STATE OF MICHIGAN

COURT OF CLAIMS

HUMAN RIGHTS DEFENSE CENTER and
TIFFANY HOLLIS,

Plaintiffs,

v

Case No. 26-000018-MZ

MICHIGAN DEPARTMENT OF
CORRECTIONS,

Hon. Sima G. Patel

Defendant.
_____ /

OPINION AND ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY DISPOSITION AND DENYING AS MOOT PLAINTIFFS' MOTION TO SHOW CAUSE

Plaintiffs—the Human Rights Defense Center (HRDC) and its public records manager, Tiffany Hollis—filed this lawsuit under the Freedom of Information Act (FOIA), MCL 15.231 *et seq*., against defendant, the Michigan Department of Corrections (MDOC), after the MDOC provided an initial response to plaintiffs' FOIA request that included a fee assessment. Plaintiffs allege that the MDOC should have granted a public-interest fee waiver given the nature of their FOIA request and that the MDOC's fee estimate was deficient because it did not include a best-efforts estimate for fulfillment or identify the benefits multiplier used to determine the amount of fringe benefits added to the hourly rate. Plaintiffs moved, at the outset of the case, for an order requiring the MDOC to show cause why a public-interest fee waiver should not be granted. The MDOC moves for summary disposition at the outset of the case under MCR 2.116(C)(8) or, alternatively, MCR 2.116(C)(10), arguing that it satisfied all requirements under FOIA and that it

had discretion over whether to grant or deny a public-interest fee waiver. The Court agrees with the MDOC. Therefore, the Court GRANTS the MDOC's motion for summary disposition, DENIES AS MOOT plaintiffs' motion to show cause, and DISMISSES the complaint WITH PREJUDICE.

I. BACKGROUND

The HRDC is a nonprofit organization that advocates for the human rights of incarcerated individuals. The HRDC publishes two journals: *Prison Legal News* and *Criminal Legal News*. According to plaintiffs, the HRDC's role includes obtaining governmental documents and publishing the information contained within those documents in various formats for public review.

On October 16, 2025, Hollis, acting on behalf of the HRDC, submitted a FOIA request to the MDOC via email, requesting the following six categories of documents:

> 1. All contracts or other agreements, including all exhibits, addenda[,] and extensions, between the [MDOC] and any other provider of services used to transfer funds to people upon their release from incarceration by the [MDOC], that have been in effect at any time from January 1, 2019 to present.
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> 2. Documents detailing all debit release cards issued to people upon release from the [MDOC] from January 1, 2019 to present.
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> 3. Documents detailing all payments made by or on behalf of the [MDOC], or on behalf of any provider of services used to transfer funds, to people upon their release from incarceration by the [MDOC] from January 1, 2019 to present.
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> 4. Documents detailing all ancillary fees related to the transfer of funds to people upon their release from incarceration by the [MDOC], including but not limited to all cardholder agreements that have been in effect at any time from January 1, 2019 to present.
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> 5. Documents detailing all other options available to people other than receipt of their funds on a debit release card upon release from the [MDOC].
>
> 6. Records detailing all fees related to use of the above services by the prisoners or other detainees of any [MDOC] [sic] that are currently in effect.

Hollis asked for a waiver of all fees for the request, explaining, "The use of these records by our non-profit organization is likely to contribute significantly to the public's understanding of the operations of the [MDOC] and their disclosure is in the public interest." The MDOC received the FOIA request on October 17, 2025.

On November 3, 2025, MDOC's FOIA Coordinator, Andrew Phelps, responded to plaintiffs' FOIA request. The response appeared in a form document labeled "[MDOC] Response to Request for Public Records-FOIA." (Bolded emphasis and capitalization omitted.) Phelps did not check the designated box on the form to indicate whether the MDOC's initial decision was to grant, deny, or grant in part and deny in part the FOIA request. However, Phelps explained that plaintiffs would be required to pay a 50% good-faith deposit of the estimated $22,635 fee (or $11,317.50) before the MDOC would process the request, and that such processing would include an update on "any applicable exemptions." Thus, the request was effectively granted for any nonexempt information in the MDOC's possession. The initial response further provided, "Once a deposit is received, [MDOC] will issue a written notice within approximately 60 business days concerning the balance due, exemptions from disclosure, if any, and your remedial rights if applicable." (Emphasis omitted.) The MDOC declined to waive the fee, but Phelps did not outline the reasoning behind that decision in the initial response. The response informed plaintiffs of the procedure for appealing the fee to MDOC Director Heidi Washington.

Phelps also provided plaintiffs with a Fee Calculation Worksheet. The Worksheet informed plaintiffs that the MDOC estimated that it would take 500 hours to search for and locate responsive material. The assessed wage was $45.27. The MDOC multiplied the 500 hours by the $45.27 wage to reach the fee estimate of $22,635. The Worksheet did not explain how much of the $45.27 rate was attributed to wages and how much was attributed to fringe benefits.

On December 1, 2026, plaintiffs, through their counsel, submitted a fee appeal to Director Washington. Plaintiffs argued that the MDOC violated FOIA by refusing to grant their request for a public-interest fee waiver. They highlighted the HRDC's nonprofit status and noted that they sought the records to "investigate and potentially report on issues with regards to how the MDOC handles money belonging to incarcerated individuals in the state, including the return of such money upon release from incarceration." According to plaintiffs, they were seeking "information that will allow the public to better understand specific issues within the MDOC," and intended to "disseminate that information through [the HRDC's] various publications." Plaintiffs argued that numerous other public bodies had granted the HRDC public-interest fee waivers in the past in response to requests made under the relevant state or federal FOIA laws. Alternatively, plaintiffs argued that Director Washington should reduce the fee. They argued that the MDOC failed to identify how the search for responsive records would result in unreasonably high costs or to specify the nature of those costs. Plaintiffs also argued that the 500-hour estimate was "absurd on its face." The appeal was received on December 5, 2025.

Director Washington issued a written determination upholding the fee on December 17, 2025. She explained in her decision, "The FOIA request will require the [MDOC] staff to search through and locate a large number of files held in paper storage to pull responsive records and to locate records in [MDOC] databases." Thus, the MDOC assessed an appropriate fee under FOIA, MCL 15.234(1) and (2). Director Washington explained, "Failure to charge to process the FOIA request would result in an unreasonably high cost in this particular instance because [MDOC] employees must be taken away from pending work to process the request and expend additional time to complete regularly assigned departmental work." As for plaintiffs' request for a public-interest fee waiver, Director Washington explained, "[T]he Michigan Legislature did not intend

for taxpayers to subsidize FOIA requests." Director Washington informed plaintiffs that they could narrow the scope of the FOIA request by contacting Phelps.

On January 30, 2026, plaintiffs filed this lawsuit under § 10a of FOIA, MCL 15.240a. Count I of the complaint asserted that the assessed fee violated § 4(2) of FOIA, MCL 15.234(2), because the MDOC failed to consider plaintiffs' request for a public-interest fee waiver and instead applied an arbitrary and capricious blanket policy of denying all requests for public-interest fee waivers without explanation. Count II alleged a violation of § 4(1) of FOIA, MCL 15.234(1), on the basis that the MDOC failed to identify how plaintiffs' FOIA request would result in unreasonably high costs to the agency. Plaintiffs also asserted that the MDOC failed to provide a best-efforts estimate of the time frame for completing the 500 hours of work, in violation of MCL 15.234(8). Plaintiffs requested a declaratory judgment that would, in relevant part, require the MDOC to grant a fee waiver or a fee reduction; award plaintiffs their attorney fees, costs, and disbursements under MCL 15.240a(6); and order the MDOC to pay a civil fine under MCL 15.240a(7).

Plaintiffs also moved, at the outset of the case, for an order requiring the MDOC to show cause "(a) why its refusal to exercise its discretion and consider the merits of Plaintiffs' request for a waiver or reduction in fees available under MCL 15.234(2) was not arbitrary and capricious; and (b) why the Court shall not be required to waive the fee calculated by MDOC to $0 in the public interest."

In lieu of filing an answer to the complaint, the MDOC moved for summary disposition under MCR 2.116(C)(8), or alternatively, MCR 2.116(C)(10). The MDOC argues that its fee estimate met all FOIA requirements. The initial response letter informed plaintiffs that the MDOC

estimated 500 hours to search for and locate responsive materials, and Director Washington clarified that MDOC staff will need to locate and search through a large number of paper files to fulfill the request. The MDOC supports its motion with Phelp's affidavit, in which he attests that many of plaintiffs requested records predated the MDOC's use of a digital search system to locate records, meaning that the MDOC staff would have to search through paper files. Additionally, the MDOC contends that it considered plaintiffs' fee-waiver request on an individualized basis and adequately explained its justification for charging a fee. The MDOC acknowledges that there was a technical defect in the initial response due to its "inadvertent failure" to note the percentage multiplier for the fringe benefits incorporated into the estimated hourly rate. But, the MDOC explains, the math behind the calculation was correct, so any error in the failure to display the percentage multiplier was *de minimis* and did not amount to a FOIA violation. The MDOC further notes that it provided a 60-business-day best-efforts estimate in its initial response, thus satisfying the requirements of MCL 15.234(8).

Plaintiffs responded, arguing that the issue of whether MDOC violated FOIA by failing to consider plaintiffs' fee-waiver request is a legal question that this Court may decide de novo as provided by MCL 15.240a(4). Plaintiffs argue that this Court should require the MDOC to waive all fees. Plaintiffs contend that MDOC violated FOIA by failing to exercise its discretion to consider the fee-waiver request, i.e., when it issued a blanket denial without considering the nature of plaintiffs' work or the scope of the request. Plaintiffs further argue that MDOC's fee estimate was unreasonable because the MDOC failed to justify how the costs would be "unreasonably high," beyond reciting the language of the statute, or to explain why the search would require 500 hours of employee time. Plaintiffs further argue that the MDOC failed to itemize its estimated costs, specifically the percentage multiplier it applied to the hourly rate for fringe benefits. They

acknowledge that the initial response contained a best-efforts estimate but suggest that the estimate may be incorrect given the total number of hours estimated to fulfill the FOIA request. They argue they are entitled to discovery to explore the attestations in Phelps's affidavit, as well as to determine the factual basis for the estimated fee.

Plaintiffs attached to their response brief the affidavit of their attorney, Andrew Pauwels, filed under MCR 2.116(H), who attests that the facts plaintiffs are seeking "are believed to be exclusively within the knowledge and possession of MDOC employees like Mr. Phelps, and are thus unavailable to Plaintiffs at this stage of the proceedings." Pauwels explains that such facts include the MDOC's approach to reviewing fee-waiver requests, the method by which the MDOC determined that fulfilling plaintiffs' FOIA request would take 500 hours, the reasons behind why the best-efforts estimate was 60 business days, and the method behind how the MDOC determined the employee rate.[1]

In reply, the MDOC argues that this case does not involve a situation in which a public body refused to consider the public-interest fee waiver request. Rather, Phelps considered the request but decided not to grant the waiver for reasons particular to plaintiffs, which were outlined in Director Washington's appeal decision. The MDOC argues that discovery is not necessary because Phelps's affidavit only serves to supplement the existing record and because plaintiffs' arguments about why the MDOC violated FOIA lack merit. Because the record is sufficiently developed to decide the pending motions, the Court dispenses with a hearing.

II. ANALYSIS

[1] Notably, Count II does not allege that the 500-hour estimate was inaccurate or challenge the selection of the hourly rate for the lowest-cost employee who could perform the work.

A motion for summary disposition under MCR 2.116(C)(8) examines the legal sufficiency of the plaintiff's claims based solely on the factual allegations raised in the complaint. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). The Court accepts the allegations in the complaint as true and decides the motion on the pleadings alone. *Id*. at 160. The motion will be granted if the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a recovery. *Id*.

"A motion under MCR 2.116(C)(10), on the other hand, tests the *factual sufficiency* of a claim." *Id*. The Court must review the evidence submitted by the parties in the light most favorable to the nonmoving party and dismiss the action if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Id*. When a party moves for summary disposition under MCR 2.116(C)(10) before discovery is complete, the issue becomes "whether further discovery stands a fair chance of uncovering factual support for the opposing party's position." *Marilyn Froling Revocable Living Trust v Bloomfield Hills Country Club*, 283 Mich App 264, 292; 769 NW2d 234 (2009).

To the extent the Court is required to interpret FOIA, the Court applies the following principles of statutory interpretation:

> When interpreting a statute, [the] foremost rule of construction is to discern and give effect to the Legislature's intent. Because the language chosen is the most reliable indicator of that intent, [the court will] enforce clear and unambiguous statutory language as written, giving effect to every word, phrase, and clause. If the statutory provision at issue is clear and unambiguous, it must be enforced as written, and no judicial construction is permitted or required. [*Lockport Twp v Three Rivers*, 319 Mich App 516, 520; 902 NW2d 430 (2017) (cleaned up).]

A. COUNT I: PUBLIC-INTEREST FEE WAIVER

Section 10a of FOIA, MCL 15.240a, allows a requesting party to file a lawsuit in this Court against a state public body when the "public body requires a fee that exceeds the amount permitted under its publicly available procedures and guidelines or section 4 [MCL 15.234]." MCL 15.240a(1)(b). If the public body provides for fee appeals, then the requesting party must first submit a fee appeal to the head of the public body and await determination on the written appeal before filing a lawsuit, unless the head of the public body does not respond on a timely basis. MCL 15.240a(1)(a)-(b). In a lawsuit filed under MCL 15.240a(1)(b), the burden is on the public body to establish that its assessed fee complied with its own procedures and guidelines, as well as Section 4 of FOIA, and the public body is not obligated to complete the processing of the FOIA request until the fee dispute is resolved. MCL 15.240a(1)(b) and (4). If the Court determines that the public body arbitrarily and capriciously violated FOIA by charging an excessive fee, the Court must order payment of a civil fine and may award punitive damages. MCL 15.240a(7).

Section 4(1) of FOIA, MCL 15.234(1), provides, in relevant part:

> 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 [MCL 15.234(4)].

There is no dispute that the MDOC had publicly available procedures and guidelines relating to FOIA fees. With limited exceptions outlined in the statute, "the fee must be limited to actual mailing costs, and to the actual incremental cost of duplication or publication including labor, the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in section 14 [MCL 15.244]." *Id.* The total fee must not exceed the sum of six components outlined in the statute. *Id.* One of the components is the following:

> That portion of labor costs directly associated with the necessary searching for, locating, and examining of public records in conjunction with receiving and fulfilling a granted written request. The public body shall not charge more than the hourly wage of its lowest-paid employee capable of searching for, locating, and examining the public records in the particular instance regardless of whether that person is available or who actually performs the labor. [MCL 15.234(1)(a).]

MCL 15.234(2) adds, in relevant part:

> When calculating labor costs . . . fee components shall be itemized in a manner that expresses both the hourly wage and the number of hours charged. The public body may also add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits if it clearly notes the percentage multiplier used to account for benefits in the detailed itemization described in subsection (4). Subject to the 50% limitation, the public body shall not charge more than the actual cost of fringe benefits, and overtime wages shall not be used in calculating the cost of fringe benefits. A search for a public record may be conducted or copies of public records may be furnished without charge or at a reduced charge if the public body determines that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public record can be considered as primarily benefiting the general public.

Beginning with the fee-waiver request, plaintiffs assert that the MDOC violated FOIA by failing to "fairly consider" whether its FOIA request would contribute significantly to the public's understanding of the MDOC's operations. To support their claim, plaintiffs emphasize the prodislcosure nature of FOIA, as recognized by the Michigan Supreme Court. See *Woodman v Dep't of Corrections*, 511 Mich 427, 444; 999 NW2d 463 (2023). They note that the purpose of FOIA, as outlined in MCL 15.231(2), is to ensure that individuals are "entitled to full and complete information regarding the affairs of government." They argue that the MDOC failed to consider the merits of their fee-waiver request and that the MDOC's blanket policy of denying public-interest fee waivers without considering the requests on an individualized basis violated the prodisclosure nature of FOIA.

Again, MCL 15.234(2) provides, in relevant part, that "[a] search for a public record may be conducted or copies of public records *may* be furnished" without charging a fee (or at a reduced

fee) "*if* the public body determines that a waiver or reduction of the fee is in the public interest because searching for or furnishing copies of the public record can be considered as primarily benefiting the general public." (Emphases added.) The use of the word "if" suggests that the decision to grant a public-interest fee waiver is conditional in nature. For example, the word "if" can be defined to mean "on condition that" or "in the event that." *Merriam-Webster.com Dictionary*, if <https://www.merriam-webster.com/dictionary/if> (accessed October 20, 2026).[2] The use of the word "may" in a statute is a permissive term that signals that the action is discretionary in nature. See *Dep't of Health & Human Servs v NRK RX, Inc*, ___ Mich ___, ___; ___ NW3d ___ (2026) (Docket No. 167917); slip op at 9.[3]

To support that the term "may" sometimes requires action on the part of a public body, plaintiffs rely on *Kment v Detroit Police Dep't*, 109 Mich App 48, 62; 311 NW2d 306 (1981), a case in which the Michigan Court of Appeals explained that "the permissive word 'may' is interpreted as mandatory when the duty is imposed upon a public official and his act is for the benefit of a private individual." (Cleaned up.) *Kment* involved a workers' compensation claim by a police officer who worked for the City of Detroit and was injured on the job, resulting in the plaintiff being disabled from work. *Id*. at 51. The plaintiff petitioned for certain workers'

[2] See *In re Erwin Estate*, 503 Mich 1, 9-10; 921 NW2d 308 (2018), as amended ("Because our goal is to glean legislative intent from the plain meaning of statutory language, the dictionary is our first point of reference to determine the term's significance.") (cleaned up).

[3] The Legislature knew how to mandate a fee waiver when appropriate. MCL 15.234(2)(b) provides that "[a] public record search shall be made and a copy of a public record *shall* be furnished without charge for the first $20.00 of the fee for each request by" certain nonprofit organizations that assist individuals with developmental disabilities and mental illness. MCL 15.234(2)(b) (emphasis added). The use of the word "shall" in that instance shows that the Legislature intended to differentiate certain mandated fee waivers from the more general public-interest fee waiver, which uses the discretionary term "may."

compensation benefits, and the claim went through the administrative process, resulting in an appeal to the Michigan Court of Appeals. *Id*. at 52-53. The relevant dispute centered on a provision of a version of the Detroit City Charter, which provided that whenever a member of the police department became disabled, his or her salary and other benefits "*may* become a charge upon the police fund and he *may* be paid such salary and expenses at the discretion of the commissioner, who shall inquire into the circumstances, and if satisfied that the charge upon said fund is correct and reasonable, may certify the same to be paid from the police fund." *Id*. at 54 (emphasis added), citing Detroit Charter, 1918, tit 4, ch 21, § 18.

The Court of Appeals determined that the word "may" "should be read as mandating the payment of charter disability benefits once it has been determined that a police officer has suffered a duty-related disability." *Kment*, 109 Mich App at 63. The Court held that the discretion outlined in the Charter "was intended to apply solely to the issues of whether a particular disability was duty related and whether a particular charge was correct and reasonable." *Id*. If the exercise of the discretion permitted were broader than what the Court explained, then the purpose of the provision would be "defeated" because it would permit arbitrary denial of benefits. *Id*. at 63-64.

Plaintiffs do not cite any caselaw applying the principle outlined *Kment* to a legislatively enacted statute, such as FOIA. Nor is it evident that the rule regarding a duty imposed on the part of a public official to act for the benefit of a private individual would apply to a fee waiver request such as the one that appears in FOIA. Furthermore, the Legislature's use of the words "shall" and "may" at different points throughout MCL 15.234 shows that the Legislature knew how to differentiate between mandated and permissive action and specifically chose to use the word "may" in the context of public-interest fee waivers. See, e.g., MCL 15.234(1)(a) and (b). Thus, in this case, the Court cannot conclude that the word "may" was intended to mean "shall."

Plaintiffs point to no other provision of FOIA that required the MDOC to articulate any rationale for its decision beyond informing plaintiffs that the fee waiver was denied. The MDOC did this by not checking the box designated "Fee Waived" and by assessing a fee. Inherent in that communication was the fact that plaintiffs' public-interest fee waiver was denied. To the extent there was any confusion about the reasoning for the denial, Director Washington's appeal response provided further insight, explaining that the Legislature did not intend for the MDOC to subsidize FOIA requests. The responses support that the MDOC *did* consider the fee-waiver request and denied it—as permitted within the agency's decision—because the MDOC determined that searching for the public record could not be considered as primarily benefiting the general public. Phelps further confirmed in his affidavit that he considered this specific fee-waiver request and decided not to grant it, thus supporting that there is no blanket policy to deny public-interest fee-waiver requests that might violate MCL 15.234(2). In sum, the Legislature did not impose any requirements on public bodies when deciding whether to grant a public-interest fee waiver or specify that a public body must articulate a specific rationale when informing the requesting party of its decision on a fee-waiver request. The MDOC met all requirements under FOIA.

Plaintiffs also compare this case with several appellate cases in which a public body has impermissibly imposed a blanket policy to deny certain FOIA requests. Plaintiffs argue that the MDOC may not "unilaterally determine that fee waivers may never be granted[.]" However, plaintiffs do not allege any facts that would support that the decision in this case was part of a blanket denial policy. In fact, MDOC Policy Directive 01.06.110(CC) mirrors the language in FOIA and provides, in relevant part, "The [MDOC] may waive or reduce fees if the [MDOC] determines it is in the public interest to do so or if providing the requested documents primarily benefits the general public for reasons identified by the requestor." The fact that the MDOC has

a policy requiring the public body to consider public-interest fee waivers undermines plaintiffs' argument that their request was subject to a blanket policy to deny all public-interest fee waivers.

Plaintiffs further emphasize the Legislature's requirement, outlined in MCL 15.240a(4), that this Court consider the issue "de novo," as well as the fact that the burden is on the public body to establish that the fee complied with its own guidelines and FOIA, to support that this Court should mandate that the MDOC grant a public-interest fee waiver, even if the MDOC found that such a fee waiver was not appropriate in this case. However, this Court's de-novo review is limited to the issue of whether the MDOC assessed a fee that violated MCL 15.234 or the MDOC's own guidelines and procedures. Even with the burden on the public body to establish the legality of the fee, FOIA does not permit this Court to amend a fee that is not otherwise unlawful. See MCL 15.240a(1)(b). Because the denial of the public-interest fee waiver did not violate Section 4 of FOIA or the MDOC's publicly available procedures and guidelines, the Court declines to order that the MDOC waive the fee. Because this issue involves a matter of statutory interpretation, and further discovery would not stand a fair chance of uncovering factual support for plaintiffs' position, summary disposition in the MDOC's favor is appropriate under MCR 2.116(C)(10).[4]

B. COUNT II: FEE CALCULATION

[4] Plaintiffs cite a federal case, *Prison Legal News v Lappin*, 436 F Supp 2d 17 (DDC, 2006)—a case in which the HRDC's legal journal was found to be entitled to a public-interest fee waiver under the federal FOIA—as persuasive authority. However, as plaintiffs acknowledge, the federal FOIA mandates a public-interest fee waiver in this context and does not leave the issue up to the discretion of the public body. Specifically, 5 USC 552(a)(4)(A)(*iii*) provides, "Documents *shall* be furnished without any charge or at a [reduced charge] if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." (Emphasis added.) Thus, *Prison Legal News* can be distinguished from this matter.

Plaintiffs further assert that the MDOC violated FOIA by "failing to justify why its costs would be 'unreasonably high,' failing to itemize its fee estimate, and failing to provide a sufficient 'best efforts' estimate."

1. UNREASONABLY HIGH COSTS

Beginning with whether the MDOC justified why its costs in this instance would be unreasonably high such that assessment of a fee is necessary, MCL 15.234(3) provides:

> A fee as described in subsection (1) shall not be charged for the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information as provided in section 14 [MCL 15.244] unless failure to charge a fee would result in *unreasonably high costs* to the public body because of the nature of the request in the particular instance, and the public body specifically identifies the nature of these unreasonably high costs. [Emphasis added.]

FOIA does not outline a particular method by which the public body must "specially identify the nature of [the] unreasonably high costs." See *id*.

The MDOC estimated that searching for and locating the requested material would require 500 hours of employee time. From this time estimate alone, it was evident that failure to charge a fee would result in unreasonably high costs to the public body. To the extent that FOIA required the MDOC to provide an additional explanation, any deficiency was cured through Director Washington's fee-appeal determination, in which she clarified that the "[f]ailure to charge to process the FOIA request would result in an unreasonably high cost in this particular instance because [MDOC] employees must be taken away from pending work to process the request and expend additional time to complete regularly assigned departmental work" and because "[t]he FOIA request will require the [MDOC] staff to search through and locate a large number of files held in paper storage to pull responsive records and to locate records in [MDOC] databases."

Plaintiffs argue that the MDOC failed to outline why production would require a search of a large number of files held in paper storage or why production would require 500 hours of employee time. But plaintiffs do not cite any legal basis to find that FOIA requires this granular level of specificity within the fee itemization. Rather, the MDOC provided the estimated number of hours and explained that such a review would result in unreasonably high costs because the MDOC could not review solely electronic records and had to review paper files as well. This description satisfied the requirement that the public body "specially identify the nature of [the] unreasonably high costs."

2. FRINGE BENEFITS MULTIPLIER PERCENTAGE

Plaintiffs next argue that the MDOC failed to "clearly note[] the percentage multiplier used to account for benefits in the detailed itemization described in subsection (4)," as outlined in MCL 15.234(2). Plaintiffs acknowledge that the MDOC's policy mirrors the requirements of MCL 15.234(2) on this issue.

The MDOC charged an hourly wage rate of $45.27, which included fringe benefits. Plaintiffs argues that the percentage multiplier for the fringe benefits was not "clearly note[d]" in "the detailed itemization," as required under this subsection. In other words, plaintiffs could not differentiate which portion of the hourly rate was the standard hourly wage and which portion accounted for the added fringe benefits. The MDOC argues that any error is "de minimis" because the MDOC's charged rate included the fringe benefits and the percentage multiplier did not exceed the amount permitted under FOIA.

At the outset, the Court notes that it is questionable whether plaintiffs can maintain this claim because they did not raise it in their fee appeal. MCL 15.240a(1)(a) requires that when the

public body provides for fee appeals to the head of the public body, the requesting person may appeal to the head of the public body and identify "how the required fee exceeds the amount permitted under the public body's available procedures and guidelines or section 4." The requesting party cannot file an action in this Court unless the public body does not provide for fee appeals, the head of the public body failed to provide a timely response, or the head of the public body issued a determination denying the written appeal. See MCL 15.240a(1)(b). This particular issue was not raised in the fee appeal, so it was not addressed in Director Washington's decision.

Even assuming that plaintiffs may raise new issues in the context of this excessive-fee lawsuit that were not raised in their fee appeal, plaintiffs' claim regarding the percentage multiplier lacks merit. Phelps clarified in his affidavit that the $45.27 hourly rate included the hourly wage of the MDOC's lowest-paid employee capable of performing the search, which is a Department Analysis-9, earning $30.18 per hour. Of that amount, the 50% base rate is $15.09. When that number is added to the $30.18, the total is $45.27. Phelps explains that this amount is less than the actual cost of fringe benefits associated with the Departmental Analyst-9 position, which is $21.83, thus meeting the requirements of FOIA. Phelps's affidavit clarifies which component of the hourly rate was for the standard hourly wage and which portion represented the benefits multiplier.

Although plaintiffs suggest that discovery is required on this issue, plaintiffs do not set forth specific facts showing that a genuine issue of material fact exists regarding the accuracy of this calculation. Plaintiffs submit the affidavit of Pauwels, filed under MCR 2.116(H), to argue that the facts needed to support plaintiffs' position are exclusively within the knowledge and possession of MDOC employees. However, a critical component of MCR 2.116(H) is that the affidavit must "state the nature of the probable testimony of these persons and the reason for the

party's belief that these persons would testify to those facts." MCR 2.116(H). Pauwels's affidavit does not explain what the nature of the probable testimony would be or the reasons for plaintiffs' belief that the identified witnesses (Phelps and other MDOC employees) would testify to those facts. In other words, plaintiffs have not laid the foundation to support their assertion that the calculation was based on incorrect information. Because the MDOC provided the calculations, and those calculations complied with FOIA, any error caused by the failure to separate the fringe benefit rate from the overall hourly rate was cured.

3. BEST-EFFORTS ESTIMATE

Finally, plaintiffs assert that the MDOC failed to include a best-efforts estimate of the timeframe for completing the 500 hours of work, in violation of MCL 15.234(8). This subsection provides that an initial response must "contain a best efforts estimate by the public body regarding the time frame it will take the public body to comply with the law in providing the public records to the requestor." MCL 15.234(8). This estimate is nonbinding on 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 under section 1 [MCL 15.231(2)]," as well as the nature of the request in the particular instance. *Id.*

Although the best-efforts estimate did not appear in the Fee Calculation Worksheet, the MDOC provided a 60-business-day best-efforts estimate in its initial response letter. This estimate satisfied the requirement of MCL 15.234(8). Plaintiffs argue that discovery is necessary to determine how the MDOC estimated that fulfillment would take approximately 60 business days. They suggest that the 60-day estimate does not "seem to be accurate" considering the 500 hours estimated to fulfill the requests: "Fulfilling Plaintiffs' Request in 60 business days would require this well-compensated, full-time employee to be available and work exclusively on Plaintiffs'

Request the entire time. It is hard to believe [the] MDOC is maintaining that level of staffing, ready to begin on short notice." However, plaintiffs alleged in their complaint that the MDOC failed to provide a best-efforts estimate—not that the estimate was inaccurate. Even so, plaintiffs' new argument about the best-efforts estimate is speculative in nature and involves a hypothetical, future injury premised on the idea that the MDOC *may* not be able to meet the 60-day estimate. Plaintiffs do not explain how the best-efforts estimate was insufficient under MCL 15.234(8), nor do they provide any legal basis to allow this Court to grant relief under MCL 15.240a for an excessive fee based solely on the length of the best-efforts estimate. See MCL 15.240a(1). For the reasons discussed, the MDOC is entitled to summary disposition of Count II of the complaint under MCR 2.116(C)(10).[5]

III. CONCLUSION

IT IS ORDERED:

1. Defendant's motion for summary disposition is GRANTED.
2. Plaintiffs' motion to show cause is DENIED AS MOOT.
3. Plaintiffs' complaint is DISMISSED WITH PREJUDICE.
4. This is a final order that resolves the last pending claim and closes the case.

[5] Notably, although plaintiffs argue in their response brief that the MDOC did not present evidence about why its search would require 500 hours, plaintiffs do not raise any allegations regarding the 500-hour estimate in their complaint, beyond alleging that the MDOC failed to provide a best-efforts estimate under MCL 15.234(8). They provide no factual support for their suggestion that the 500 hours was excessive given the explanation outlined in the fee appeal. Nor do they request leave to amend the complaint to add this allegation.

Date: October 29, 2026

Sima G. Patel
Judge, Court of Claims