STATE OF MICHIGAN

COURT OF CLAIMS

MARGARET A. CONE,

Plaintiff,

v Case No. 26-000010-MZ

REGENTS OF THE UNIVERSITY OF MICHIGAN, Hon. Michael J. Riordan

Defendant.
_____ /

OPINION AND ORDER RE: PLAINTIFF'S MOTION TO COMPEL DISCOVERY AND DEFENDANT'S MOTION TO STRIKE PLAINTIFF'S MOTION TO COMPEL DISCOVERY

In this action involving the Freedom of Information Act (FOIA), MCL 15.231 *et seq*., plaintiff, Margaret A. Cone, moves to compel discovery under MCR 2.313(A) and MCR 2.312(C), arguing that defendant, the Regents of the University of Michigan (the University), served incomplete discovery responses and raised improper objections to certain discovery requests. The University moves to strike plaintiff's motion to compel, arguing that Attachments 1-4 contain approximately 94 pages of additional argument, exceeding the 20-page brief limit in Court of Claims LCR 2.119(A)(3). For the reasons discussed in this Opinion and Order, the Court GRANTS IN PART and DENIES IN PART both motions.

I. BACKGROUND

This matter relates to two FOIA requests plaintiff submitted to the University. In FOIA Request 260198, plaintiff requested documents relating to the University's handling of federal

grant funds for a specific project. The University's initial response indicated that it would take approximately six hours of work to respond to the FOIA request and estimated that the work would be completed within 90 days of receipt of a $150 deposit. Plaintiff paid the $150 deposit, but the University did not respond within the 90-day timeframe. Plaintiff also submitted FOIA Request 260459, seeking records relating to the same topic. The University required a deposit of $225, estimated the work would take 4½ hours, and estimated that it could fulfill the request within 60 days of receipt of the deposit. Plaintiff paid the $225 deposit in December 2025. The University again did not respond within the 60-day timeframe.

Plaintiff filed this lawsuit on January 13, 2026, challenging the University's failure to respond to FOIA Request 260198. Plaintiff later amended her complaint to include allegations relating to FOIA Request 260459 after the 60-day timeframe expired. Plaintiff asserts that the University's failure to respond to her FOIA requests within the estimated timeframe constituted a constructive denial. She further alleges that the University's handling of the FOIA requests was arbitrary and capricious.

The University moved for summary disposition at the outset of the case under MCR 2.116(C)(8), arguing that plaintiff's claim was not ripe because the University had not issued final determinations for either FOIA request. The University attributed the fulfillment delay to a backlog in the processing of FOIA requests for which the fee or deposit had been paid. On May 8, 2026, this Court, Judge REDFORD presiding, denied the motion for summary disposition, concluding that plaintiff's claim was ripe for judicial review. Judge REDFORD explained that plaintiff's payment of the deposits triggered the University's duty to fulfill the FOIA requests by producing the requested materials or identifying materials that are exempt from disclosure. The University answered the complaint and discovery commenced.

On July 6, 2026, plaintiff served the University with written discovery requests, including 18 interrogatories, 22 requests for production of documents, and 32 requests for admission. In early September 2026, after initially objecting to the discovery requests in their entirety, the University served supplemental responses. The University continued to object to certain discovery requests because they sought materials that would be responsive to plaintiff's FOIA requests, effectively granting plaintiff her requested relief. The University provided a second set of supplemental discovery responses on October 26.

On October 15, plaintiff moved, under MCR 2.313(A) and MCR 2.312(C), for an order to compel the University to respond to the following discovery requests:

- Interrogatories 1-18
- Requests for Production 1-22
- Requests for Admission 3, 4, and 13-29

Plaintiff argues that the University improperly objected to Interrogatories 1-18 because they did not relate to the delay in production. Plaintiff argues that she asked the University to identify the records—not to produce those records. Plaintiff contends that the same argument applies to the requests for admission, which the University did not answer because the responses would grant plaintiff the relief requested in her amended complaint.[1] Plaintiff contends that the University's responses to her requests for production of documents were deficient, explaining that the document production "does not establish a backlog" or explain why "the asserted backlog led to these delays." Plaintiff also argues that for certain requests for production, the University

[1] Plaintiff also argued that the responses were not signed under oath as required in MCR 2.309(B)(1) and (3). However, the University later served a signed verification, and plaintiff has withdrawn this argument.

referred plaintiff to the document production "without stating which portions of the requests those documents satisfied or whether additional responsive records exist and are being withheld." Plaintiff requests that this Court review *in camera* an October 29, 2025 email chain identified on the University's privilege log, which was withheld because it allegedly contains information that would effectively grant plaintiff the relief requested in her complaint. Plaintiff's motion included several exhibits, as well as four documents she refers to as Attachments 1-4.

On October 22, the University moved to strike plaintiff's motion to compel discovery, arguing that Attachments 1-4 were not original exhibits but, rather, were a continuation of the argument raised in plaintiff's brief. Therefore, the University contends that the motion violates LCR 2.119(A)(3), which provides that a motion and supporting brief may not exceed 20 double-spaced pages. Because plaintiff did not obtain leave of this Court to file a brief exceeding the 20-page limit, the University argues that this Court should strike the motion to compel. Plaintiff responds that her motion and brief do not exceed 20 pages because LCR 2.119(A)(3) excludes exhibits and attachments from the 20-page limit, and the University has not demonstrated prejudice caused by her inclusion of Attachments 1-4. Alternatively, she argues that this Court should disregard any portion of Attachments 1-4 that constitute an argument rather than an original exhibit.

The University also responded to plaintiff's motion on the merits, arguing that the scope of this lawsuit is limited to whether the University complied with FOIA's procedural requirements. The University argues that many of plaintiff's interrogatories and requests for admission relate to the substance of the FOIA requests and therefore go beyond the limited scope of discovery in this case. The University further argues that it cannot identify records responsive to plaintiff's FOIA requests or identify any claimed exemptions because it has yet to complete its

processing of those requests. However, the University provided records explaining the delay in production, including a screenshot of the database input form, a graph showing the number of FOIA requests the University has received over the last 10 years, and documentation regarding the processing details for plaintiff's FOIA requests, thus fulfilling its discovery obligations.

Plaintiff replied, arguing, in relevant part, that her discovery requests ask for information regarding the production delay. She argues that the University's document production does not explain the backlog or delay in fulfillment. Plaintiff further argues that the University did not respond to her request for *in camera* review of the October 29, 2025 email chain. Because the briefing adequately addresses the issues presented, the Court dispenses with a hearing.

II. ANALYSIS

MCR 2.302(B)(1) relates to the scope of discovery and provides, in relevant part:

> Parties may obtain discovery regarding any non-privileged matter that is relevant to any party's claims or defenses and proportional to the needs of the case, taking into account all pertinent factors, including whether the burden or expense of the proposed discovery outweighs its likely benefit, the complexity of the case, the importance of the issues at stake in the action, the amount in controversy, and the parties' resources and access to relevant information.

MCR 2.313(A) permits a party to move for an order to compel discovery when another party fails to answer an interrogatory submitted under MCR 2.309 or fails to permit an inspection of documents under MCR 2.310. MCR 2.313(A)(2)(b)(*iii*) and (*iv*). Additionally, "an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond." MCR 2.313(A)(4). Under MCR 2.309, "The party submitting the interrogatories may move for an order under MCR 2.313(A) with respect to an objection to or other failure to answer an interrogatory." MCR 2.309(C). As it relates to requests for production of documents, "[t]he party submitting the request may move for an order under MCR 2.313(A) with respect to an

objection to or a failure to respond to the request or a part of it, or failure to permit inspection as requested." MCR 2.310(C)(3).

Regarding requests for admission, MCR 2.312(B)(2) provides:

> The answer must specifically deny the matter or state in detail the reasons why the answering party cannot truthfully admit or deny it. A denial must fairly meet the substance of the request, and when good faith requires that a party qualify an answer or deny only part of the matter of which an admission is requested, the party must specify the parts that are admitted and denied.

MCR 2.312(C) permits a party requesting an admission to move to determine the sufficiency of the answer or response. "If the court determines that an answer does not comply with the requirements of the rule, it may order either that the matter is admitted, or that an amended answer be served." *Id*.

A. DEFENDANT'S MOTION TO STRIKE

LCR 2.119(A)(3) provides, in relevant part:

> A motion or response to a motion that presents an issue of law must be accompanied by a brief citing the authority on which it is based. Except as permitted by the court, the combined length of any motion and brief, or of a response and brief, may not exceed 20 pages double spaced, exclusive of attachments and exhibits. Exhibits and attachments are to be abridged to include only the portions that are relevant to the motion or response.

Upon review of plaintiff's motion, exhibits, and attachments, plaintiff has submitted a 20-page motion to compel, which is within the required page limit. Plaintiff has also submitted Exhibits A through H, which are original exhibits. However, plaintiff also includes with her motion Attachments 1-4, which upon the Court's review are *not* original documents but are additional arguments presented in support of plaintiff's position. The Court strikes Attachments 1-4 because they contain additional argument or commentary exceeding the 20-page limit. The

Court denies the University's motion to strike the remainder of the motion to compel or the exhibits.

B. PLAINTIFF'S MOTION TO COMPEL

Turning to the merits of the motion to compel, plaintiff first challenges the University's responses to Interrogatories 1-18. Upon review of the University's supplemental responses, the Court concludes that the University has responded in substance to Interrogatories 1-3, 9, and 12, which relate to the delay in fulfillment of plaintiff's FOIA requests. Accordingly, there is no basis for compelling an additional answer under MCR 2.309(C) or MCR 2.313(A).

The lone exception is Interrogatory 10, which requested the following:

> Identify each person who made, approved, reviewed, or participated in any decision concerning the processing priority, assignment, timing, delay, estimated completion date, or response schedule for FOIA Request Nos. 260198 and 260459. For each person identified, state the person's title, office, role in processing the request, and the decision or action in which the person participated.

The University responded, in relevant part, by objecting to the request as vague, ambiguous, and confusing because "it assumes that FOIA imposes certain requirements that are not required by the statute." The University did not invoke any privilege or raise any other objection. The University also responded in substance by identifying several individuals and their job titles. The University did not, however, identify the role those individuals have played in processing plaintiff's FOIA requests or the decision or action in which the person participated. The Court concludes that Interrogatory 10 was within the scope of discovery relating to the delay in production. See MCR 2.302(B)(1). Accordingly, within seven days of the date of this Opinion and Order, the University must provide a supplemental response addressing the role each

identified person played in processing plaintiff's FOIA requests, as well as the decision or action in which the person participated.

As for Interrogatories 4-8, 11, and 13-18, the University objected to these interrogatories without providing a substantive answer, explaining that plaintiff was seeking through discovery the information sought in her FOIA requests. Upon review of the interrogatories and responses, the Court concludes that the University's objections were proper. These interrogatories requested information about the underlying project for which plaintiff sought documentation through FOIA. The University has yet to respond to plaintiff's FOIA request, and the scope of this lawsuit is about whether the University constructively denied the FOIA requests through ongoing delay and whether the University should be ordered to produce responsive documents. As such, these discovery requests go beyond the scope of discovery. See MCR 2.302(B)(1).

Plaintiff also challenges the University's responses to Requests for Admission 3-4, and 13-29. In Request for Admission 3, plaintiff requested the following: "Admit that Defendant's fee estimate for FOIA Request No. 260198 included two hours of search time and four hours of review time." In Request for Admission 4, plaintiff requested the following: "Admit that Defendant's fee estimate for FOIA Request No. 260459 included four hours of search time and one-half hour of review time." The University objected to these requests on the basis that it was unclear what plaintiff meant by "search time" and "review time." The University explained, "If Plaintiff clarifies to what 'search time' and 'review time' means, Defendant will supplement its response." The Court agrees with the University that plaintiff's requests for admission were vague, and the answers stated in detail the reasons why the University could not truthfully admit or deny the information contained in the requests. See MCR 2.312(B)(2). Therefore, there is no basis to compel admission under MCR 2.312(C).

The University also objected to Requests for Admission 13-30, explaining that the requests sought information outside the scope of discovery because they asked about other FOIA requests or sought information regarding the project that was the subject of the FOIA requests. Upon the Court's review, the University's objections were appropriate because these requests for admission relate to the underlying project forming the basis for plaintiff's FOIA requests and do not relate to the delay in processing plaintiff's FOIA requests. The objections are therefore sufficient, and this Court will not compel further response. See MCR 2.312(C).

Plaintiff also moves to compel responses to Requests for Production 1-22, arguing that the University's October 26 supplemental responses did not cure certain production deficiencies. Upon review of the supplemental responses and the argument raised in plaintiff's motion, the Court concludes that the supplemental responses responded to the substance of plaintiff's requests for production. The University also provided responsive documents. Plaintiff argues that the University has not provided records supporting certain representations it made regarding the underlying project. Again, the project itself is not at issue in this matter, which is limited to the issue of the delay in production of responsive records or claimed exemptions. The University is not required in the discovery underlying this case to verify project-related documents. Plaintiff further argues that the University has not identified the facts supporting its backlog explanation. But this argument goes to the merits of plaintiff's claims and the University's defenses, and not the sufficiency of the University's document production. And the University addressed whether additional responsive records exist and are being withheld by providing plaintiff with a privilege log. Because plaintiff has not identified any deficiencies in the University's document production, there is no basis to compel additional discovery.

C. *IN CAMERA* REVIEW

Plaintiff also argues that the University improperly withheld an October 29, 2025 email chain from production. She requests that this Court conduct an *in camera* inspection of the email chain to determine if it was properly withheld.

The University withheld the October 29, 2025 email chain from production, describing it in a privilege log as follows: "Email string among FOIA Office and Institute for Social Research regarding potential [sic] responsive records for FOIA Request No. 260459." The emails were sent on the same day the University provided an initial response to FOIA Request 260459. The University cited two FOIA exemptions in its privilege log—MCL 15.243(1)(a) (privacy exemption) and (g) (attorney-client privilege). The University stated that the requested record "[c]ontains information that would effectively grant Plaintiff the relief she is seeking before the issues in this case are decided."

The Court GRANTS plaintiff's request for an *in camera* inspection. The Court is unable to decide whether this record must be produced without reviewing the email chain in question. It is unclear whether the email chain is relevant to the issue of delay or contains privileged (or exempted) material. Unlike the other two email chains included in the privilege log, there is no indication that the University's Office of General Counsel was involved in the discussion. It is also unclear whether any concerns of privilege or exemption could be addressed through redaction. Accordingly, within seven days of this Opinion and Order, the University shall file under seal an unredacted copy of the October 29, 2025 email chain for the Court's *in camera* review, as well as any proposed redacted copies. After *in camera* review of the records, the Court will determine whether the University must produce the October 29, 2025 email chain, with or without redactions.

IT IS SO ORDERED:

1. The University's motion to strike plaintiff's motion to compel is GRANTED IN PART and DENIED IN PART.

2. The Court STRIKES Attachments 1-4 to plaintiff's motion to compel.

3. Plaintiff's motion to compel discovery is GRANTED IN PART and DENIED IN PART.

4. The University is ordered to supplement its response to Interrogatory No. 10, as outlined in this Opinion and Order, within 7 days. The University shall file a proof of service with this Court.

5. The University is ordered to file under seal an unredacted copy and any proposed redacted copies of the October 29, 2025 email chain for this Court's *in camera* review.

6. This is not a final order that resolves the last pending claim and does not close the case.

Date: 11/03/2026

Michael J. Riordan
Judge, Court of Claims