STATE OF MICHIGAN

COURT OF CLAIMS

CHARLIE LEDUFF,

Plaintiff,

v

Case No. 25-000195-MZ

MICHIGAN DEPARTMENT OF ATTORNEY GENERAL,

Hon. Michael F. Gadola

Defendant.
_____ /

OPINION AND ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

In this action involving the Freedom of Information Act (FOIA), MCL 15.231 *et seq*., plaintiff, Charlie LeDuff, asserts that defendant, the Michigan Department of Attorney General, wrongfully denied his FOIA request through delay in fulfillment. Plaintiff also asserts two claims for a declaratory judgment under MCR 2.605, which challenge "ongoing agency practice[s]" relating to FOIA requests. Defendant moves for summary disposition at the outset of the case under MCR 2.116(C)(4), (8), and (10). The Court dispenses with oral argument because the briefing adequately addresses the issues. For the reasons discussed in this Opinion and Order, the Court GRANTS defendant's motion for summary disposition and DISMISSES the complaint WITH PREJUDICE.

I. BACKGROUND

Plaintiff is a journalist who asserts that he routinely submits FOIA requests to public bodies. On April 29, 2025, plaintiff submitted a FOIA request to defendant via e-mail, requesting the following documents:

> All responses, correspondence, documents, data sets, memos, briefings, notes, investigation files, emails and attachments, and work product concerning the the [sic] state's response to the U.S. Department of Justice['s] request for information regarding Covid-19 and the state's public nursing homes. [Bolded emphasis omitted.]

Plaintiff provided defendant with an e-mail address to send its response.

On May 7, 2025, defendant responded to the FOIA request by extending the response period to May 21, 2025. On May 20, 2025,[1] defendant's FOIA Coordinator, Christy Wendling-Richards, responded as follows to plaintiff's FOIA request: "Your request will be granted as to any nonexempt records in the Department's possession that fall within the scope of your request."[2] Wendling-Richards informed plaintiff that defendant's fee estimate was $3,147.80, and that defendant required prepayment of a 50% deposit. Wendling-Richards informed plaintiff that defendant estimated that it would take 90 business days to process the request and produce responsive records. On June 6, 2025, plaintiff paid the full $3,147.80 fee estimate by check. Defendant received the payment a few days later.

[1] Plaintiff asserts in his complaint that defendant issued this response on May 21, 2025. However, the letter is dated May 20, 2025.

[2] Plaintiff calls this response a "*King* response," referring to a similar response that was the subject of dispute in *King v Mich State Police Dep't*, 303 Mich App 162; 841 NW2d 914 (2013).

On October 16, 2025, Wendling-Richards informed plaintiff that defendant required up to 21 additional business days, or through November 17, 2025, to complete the processing of his FOIA request, after which time defendant would provide plaintiff with copies of nonexempt records and any statutory bases for claimed exemptions. Plaintiff asserts that he did not receive a response by November 17, 2025. He does not, however, assert that he contacted defendant to follow up on the request before filing this lawsuit. Plaintiff further alleges that defendant "is not promptly or timely providing records under the time frames and directive of the [FOIA] by purporting to act in accordance with [OAG, 2017-2018, No. 7300, p 42, at 42 (the Attorney General Opinion),] which opines, 'FOIA does not impose a specific time by which a public body must fulfill a request for public records that it has granted.' " However, plaintiff does not point to a specific instance in which defendant cited or relied on the Attorney General Opinion in relation to plaintiff's FOIA request.

Defendant maintains that it sent plaintiff responsive documents on November 17, 2025. Defendant attached to its motion for summary disposition a copy of an e-mail, sent to plaintiff's e-mail address on November 17, 2025, at 5:18 p.m., in which Wendling-Richards shared a link to a virtual OneDrive folder of documents. Welding-Richards stated in the body of the e-mail, "Please see the attached notice issued by the Department in response to your FOIA request, responsive records, privilege log, a copy of the previous notices, and a copy of your original request." Wendling-Richards stated in a declaration attached to defendant's motion for summary disposition that she did not receive a nondelivery report or a "bounce back" e-mail after sending plaintiff the link to the virtual folder at the e-mail address specified in his FOIA request. Defendant further supports the authenticity of the November 17, 2025 e-mail with the declaration of Ken Partridge, an Information Technology Specialist with the Michigan Department of Technology,

Management, and Budget, who was able to locate the November 17, 2025 e-mail in the State of Michigan's e-mail portal. Plaintiff, in response, stated in an affidavit attached to his response brief that he did not receive the e-mail in question in his inbox or in his "spam/junk" folders.

Plaintiff filed this lawsuit on December 19, 2025, approximately 7½ months after he submitted his FOIA request. Count I of the complaint requests a declaratory judgment that defendant violated FOIA by issuing a response letter that granted the FOIA request "in the abstract" but reserved the ability to assert exemptions under FOIA. Plaintiff alleges that FOIA does not permit a public body to defer its obligation to produce responsive records "until some undefined future point of its choosing[,]" or to demand a fee payment while withholding responsive documents that must be produced "promptly." Count II alleges a second claim for a declaratory judgment, in which plaintiff requests that this Court rule that the Attorney General Opinion is invalid. Count III alleges a claim for wrongful denial under FOIA, asserting that defendant "effectively denied" plaintiff's FOIA request by withholding responsive documents. He requests that this Court order defendant "to cease withholding or to produce all or a portion of a public record wrongfully withheld pursuant to MCL 15.240(4)[.]" Plaintiff requests attorney fees, costs, and disbursements under MCL 15.240(6), as well as fines and punitive damages under MCL 15.240(7).

In lieu of answering the complaint, defendant moved for summary disposition, arguing that it complied with FOIA when it produced responsive records within the best-efforts timeframe approximately one month before plaintiff filed this lawsuit. Thus, defendant argues, plaintiff's claim for wrongful withholding of records in Count III fails as a matter of law under either MCR 2.116(C)(8) or (10). Defendant further argues that summary disposition of Counts I and II is justified under MCR 2.116(C)(4) because these claims are not based on an actual controversy.

Alternatively, defendant argues that Counts I and II should be dismissed on the merits under MCR 2.116(C)(8) or (10).

Plaintiff responded, arguing that he pleaded an actual controversy in Counts I and II because a declaratory judgment is necessary to guide his future conduct and preserve his legal rights. He argues that these two counts challenge defendant's ongoing policies and practices. For Count III, plaintiff argues that a factual dispute exists about whether he received responsive records. Plaintiff does not dispute the authenticity of the e-mail attached to defendant's motion for summary disposition or argue that the e-mail was sent to the wrong e-mail address. Instead, he argues that the e-mail establishes that defendant *attempted* transmission—not that it actually delivered the responsive documents to plaintiff. Plaintiff also argues that the e-mail refers to a privilege log of claimed exemptions, so some records or parts of records were presumably deemed exempt and not produced. Plaintiff countermoves for summary disposition of Count III in his favor under MCR 2.116(I)(2). He requests that this Court order that defendant produce "all nonexempt, responsive records onto a physical electronic storage device."[3]

Defendant replied, arguing that FOIA did not require that it take any action other than transmitting the responsive records to the e-mail address designated in the FOIA request. Defendant represented that it would produce the documents to plaintiff again via flash drive.

II. ANALYSIS

[3] After responding to the motion, plaintiff moved, under MCR 2.118(E), for leave to supplement his pleadings, representing that defendant produced responsive records after briefing was completed on the motion for summary disposition, but that those responsive records contained redactions based on wrongful invocation of FOIA exemptions. The Court denied that motion, explaining that the proposed supplemental pleading attached to the motion was not a pleading as that term is defined in MCR 2.110(A).

Defendant moves for summary disposition under MCR 2.116(C)(4), (8), and (10). A motion under MCR 2.116(C)(4) examines whether the trial court has jurisdiction over the subject matter of the case. *True Care Physical Therapy, PLLC v Auto Club Group Ins Co*, 347 Mich App 168, 176; 14 NW3d 456 (2023). The Court will examine "the affidavits, together with the pleadings, depositions, admissions, and documentary evidence" to determine whether they demonstrate a lack of subject-matter jurisdiction. *Id*.

> A motion under MCR 2.116(C)(8) tests the *legal sufficiency* of a claim based on the factual allegations in the complaint. When considering such a motion, a trial court must accept all factual allegations as true, deciding the motion on the pleadings alone. A motion under MCR 2.116(C)(8) may only be granted when a claim is so clearly unenforceable that no factual development could possibly justify recovery.
>
> A motion under MCR 2.116(C)(10), on the other hand, tests the *factual sufficiency* of a claim. When considering such a motion, a trial court must consider all evidence submitted by the parties in the light most favorable to the party opposing the motion. A motion under MCR 2.116(C)(10) may only be granted when there is no genuine issue of material fact. A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ. [*El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159-160; 934 NW2d 665 (2019) (quotation marks and citations omitted).]

MCR 2.116(I)(2) provides, "If it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party." Because the parties dispute the proper interpretation of FOIA, the Court applies the following principles of statutory interpretation:

> The goal of statutory interpretation is to give effect to the Legislature's intent as determined from the language of the statute. In order to accomplish this goal, this Court interprets every word, phrase, and clause in a statute to avoid rendering any portion of the statute nugatory or surplusage. [The Court will] give the words of a statute their plain, ordinary meaning unless the Legislature employs a term of art. [*Bukowski v Detroit*, 478 Mich 268, 273-274; 732 NW2d 75 (2007).]

A. WRONGFUL FOIA DENIAL

The Court first examines plaintiff's claim for wrongful denial under FOIA (Count III). Plaintiff's wrongful denial claim is premised on MCL 15.240, which provides, in relevant part:

> (1) If a public body makes a final determination to deny all or a portion of a request, the requesting person may do 1 of the following at his or her option:
>
> * * *
>
> (b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, the court of claims, to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request. [MCL 15.240(1)(b).]

FOIA provides that a public body must take the following action upon receipt of a FOIA request:

> Unless otherwise agreed to in writing by the person making the request, a public body shall . . . respond to a request for a public record within 5 business days after the public body receives the request by doing 1 of the following:
>
> (a) Granting the request.
>
> (b) Issuing a written notice to the requesting person denying the request.
>
> (c) Granting the request in part and issuing a written notice to the requesting person denying the request in part.
>
> (d) Issuing a notice extending for not more than 10 business days the period during which the public body shall respond to the request. A public body shall not issue more than 1 notice of extension for a particular request. [MCL 15.235(2).]

The failure to respond to a FOIA request within the time parameters outlined in MCL 15.235(2) constitutes a final determination to deny the request if either of the following applies:

> (a) The failure was willful and intentional.
>
> (b) The written request included language that conveyed a request for information within the first 250 words of the body of a letter, facsimile, electronic mail, or electronic mail attachment, or specifically included the words, characters, or abbreviations for "freedom of information", "information", "FOIA", "copy", or a recognizable misspelling of such, or appropriate legal code reference to this act,

> on the front of an envelope or in the subject line of an electronic mail, letter, or facsimile cover page. [MCL 15.235(3).]

Plaintiff does not dispute that on May 7, 2025, defendant timely responded to his FOIA request by issuing a notice extending the response period to May 21, 2025. Defendant timely responded on May 20, 2025, by granting the request with respect to any nonexempt records in defendant's possession. Plaintiff does not take issue with the timing of either of these responses.

FOIA contemplates that a public body will require time to review potentially responsive records and separate exempt from nonexempt records before production. Section 4 of FOIA provides:

> A public body may charge a fee for a public record search, for the necessary copying of a public record for inspection, or for providing a copy of a public record if it has established, makes publicly available, and follows procedures and guidelines to implement this section as described in subsection (4). [MCL 15.234(1).]

Subject to certain conditions, that fee must include, among other things, the cost to examine the potentially responsive records and separate exempt from nonexempt material. *Id*. The public body's FOIA response must contain a "best efforts" estimate of the timeframe to comply with the law when providing the public records to the requestor. MCL 15.234(8).

In its May 20, 2025 response, defendant provided a best-efforts estimate of 90 days for production, or by October 17, 2025. FOIA explains that such estimates are "*nonbinding upon the public body*," but should be made in "good faith and strive to be reasonably accurate." *Id*. (emphasis added). On October 16, 2025, defendant alerted plaintiff that it required 21 additional

business days to respond to the request, thus extending its best-efforts estimate to November 17, 2025.[4]

Plaintiff contends that defendant "failed to actually and successfully provide the requested records," in violation of FOIA. But defendant has supplied evidence that it fulfilled the FOIA request within the best-efforts timeframe (as extended) and well before plaintiff filed this lawsuit. Defendant sent responsive documents and a privilege log to plaintiff via e-mail on November 17, 2025, which was the date that defendant estimated for fulfillment. Plaintiff does not challenge the authenticity of that e-mail, which was sent to the e-mail address specified in his FOIA request. Instead, he argues that he did not receive the documents in his e-mail inbox. He explains that he searched his spam and junk e-mail folders and did not find the e-mail. He argues that an "attempted transmission" is not the equivalent of delivery of responsive records under FOIA.

There is nothing in the language of FOIA to support plaintiff's argument that the public body must ensure "actual receipt" of the requested records. To hold otherwise would place a burden on public bodies that is not supported by the plain language of the statute. FOIA permits a requestor to sue in this Court only upon a "final determination to deny all or a portion of the request." MCL 15.240(1)(b). There is no indication in the plain language of FOIA that the failure to ensure "actual receipt" constitutes a denial of a FOIA request, particularly when the public body has submitted responsive records in the manner specified in the FOIA request. Defendant is

[4] As a panel of the Court of Appeals recently recognized, "[T]here is no express provision in Michigan's FOIA that gives public bodies a specific time limit within which to fulfill requests." *American Civil Liberties Union of Mich v Grand Rapids*, unpublished per curiam opinion of the Court of Appeals, issued December 11, 2025 (Docket No. 373417), p 3, oral argument scheduled on the application 36 NW3d 788 (Mich, 2026).

entitled to summary disposition under MCR 2.116(C)(10) because discovery would not stand a fair chance of uncovering factual support for plaintiff's position, which rests on an incorrect interpretation of FOIA. See *Marilyn Froling Revocable Living Trust v Bloomfield Hills Country Club*, 283 Mich App 264, 292; 769 NW2d 234 (2009).[5] Because defendant is the prevailing party on the FOIA claim, plaintiff does not have a valid claim for attorney fees, costs or disbursements under MCL 15.240(6), or civil fines and punitive damages under MCL 15.240(7).[6]

B. DECLARATORY JUDGMENT

Counts I and II of the complaint are both claims for declaratory relief. MCR 2.605(A)(1) provides, "In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted." The court rule explains that "an action is considered within the jurisdiction of a court if the court would have jurisdiction of an action on the same claim or claims in which the plaintiff sought relief other than a declaratory judgment." MCR 2.605(A)(2).

MCR 2.605 encompasses the justiciability doctrines of standing, ripeness, and mootness and does not otherwise limit or expand the subject-matter jurisdiction of the courts. *Int'l Union,*

[5] Plaintiff's reliance on *Gillman v Dep't of Technology, Mgt, & Budget*, unpublished per curiam opinion of the Court of Appeals, issued September 28, 2023 (Docket No. 362504), is misplaced. In *Gillman*, the issue was whether the public body received an e-mail that was quarantined in its e-mail system for purposes of calculating the response period. *Id*. at 6-7. The panel did not hold that a public body is obligated to ensure that the requestor actually receive the responsive documents sent by the public body in the manner directed by the requestor.

[6] MCL 15.240(7) contemplates that certain remedies are available when the public body has arbitrarily and capriciously violated FOIA through delay in disclosure of public records, but plaintiff does not allege that defendant engaged in arbitrary and capricious conduct.

United Auto, Aerospace & Agricultural Implement Workers of America v Central Mich Univ Trustees, 295 Mich App 486, 495; 815 NW2d 132 (2012). An "actual controversy" exists for purposes of MCR 2.605 "when a declaratory judgment is necessary to guide a plaintiff's future conduct in order to preserve legal rights." *Id*. Thus "by granting declaratory relief in order to guide or direct future conduct, courts are not precluded from reaching issues before actual injuries or losses have occurred." *Id.* To demonstrate an actual controversy, the plaintiff must plead and demonstrate "an adverse interest necessitating the sharpening of the issues raised." *Id*. (quotation marks and citation omitted). This requirement prevents the Court from deciding hypothetical issues. *Id*. Relatedly, the doctrine of ripeness "requires that a party has sustained an actual injury to bring a claim." *Van Buren Charter Twp v Visteon Corp*, 319 Mich App 538, 554; 904 NW2d 192 (2017). Thus, "[a] party may not premise an action on a hypothetical controversy." *Id*.

In Count I, plaintiff seeks a declaration that defendant's "practice and custom" of issuing FOIA responses that grant the FOIA request as to nonexempt records in defendant's possession violates FOIA. He asks the Court to enjoin defendant's future use of this response. The Court finds that plaintiff's request is untimely as to this lawsuit and hypothetical as to potential future lawsuits. To the extent plaintiff is challenging the May 20, 2025 letter as a partial denial of his FOIA request, that claim is untimely because this lawsuit was filed on December 19, 2025, more than 180 days after the May 20, 2025 letter was issued. See MCL 15.240(1)(b). Plaintiff cannot resurrect an untimely FOIA claim by styling it as a claim for declaratory relief. Plaintiff represents that without declaratory relief, defendant "will continue issuing unlawful *King* responses" to plaintiff and the public at large. This is a hypothetical claim based on potential future injuries. FOIA provides a variety of remedies for noncompliance, so a declaratory judgment is not

necessary to preserve plaintiff's legal rights. The Court declines to consider this nonjusticiable claim and dismisses it under MCR 2.116(C)(8).[7]

Count II is also speculative and unripe. Plaintiff alleges "[o]n information and belief" that defendant relied on the Attorney General Opinion "to justify prolonged nonproduction in this case and others." Again, plaintiff's substantive FOIA claim in this case fails on the merits. To the extent that plaintiff takes issue with defendant's hypothetical reliance on the Attorney General Opinion in "other" cases, this claim is speculative and unripe. A declaratory judgment is unnecessary to preserve plaintiff's legal rights, and defendant is entitled to summary disposition under MCR 2.116(C)(8). Finally, because this order resolves the last pending claim, plaintiff's motion for a status conference is moot.

III. CONCLUSION

For the reasons stated in this Opinion and Order,

IT IS ORDERED that defendant's motion for summary disposition is GRANTED.

IT IS FURTHER ORDERED that plaintiff's partial countermotion for summary disposition under MCR 2.116(I)(2) is DENIED.

IT IS FURTHER ORDERED that plaintiff's complaint is dismissed WITH PREJUDICE.

[7] The Court disagrees with defendant that summary disposition of Counts I and II is appropriate under MCR 2.116(C)(4), which provides that summary disposition is warranted when the court lacks subject-matter jurisdiction over the case. As defendant acknowledges, this Court has subject-matter jurisdiction over claims for declaratory relief against the State or any of its departments. See MCL 600.6419(1)(a). The claims in Counts I and II fall within the subject-matter jurisdiction of this Court but fail to state an actual controversy.

IT IS FURTHER ORDERED that plaintiff's motion for a status conference is DENIED AS MOOT.

IT IS SO ORDERED. This is a final order that resolves the last pending claim and closes the case.

Date: September 25, 2026

Hon. Michael F. Gadola
Chief Judge, Court of Claims