. Defendant denied that FOIA request on January 15, 2024, under MCL 15.243(1)(a), asserting that it had found a single responsive record, but that disclosure would "constitute an unwarranted invasion of an individual's privacy." That FOIA request is not the subject of this litigation.

On December 15, 2023, plaintiff sent defendant a FOIA request seeking a complaint made against him "in relation to academic teaching" he did "in September and October 2023." Plaintiff also sought any investigatory file opened about him and e-mails about the decision to suspend him from teaching. Defendant responded on January 16, 2024, identifying the request as "Buchman 1039-23," and explaining that it required a good-faith deposit of $149.00 under MCL 15.234(8) to begin processing the FOIA request. Plaintiff insists that he paid that deposit.

On December 20, 2023, in a separate long e-mail sent to the University's assistant director for civil rights investigations, plaintiff asked for investigatory records. Plaintiff also included the University's FOIA official as a recipient and requested under FOIA additional records regarding the investigation into him and the decision to suspend him from teaching. On January 19, 2024, the University identified that request as "Buchman 1053-23" and demanded a good-faith deposit of $90.00 under MCL 15.234(8) to begin processing the FOIA request. Plaintiff states that he paid that deposit.

On June 24, 2024, the Court of Claims dismissed plaintiff's claims in the suit filed as docket number 23-000118-MK. That case is currently pending before our Court of Appeals under docket number 371956.

On April 16, 2025, defendant denied both of plaintiff's FOIA requests—1039-23 and 1053-23—based upon the exemption in MCL 15.243(1)(v) because of the pending civil action between

plaintiff and defendant. Plaintiff appealed the denials on April 21, 2025, pursuant to defendant's internal FOIA appeal process, contending that the requested records do not relate to pending civil litigation between plaintiff and defendant, but defendant denied that appeal on May 2, 2025.

Plaintiff filed the instant case against defendant on July 9, 2025, contending that defendant violated FOIA when it denied requests 1039-23 and 1053-23 because defendant failed to identify civil litigation between plaintiff and defendant that could involve the requested records. Plaintiff also asserted that only one civil action existed between himself and defendant, and he claimed that the requested records in 1039-23 and 1053-23 did not relate to that action. Plaintiff further argued that defendant repeatedly violated FOIA, MCL 15.235(2)(d), by responding to his requests in an untimely manner and by "unilaterally extending the time to respond" to his FOIA requests by more than 10 business days "on multiple occasions." In addition, plaintiff stated that defendant violated Bullard-Plawecki because, although his FOIA requests sought the production of personnel records, defendant failed to produce the records. In lieu of answering the complaint, defendant moved for summary disposition under MCR 2.116(C)(10). Thus, the Court must consider whether defendant violated FOIA or Bullard-Plawecki in its treatment of plaintiff.

II. LEGAL ANALYSIS

Seeking summary disposition under MCR 2.116(C)(10), defendant contends that the civil-litigation exemption in FOIA, MCL 15.243(1)(v), served as an acceptable basis to deny plaintiff's FOIA requests. Defendant also claims it did not violate MCL 15.235(2)(d) in processing plaintiff's FOIA requests. Further, defendant argues that plaintiff's FOIA requests did not constitute requests under Bullard-Plawecki, and even if his FOIA requests could be regarded as such, the responsive records are exempted under Bullard-Plawecki. A motion requesting summary disposition pursuant to MCR 2.116(C)(10) "tests the *factual sufficiency* of a claim." *El-Khalil v Oakwood Healthcare,*

Inc, 504 Mich 152, 160; 934 NW2d 665 (2019). The Court "must consider all evidence submitted by the parties in the light most favorable to the party opposing the motion." *Id.* When conducting its review under MCR 2.116(C)(10), the Court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence offered by the parties. MCR 2.116(G)(5). A motion for summary disposition "under MCR 2.116(C)(10) may only be granted when there is no genuine issue of material fact." *El-Khalil*, 504 Mich at 160. "A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ." *Id.* Applying all these principles, the Court will address defendant's arguments in turn.

A. FOIA

Defendant contends that the civil litigation initiated by plaintiff concerned, at least in part, the records he demanded in his FOIA requests, which is bolstered by plaintiff's subsequent request for those records during discovery in Court of Claims docket number 23-000118-MK. Therefore, defendant asserts, the civil-litigation exemption in FOIA was a proper basis for denying plaintiff's FOIA requests. Defendant further argues that it did not violate MCL 15.235(2)(d) of FOIA, and it complied with the requisite timelines for responding to plaintiff's FOIA requests.

Plaintiff counters that, at the time defendant denied his FOIA requests, his civil case against defendant had been dismissed and his appeal was pending, so the case no longer constituted a civil action under MCL 15.243(1)(v). Plaintiff also accuses defendant of refusing to produce requested records during discovery in Court of Claims docket number 23-000118-MK based on defendant's position that the records were outside the scope of that action.

As an initial matter, this Court notes that plaintiff submitted FOIA requests 1039-23 and 1053-23 in December 2023. At that point, plaintiff was in active litigation with defendant in Court

of Claims docket number 23-000118-MK, but that matter was dismissed by the Court in June 2024, and plaintiff's appeal to our Court of Appeals has been pending since then. Defendant denied the FOIA requests in April 2025, and plaintiff's FOIA appeal to defendant was denied in May 2025. This Court finds it odd, to say the least, that defendant took nearly 16 months to realize that it was in civil litigation with plaintiff and to invoke the exemption under MCL 15.243(1)(v) as a basis to deny his FOIA requests. Beyond that, defendant did not deny plaintiff's FOIA requests until after the civil case was dismissed by the Court of Claims, plaintiff had filed a claim of appeal with our Court of Appeals, and the parties had completed their appellate briefs in that matter.

1. CIVIL-ACTION EXEMPTION

MCL 15.243(1)(v) of FOIA expressly allows a public body to "exempt from disclosure as a public record" all "[r]ecords or information relating to a civil action in which the requesting party and the public body are parties." The "public body asserting the exemption in MCL 15.243(1)(v) must prove that it is a party to a civil action involving the requesting party." *Taylor v Lansing Bd of Water and Light*, 272 Mich App 200, 205; 725 NW2d 84 (2006). When considering whether a FOIA exemption applies, the Court should: (1) receive a complete particularized justification for the claimed FOIA exemption from the public agency; or (2) conduct a de novo in camera hearing to determine whether the exemption applies; or (3) consider allowing plaintiff's counsel access to the documents in camera. *King v Oakland County Prosecutor*, 303 Mich App 222, 228; 842 NW2d 403 (2013). To be sure, all three steps are not required, *id.*, but the Court "must make particularized findings of fact indicating why the claimed exemption is appropriate." *Messenger v Consumer & Indus Servs*, 238 Mich App 524, 532; 606 NW2d 38 (1999).

First, it is clear that the requested records "relat[ed] to a civil action" between plaintiff and defendant. The documents plaintiff sought in his FOIA requests concern internal investigations

into him stemming from complaints about him and defendant's internal disciplinary proceedings against plaintiff, which were the subject of his action against defendant. Further, between the dates plaintiff made his FOIA requests for those records and the dates on which defendant denied those requests, those documents were the subject of discovery disputes between plaintiff and defendant in their litigation, additionally establishing the records' relevance to that civil action. Therefore, the records manifestly "relat[ed] to a civil action in which the requesting party and the public body are parties." MCL 15.243(1)(v).

Michigan's FOIA does not define a "civil action," but it is undisputed that plaintiff's action against defendant in Court of Claims docket number 23-000118-MK constituted a "civil action." *Kent Co Deputy Sheriff's Ass'n v Kent Co Sheriff*, 463 Mich 353, 363 n 18; 616 NW2d 677 (2000) (noting that a "civil action" is initiated consistent with MCR 2.101, and therefore arbitration is not a "civil action"); see also MCL 600.1901. A "civil action" is otherwise statutorily defined by what it is not, rather than what it includes. See MCL 600.1985(c) (a "civil action" is not a criminal case, not a civil infraction, not a proceeding in probate court, and not a proceeding involving a juvenile). But Michigan courts have not addressed whether an appeal from a "civil action" also constitutes a continuation of that "civil action" in the context of the FOIA.[2] This Court finds that it does.

[2] Our Court of Appeals has held that, within the context of recovering costs and fees for a frivolous civil action in a trial court pursuant to MCL 600.2591, "an appeal from the circuit court to" the Court of Appeals "is not a 'civil action,' " and therefore that statute "does not allow for an award of appellate costs and attorney fees." *Fette v Peters Const Co*, 310 Mich App 535, 552; 871 NW2d 877 (2015). That decision is distinguishable from the matter at hand, however, as the holding in *Fette* is limited to MCL 600.2591 and the distinction between the different mechanisms by which costs and fees can be recovered for frivolous filings in circuit court, rather than vexatious appeals.

Quoting Black's Law Dictionary, our Court of Appeals has explained in a different context that a "'[c]ivil action' is defined . . . as '[a]n action brought to enforce, redress, or protect a private or civil right; a noncriminal litigation.'" *Wilcoxon v Wayne Co Neighborhood Legal Servs*, 252 Mich App 549, 554; 652 NW2d 851 (2002). A civil action begins with the filing of a complaint in a court. MCR 2.101(B). Here, plaintiff filed a complaint, and the case was later transferred to the Court of Claims as docket number 23-000118-MK, and ultimately dismissed. That dismissal constituted a final order. Such a final order is automatically stayed for 21 days to enable the non-prevailing party to seek reconsideration or other relief or to pursue an appeal. MCR 2.614(A)(1). In a civil action, a final order entitles the non-prevailing party to appeal of right. MCR 7.202(6)(a); MCR 7.203(A)(1). If such an appeal is filed, the trial court loses authority to set aside or modify that final order except by order of the Court of Appeals, stipulation by the parties, or as otherwise provided by law. MCR 7.208(A). Essentially, the trial court's final order remains suspended until the disputed issues are resolved by the appellate courts. Therefore, the effect of a trial court's final order ending a civil action is stayed until the appellate process runs its course.

Taking an appeal of a civil action does not end that civil action. It is simply a continuation of that civil action. Plaintiff, by appealing the dismissal of docket number 23-000118-MK by the Court of Claims, continued the civil action and extended the applicability of FOIA's civil-litigation exemption. Therefore, defendant properly asserted MCL 15.243(1)(v) as an applicable exemption, and thereby denying plaintiff's FOIA requests.

2. EXTENSIONS OF REQUESTS UNDER MCL 15.235(2)(d)

Plaintiff faults defendant for violating MCL 15.235(2)(d) by its delays in responding to his FOIA requests. Defendant insists that it complied with the timeline requirements of FOIA, but the record does not support defendant's contention. Regarding "Buchman 1039-23," the request was

submitted on December 15, 2023, but received on December 18. According to MCL 15.235(2), a public body must respond within 5 business days, and its response can include an extension for up to ten additional business days. Therefore, that response was required by December 26, 2023, with a ten-day extension until January 10, 2024. Instead, defendant responded on January 2, 2024, and claimed an extension until January 16, 2024, which is when defendant issued a demand for a good-faith deposit. Defendant's actions filed to comply with MCL 15.235(2).

Regarding "Buchman 1053-23," the request was submitted on December 20, 2023, but it was not received until December 21. Under MCL 15.235(2), defendant was obligated to respond by December 29, with the potential for a 10-day extension until January 16, 2024. The record does not contain defendant's initial response to plaintiff, but defendant made a demand for a good-faith deposit on January 19, 2024. That was not in compliance with MCL 15.235(2).

"In either the public body's initial response or subsequent response as described under [MCL 15.235(2)(d)], the public body may require a good-faith deposit from the person requesting information before providing the public records to the requestor if the entire fee estimate or charge authorized under this section exceeds $50.00[.]" MCL 15.234(8). In response to plaintiff's FOIA requests, defendant required a good-faith deposit, which plaintiff claims he paid. "The time frame estimate" of the public body "is nonbinding upon the public body, but the public body shall provide the estimate in good faith and strive to be reasonably accurate and to provide the public records in a manner based on this state's public policy[.]" MCL 15.234(8). Because nothing in any statute or binding precedent has established anything more than a best-efforts requirement on the part of a public body to adhere to the estimated time frame once a good-faith deposit has been paid, even protracted delays do not constitute violations of FOIA, contrary to plaintiff's position.

"If a public body does not respond in a timely manner as described under [MCL 15.235(2)], it is not relieved from its requirements to provide proper fee calculations and time frame estimates in any tardy responses." MCL 15.234(8). And if a public body does not respond to a FOIA request within the deadlines prescribed by MCL 15.235(2), the public body shall "[r]educe the charges for labor costs otherwise permitted . . . by 5% for each day the public body exceeds the time permitted under [MCL 15.235(2)] for a response to the request, with a maximum 50% reduction[.]" MCL 15.234(9)(a). Here, defendant did not indicate whether it was offering plaintiff such a reduction for its violations of MCL 15.235(2) in either "Buchman 1039-23" or "Buchman 1053-23," which likely constituted violations of MCL 15.234(9)(a).

Despite these violations by defendant, when a civil action has been initiated to compel the production of public records under FOIA, damages for violating the timelines prescribed by MCL 15.235(2) are only permitted if the court orders the disclosure of those records. MCL 15.235(4). Here, the Court is not ordering production of plaintiff's requested records because defendant has claimed a valid FOIA exemption, so defendant's violations of MCL 15.235(2) carry no practical consequence because damages are not compelled by FOIA. Thus, although plaintiff is correct that defendant violated MCL 15.235(2) (albeit not to the extent plaintiff claims), plaintiff is not entitled to recover damages for those violations.

B. BULLARD-PLAWECKI

Defendant contends that plaintiff's FOIA requests did not constitute requests for personnel records under Bullard-Plawecki. Alternatively, defendant asserts that if plaintiff's requests can be considered under Bullard-Plawecki, the records plaintiff sought are exempted from the definition of "personnel records" in Bullard-Plawecki under MCL 423.501(2)(c)(*vii*). Plaintiff responds that

the exemption in MCL 423.501(2)(c)(*vii*) concerns educational records of a student, as opposed to a complaint made by a student against plaintiff.

Plaintiff made FOIA requests to defendant; he did not separately request to inspect or copy his personnel file in accordance with Bullard-Plawecki. Plaintiff's complaint asserts that, because his FOIA requests concerned his personnel records, the denial of his FOIA requests simultaneously constituted a denial under Bullard-Plawecki because the requested records fall within the definition of "personnel records" under that act. The Court disagrees.

A request under FOIA does not constitute a request under Bullard-Plawecki. "The purpose of the FOIA is to benefit the public by providing access to records pertaining to the acts of public officials and employees," but "the personnel records exemption to the FOIA is a limitation on that right of access." *Newark Morning Ledger Co v Saginaw County Sheriff*, 204 Mich App 215, 221; 514 NW2d 213 (1994). "In contrast, the purpose of [Bullard-Plawecki] is to establish an individual employee's right to examine the employee's personnel records, i.e., the documents that are being kept by the employer concerning that employee." *Id.* Because of the different purposes of FOIA and Bullard-Plawecki, the Court cannot say "that the Legislature intended the meaning of the term 'personnel record' as used in the FOIA to be the same as that defined in" Bullard-Plawecki. *Id.* at 221-222. Bullard-Plawecki states that an employee, by submitting a written request, may review his or her personnel record. MCL 423.503. After such a review, the employee may obtain a copy of that personnel record. MCL 423.504.

Nothing in the record indicates that plaintiff made such a request under Bullard-Plawecki, and defendant could not violate Bullard-Plawecki by denying a request that was never submitted. Also, the Court cannot evaluate the applicability of MCL 423.501(2)(c)(*vii*) to an exemption that

was not asserted in response to a request that was never made. Although plaintiff requested records that may well qualify as part of his "personnel record" under Bullard-Plawecki, he did so pursuant to FOIA, not Bullard-Plawecki.

C. ALLEGED PRODUCTION OF PLAINTIFF'S PERSONNEL RECORD

Defendant asserts that plaintiff's personnel record was nonetheless provided to him during discovery in Court of Claims docket number 23-000118-MK, citing plaintiff's first set of requests for production that sought production of "all Plaintiff's University of Michigan personnel records as 'personnel records' are defined by MCL 423.501(1)(c)" of Bullard-Plawecki. Plaintiff refutes defendant's claim, pointing to defendant's objections and answers to those interrogatories as well as defendant's objections to plaintiff's first set of requests for production of documents. Nothing in the record supports defendant's claim that it provided plaintiff with his personnel record during discovery, and nothing supports plaintiff's claim that the records were not provided to him. This Court cannot resolve a discovery dispute between the parties in a separate case. Instead, the Court must confine its analysis to the record in this FOIA and Bullard-Plawecki dispute.

III. CONCLUSION

For all the reasons set forth in this opinion, defendant's summary disposition motion under MCR 2.116(C)(10) is granted, thereby resolving the entire case.

IT IS SO ORDERED.

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

Date: May 4, 2026

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