STATE OF MICHIGAN

COURT OF CLAIMS

MARGARET A. CONE,

Plaintiff,

v

Case No. 26-000010-MZ

THE UNIVERSITY OF MICHIGAN,

Hon. James Robert Redford

Defendant.

_____/

OPINION AND ORDER DENYING DEFENDANT'S 3/5/26 MOTION FOR SUMMARY DISPOSITION

Plaintiff, Margaret A. Cone, filed suit alleging that defendant, the University of Michigan, violated the Freedom of Information Act (FOIA), MCL 15.231 et seq. by failing to produce records within a reasonable time, MCL 15.235(2). Defendant responded with a motion for summary disposition under MCR 2.116(C)(8), claiming that plaintiff's claims are not ripe for judicial review because defendant has not issued a final determination. The Court DENIES defendant's motion.

I. BACKGROUND

On August 8, 2025, plaintiff submitted FOIA request 260198 to defendant seeking records relating to defendant's handling of federal grant funds for a specific project. On September 2, 2025, defendant responded that due to the amount of time necessary to search for responsive records and to separate exempt from nonexempt materials, plaintiff would be required to make a good faith deposit before defendant would start its work. Defendant "estimated" that the cost of

performing the FOIA search would be $400, the work would take approximately six hours, and it would take 90 days from receipt of the deposit to complete the search. Plaintiff paid the good faith deposit and defendant acknowledged receipt on September 18, 2025.

Plaintiff requested a status report on November 13, 2025, and defendant responded the following day that the 90-day estimate was "a nonbinding best efforts estimate" and that time period had not expired. Defendant indicated it was "still processing [the] request."

On October 7, 2025, plaintiff submitted FOIA request 260459 to defendant seeking other records related to the same topic. On October 29, 2025, defendant responded that plaintiff would again be required to make a good faith deposit before defendant could start its search. Defendant "estimated" the cost at $225, the work would take approximately 4.5 hours, and it would take 60 days from receipt of the deposit to complete the search. Plaintiff paid the good faith deposit on December 1, 2025.

Plaintiff filed the current suit on January 13, 2026, when defendant had not produced any records connected to FOIA request 260198. Plaintiff filed a first amended complaint adding allegations related to FOIA request 260459 on February 12, 2026.

In lieu of an answer, defendant moved for summary disposition under MCR 2.116(C)(8), contending that it had yet to issue a final determination and, therefore, plaintiff's claims were not ripe for review. Plaintiff retorted that even if defendant had not reached a final determination, she had an independent remedy because defendant had arbitrarily and capriciously delayed production; that defendant's fee estimates were partial denials because they indicated defendant would omit exempt materials; and even if her claims were premature, the Court should permit her to amend,

rather than dismissing the action. As of April 15, 2026, defendant had not produced any records connected to plaintiff's FOIA request.

II. FOIA STATUTES

MCL 15.235 of the FOIA governs a public body's duties when presented with a FOIA request and provides in relevant part:

> (1) Except as provided in section 3, a person desiring to inspect or receive a copy of a public record shall make a written request for the public record to the FOIA coordinator of a public body. . . .
>
> (2) Unless otherwise agreed to in writing by the person making the request, a public body shall, subject to subsection (10), 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.
>
> (3) Failure to respond to a request under subsection (2) constitutes a public body's 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 . . . .
>
> (4) In a civil action to compel a public body's disclosure of a public record under [MCL 15.240], the court shall assess damages against the public body under [MCL 15.240(7)] if the court has done both of the following:
>
> (a) Determined that the public body has not complied with subsection (2).

(b) Ordered the public body to disclose or provide copies of all or a portion of the public record.

(5) A written notice denying a request for a public record in whole or in part is a public body's final determination to deny the request or portion of that request. The written notice must contain:

(a) An explanation of the basis under this act or other statute for the determination that the public record, or portion of that public record, is exempt from disclosure, if that is the reason for denying all or a portion of the request.

(b) A certificate that the public record does not exist under the name given by the requester or by another name reasonably known to the public body, if that is the reason for denying the request or a portion of the request.

(c) A description of a public record or information on a public record that is separated or deleted under [MCL 15.244], if a separation or deletion is made.

(d) A full explanation of the requesting person's right to do either of the following:

(*i*) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the disclosure denial.

(*ii*) Seek judicial review of the denial under [MCL 15.240].

(e) Notice of the right to receive attorneys' fees and damages as provided in [MCL 15.240] if, after judicial review, the court determines that the public body has not complied with this section and orders disclosure of all or a portion of a public record.

* * *

(8) If a public body makes a final determination to deny in whole or in part a request to inspect or receive a copy of a public record or portion of that public record, the requesting person may do either of the following:

(a) Appeal the denial to the head of the public body under [MCL 15.240].

(b) Commence a civil action, under [MCL 15.240].

MCL 15.240, as referenced in MCL 15.235, governs a requesting individual's rights when a public body denies all or part of a FOIA request. The statute 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:

(a) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial.

(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.

* * *

(6) If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in an action commenced under this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or public body prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages under subsection (7).

(7) If the court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall order the public body to pay a civil fine of $1,000.00, which shall be deposited into the general fund of the state treasury. The court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of $1,000.00 to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

III. ANALYSIS

Defendant moved for summary disposition under MCR 2.116(C)(8), based on ripeness.

A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of the claim on the basis of the pleadings alone and the ruling is reviewed de novo. The motion must be granted if no factual development could justify the plaintiff's claim for relief. When deciding a motion under MCR 2.116(C)(8), the court must accept as true all factual allegations contained in the complaint. [*King v Mich State Police*, 303 Mich App 162, 188; 841 NW2d 914 (2013) (quotation marks and citations omitted).]

King, 303 Mich App at 188, also describes the ripeness doctrine:

> The doctrine of ripeness is designed to prevent the adjudication of hypothetical or contingent claims before an actual injury has been sustained. A claim that rests on contingent future events is not ripe. Hence, when considering the issue of ripeness, the timing of the action is the primary focus of concern. [Quotation marks and citations omitted.]

MCL 15.235(8)(b) provides that if a public body makes a final determination denying in whole or in part a FOIA request, the requesting party may file suit under MCL 15.240(1)(b). MCL 15.240(1)(b) provides that a requesting party may file suit in this Court within 180 days after "a public body makes a final determination." A final determination is a condition precedent to filing suit. A public body reaches a final determination when it grants, denies, or grants in part and denies in part a FOIA request. MCL 15.235(2). A public body reaches a constructive final determination of denial when it willfully and intentionally fails to respond to a FOIA request. MCL 15.235(3).

Defendant contends that it merely issued a good faith estimate on the time and cost necessary to fulfill plaintiff's FOIA request and that this did not amount to a final determination. Caselaw interpreting the FOIA does not support defendant's position.

In *King v Mich State Police*, 303 Mich App 162, 188; 841 NW2d 914 (2013), the defendant filed a cross-appeal claiming that the trial court erred in denying its motion for summary disposition under MCR 2.116(C)(8) for lack of ripeness. The defendant contended that the plaintiff prematurely filed suit before the public body made a final determination about the FOIA request. *Id.*

The Court of Appeals noted that a public body must respond to a FOIA request within five days of receipt and either grant, deny, grant in part and deny in part, or extend the response period

by 10 days. *Id.* And the Court described that the failure to provide a timely response amounts to a final determination of denial. *Id.* at 188-189.

The defendant in *King* contended that it granted the plaintiff's FOIA request and was working on fulfilling the request, rendering the plaintiff's action premature and not ripe for judicial review. *Id.* at 189. The Court of Appeals disagreed with the defendant's characterization of its response to the plaintiff's FOIA request:

> In responding to Barry King's January 6, 2010 FOIA request, defendant's response letter stated: "Your request is granted as to existing, *non-exempt* records in the possession of the Michigan State Police that fall within the scope of the request." (Emphasis added.) The letter also requested a deposit based in part on estimated labor costs for "separating exempt and nonexempt material." The letter further indicated that upon receipt of the requested deposit, defendant would process the request and notify Barry King of the statutory basis for the exemption of any records or portions of records. Defendant included similar language in its letter responding to Christopher King's FOIA request. Thus, although defendant contends that it granted the requests, its response letters reflect that the requests were effectively granted in part and denied in part, as the letters contemplated the separation of exempt material and thereby implicitly denied the requests with respect to such material.
>
> It could be argued that defendant's responses did not expressly deny any portion of the requests but merely asserted the possibility that an exemption would later be asserted. In that event, however, defendant must be deemed to have failed to timely respond to the FOIA requests in their entirety by granting, denying, or granting in part and denying in part the requests. In other words, defendant granted the requests in part but failed to respond with respect to all the requested documents because the response suggested some material might be withheld as exempt but failed to state conclusively whether the response was granted or denied with respect to those potentially exempt items. A public body's failure to timely respond to a request as required by the FOIA constitutes a final determination to deny the request.
>
> In either event, then, defendant's responses are deemed to reflect a partial denial of the FOIA requests. Therefore, plaintiffs' FOIA claims did not rest on contingent future events. Rather, the claims were filed after defendant had effectively denied the FOIA requests with respect to potentially exempt materials. Thus, plaintiffs did not file this action prematurely. [*Id.* at 189-191 (quotation marks and citations omitted).]

In the current matter, defendant's responses did not expressly grant or deny the requests. Instead, defendant indicated that the amount of time necessary to respond to the requests would result in unreasonably high costs, such that defendant was permitted to require the payment of a good faith deposit first. Defendant outlined the estimated labor time and costs of reviewing the requests and indicated, "If you would like us to proceed with the search for, examination, duplication, review, and deletion and separation of exempt from nonexempt material" payment of the deposit was first required. Once the deposit was received, defendant made a "nonbinding estimate" "that we will complete the response to your request within" 90 and 60 business days respectively. The Court is not convinced that the slight differences in language in the current defendant's response distinguishes this case from *King*.

In *Arabo v Mich Gaming Control Bd*, 310 Mich App 370, 384; 872 NW2d 223 (2015), the defendant responded to a FOIA request using language nearly identical to that in *King*, "including language indicating that the request was granted as to existing, non-exempt records and assessing a fee and deposit based in part on estimated labor costs for separating exempt and nonexempt material." (Quotations omitted.) The *Arabo* Court held consistent with *King* that the defendant's response "did not constitute a 'grant' of plaintiff's FOIA request, but rather is indicative, at least preliminarily, of a partial grant and partial denial." *Id.* at 386. The *Arabo* Court found that dismissal of the plaintiff's claim on ripeness grounds was still appropriate, however, because the plaintiff did not make a good faith deposit, meaning that the defendant was not required to review its records and make a final determination. The public body's duty to respond under MCL 15.235(2) only arises once the deposit is made. *Id.* at 386-387. The Court of Appeals held:

> that a final determination by the [public body] is a prerequisite to plaintiff's commencement of a cause of action to compel disclosure of the requested records

(and to recover attorney fees and punitive damages) under § 10 of the FOIA, MCL 15.240(1)(b), (6), (7), but a final determination is not required until plaintiff has paid the deposit required by the [public body]. [*Id.* at 388.]

The *Arabo* Court clarified that the plaintiff's complaint in *King* was timely because the plaintiff did not file suit until after the plaintiff paid the deposit and then the defendant "failed to timely respond to his request." *Id.*

The Court concludes that plaintiff's complaint is ripe for review. Defendant indicated that it would separate exempt from nonexempt materials for production. Consistent with *King* and *Arabo*, this amounted to a partial denial and a partial grant of the FOIA request. Plaintiff timely made the good faith deposit requested by defendant, triggering defendant's duty to fulfill the request. And defendant still has not produced the requested materials or identified materials that are exempt from production. Accordingly, defendant is not entitled to summary disposition.

IT IS ORDERED:

1. The Court DENIES defendant's motion for summary disposition on ripeness grounds.
2. This is not a final order.

Date: May 8th, 2026

James Robert Redford
Judge, Court of Claims