STATE OF MICHIGAN

COURT OF CLAIMS

ALEXANDER YIANNOPOULOS,

Plaintiff,

v

Case No. 26-000026-MZ

MICHIGAN STATE UNIVERSITY and KEVIN GUSKIEWICZ, in his official capacity as President of MICHIGAN STATE UNIVERSITY,

Hon. Sima G. Patel

Defendants.
_____ /

OPINION AND ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY DISPOSITION, DENYING PLAINTIFF'S MOTION FOR AN *IN CAMERA* INSPECTION, AND GRANTING DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S SUPPLEMENTAL NOTICES

In this Freedom of Information Act (FOIA), MCL 15.231 *et seq*., lawsuit, plaintiff, Alexander Yiannopoulos, raises constitutional and statutory claims arising from the fee estimate and the fulfillment estimate for his FOIA request to defendant Michigan State University (MSU). Defendants—MSU and MSU President Kevin Guskiewicz—move for summary disposition under MCR 2.116(C)(8) and (10) at the outset of this case. Plaintiff has responded to the motion for summary disposition and moves for an *in camera* inspection of potentially responsive records. Defendants move to strike two documents plaintiff filed with this Court that are described as notices of supplemental factual developments. For the reasons discussed in this Opinion and Order, the Court GRANTS IN PART and DENIES IN PART the motion for summary disposition,

DENIES plaintiff's motion for an *in camera* inspection, and GRANTS defendants' motion to strike plaintiff's first and second notices of factual developments.

I. BACKGROUND

On December 23, 2025, plaintiff submitted a FOIA request to MSU requesting records for a program known as "H-NET," certain alleged financial irregularities, and alleged Board oversight activities. Plaintiff requested information from August 1, 2025 through December 23, 2025, and identified five individuals whose email accounts, digital correspondence, and text messages should be searched. Plaintiff outlined the keywords he wanted MSU to include in the search. Plaintiff also requested that MSU include with any responsive materials the relevant email metadata in the search results, such as any delivery information, forwarding information, and quarantine information. Plaintiff requested a fee waiver on the basis that release of the requested information is in the public's interest. Plaintiff asserts that the basis for the fee waiver was that the FOIA request "concerns the financial integrity, governance, and potential criminal liability of a public university and its 'independent' affiliates."

On January 26, 2026, MSU's FOIA Officer, Rebecca Nelson, responded to plaintiff's FOIA request, informing him that "[t]he processing of [his] request thus far has involved significant labor." Nelson estimated that the time to search, gather, review, and separate records, including approximately 6,634 emails located by MSU's IT Services Department, would total approximately 110.5 hours.[1] Nelson estimated that the fee associated with fulfillment of plaintiff's

[1] Defendants argue that the actual number of hours it will take the MSU FOIA Office to fulfill plaintiff's FOIA request may be higher than the estimate because Nelson assumed that each email will take approximately one minute to review.

FOIA request would exceed $3,900. She required a $1,950 deposit before the MSU FOIA Office would begin to process plaintiff's request. Nelson declined to waive fees because responding to the request would result in "unreasonably high costs" to MSU. Nelson provided plaintiff with an itemization outlining the estimated hours and hourly rate, as well as a best-efforts estimate for the timeframe for fulfillment of the FOIA request, which was 52 weeks from the date that the deposit was received. Nelson's letter also provided that the $3,900 estimate "serves as an approximation only, and does not guarantee or limit the final, total fees which may be incurred and assessed." Nelson provided plaintiff with directions for submitting his deposit.

In an affidavit attached to defendants' motion for summary disposition, Nelson explained how she calculated the $3,900 fee estimate. Nelson began by multiplying the number of hours she assessed to complete the processing of the 6,634 potentially responsive emails (110.5 hours) by the lowest hourly rate recognized by the MSU Administrative Professional Association ($25.26 per hour). Nelson also added to the fee a 40% charge to cover the cost of fringe benefits for the involved employees. Nelson explained, "MSU has determined that failure to charge fees in situations where the fees would be equal or greater than $50.00 would result in unreasonably high costs to MSU." In other words, if the fee estimate is $50 or more, then MSU will automatically assess a fee and will not grant a fee waiver.

Nelson explained in her affidavit how she concluded that it would take MSU approximately 52 weeks to fulfill plaintiff's FOIA request. Nelson considered the number of responsive emails to be processed, the size of MSU's FOIA Office, the number of other FOIA requests that MSU typically receives (over 1,000 annual requests), and the number of other pending projects for which a fee or deposit was already submitted (12 total projects). She estimated that MSU's FOIA Office could devote two to three hours per week to plaintiff's project. Nelson explained in her affidavit

that she denied plaintiff's request for a fee waiver because "it was not evident how the request might be considered as 'primarily benefitting the general public.' "

Plaintiff emailed a fee appeal to Guskiewicz, whom plaintiff contends is the head of the public body for purposes of FOIA appeals. Plaintiff argued in his fee appeal that the 52-week estimate for fulfillment constituted a constructive denial of his FOIA request, as well as arbitrary and capricious conduct prohibited by FOIA, MCL 15.240a(7). He argued that the fee was punitive in nature and asked MSU to preserve the responsive records.

MSU's FOIA Processing Procedures and Guidelines do not provide a procedure for a fee appeal. Instead, the FOIA Processing Procedures and Guidelines provide, in relevant part:

> If a requester believes that MSU has required payment of a fee that exceeds the amount permitted under these Procedures and Guidelines, he or she may commence an action in the Court of Claims for a fee reduction within forty-five (45) days after receiving the notice of the required fee.

On January 29, 2026, Nelson wrote a second letter to plaintiff, explaining that MSU does not process FOIA fee appeals. Nelson explained that "an electronic search has yielded a substantial volume of records" that are potentially responsive to plaintiff's FOIA request. MSU did not charge plaintiff for this initial search but required a good-faith fee deposit before separating exempt from nonexempt materials. Nelson explained, "[I]t is unreasonable to ask the University to bear the full cost of processing your request" for the subject records. She explained that the 52-week response

estimate was made in consideration of the time to process plaintiff's FOIA request along with the "many others at any given time."[2]

Plaintiff did not pay the deposit. Instead, he filed this seven-count lawsuit against MSU in February 2026. Plaintiff subsequently amended his complaint to include the required verification under the Court of Claims Act, MCL 600.6431(2)(d), in response to this Court's show-cause order, and to identify Guskiewicz as a defendant. Count I of the amended complaint alleges constitutional claims for abdication of financial control, violation of the nondelegation doctrine, and violation of the right to petition the government on the basis that Guskiewicz should have processed and decided plaintiff's fee appeal. Count II of the complaint alleges a claim for "statutory repugnancy" and statutory impossibility on the basis that MSU violated FOIA by failing to provide a fee appeal. Count III asserts a claim for a writ of mandamus to require Guskiewicz to review plaintiff's FOIA appeal. Count IV alleges ultra vires governmental activity and arbitrary and capricious conduct on the basis that MSU will not process fee appeals. Count V alleges that MSU assessed a fee exceeding the amount permitted under Section 4 of FOIA, MCL 15.234. Count VI alleges that MSU arbitrarily denied plaintiff's public-interest fee waiver under Section 4 of FOIA. Count VII alleges a constructive denial of plaintiff's FOIA request on the basis of the 52-week estimate.

Plaintiff also moved, on an ex parte basis, for a temporary restraining order to prevent MSU from automatically purging, overwriting, or destroying the requested records. The Court granted

[2] Both parties acknowledge that plaintiff submitted a second FOIA request to MSU on January 29, 2026, and MSU responded on February 6, 2026 by disclosing responsive, nonexempt records without requiring a fee. Plaintiff submitted a third FOIA request to MSU on February 11, 2026, and MSU responded on March 5, 2026 by disclosing all responsive, nonexempt records without requiring a fee. The second and third FOIA requests are not at issue in this lawsuit.

the motion and directed MSU to preserve all emails and metadata, digital correspondence files, and text-message logs. Plaintiff has also filed two notices of supplemental factual developments, which defendants have moved to strike under MCR 2.115(B).

Defendants moved for summary disposition at the outset of the case under MCR 2.116(C)(8) and (10). Defendants argue that Count I of the amended complaint fails to state a claim on which relief may be granted because FOIA authorizes MSU to appoint a FOIA Coordinator to process FOIA requests. Defendants contend that Counts II through IV should be dismissed because FOIA allows a public body the option of whether to permit fee appeals. For Count V, defendants maintain that MSU did not charge an unreasonable or unlawful fee in response to plaintiff's FOIA request. Defendants argue that Count VI does not state a claim for relief because FOIA does not create a cause of action associated with a decision to deny a public-interest fee waiver. Defendants maintain that Count VII is not supported by the factual allegations, and FOIA does not recognize a cause of action for constructive denial.

Plaintiff responded to the motion for summary disposition and moved the Court for an *in camera* inspection of the potentially responsive records. Plaintiff argues that MSU's failure to process his fee appeal interfered with his ability to stop the 45-day clock on payment of the deposit to avoid abandonment of his FOIA request under MCL 15.234(14). Plaintiff further argues that MSU's FOIA Procedures and Guidelines, which went into effect July 1, 2015, establish an appeal procedure to MSU's President for substantive FOIA appeals but not for fee appeals. Plaintiff argues that he has stated a claim for mandamus relief because he was entitled to a fee appeal, which is typically much less expensive than traditional litigation. Plaintiff further argues that summary disposition would be premature on Count V because MSU imposed a blanket policy in deciding

whether to assess fees that was not tailored to plaintiff's specific FOIA request. He contends that MSU's 52-week estimate for fulfillment constituted a constructive denial of his FOIA request.

Plaintiff attached to his response brief an affidavit filed under MCR 2.116(H), in which plaintiff (who is representing himself in this matter) stated, "I cannot fully respond to the factual assertions in the Nelson Affidavit without discovery because the facts necessary to do so are in the exclusive possession and control of Defendants' employees."

Defendants replied that plaintiff abandoned Counts I and VI of the first-amended complaint by failing to raise a substantive argument regarding these claims in his response brief. They argued that plaintiff is not entitled to an *in camera* review of the 6,634 emails because he has not paid the requested deposit. Defendants also took the position that plaintiff's notices of supplemental developments should be stricken from the record under MCR 2.115(B) because plaintiff did not move for leave to amend the complaint under MCR 2.118(A). With leave of the Court, plaintiff submitted a sur-reply brief, arguing that he did not abandon Counts I and VI of the complaint and explaining how his arguments in his response brief align with the allegations in the complaint. Because the detailed briefing is sufficient to outline the issues, the Court dispenses with a hearing on the motion.

II. ANALYSIS

A. STANDARDS OF REVIEW

A motion for summary disposition under MCR 2.116(C)(8) examines the legal sufficiency of the plaintiff's claims based on the factual allegations raised in the complaint. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). The Court must accept the allegations in the complaint as true and will decide 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 would justify recovery. *Id.* The Court may consider the documents attached to the pleadings under MCR 2.113(C) when ruling on a motion for summary disposition under MCR 2.116(C)(8) because the documents are considered part of the pleadings. *Id*. at 163.

"A motion under MCR 2.116(C)(10), on the other hand, tests the *factual sufficiency* of a claim." *Id*. at 160. 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).

Because resolution of the issues requires the Court to interpret FOIA, the Court adopts 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, [a 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).]

B. COUNTS II THROUGH IV: RIGHT TO FEE APPEAL

Defendants first move for summary disposition of Counts II through IV of the amended complaint under MCR 2.116(C)(8). In Counts II through IV, plaintiff raises a statutory-interpretation argument that Section 4 of FOIA, MCL 15.234(14), required MSU to accept and

process his fee appeal. In Count III, plaintiff requests a writ of mandamus requiring Guskiewicz to personally review his FOIA appeal. Count IV alleges ultra vires activity on the part of MSU.

MCL 15.240a(1) provides:

> If a public body requires a fee that exceeds the amount permitted under its publicly available procedures and guidelines or section 4, the requesting person may do any of the following:
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> (a) *If the public body provides for fee appeals to the head of the public body in its publicly available procedures and guidelines*, submit to the head of the public body a written appeal for a fee reduction that specifically states the word "appeal" and identifies how the required fee exceeds the amount permitted under the public body's available procedures and guidelines or section 4.
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> (b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, in the court of claims, for a fee reduction. The action must be filed within 45 days after receiving the notice of the required fee or a determination of an appeal to the head of a public body. If a civil action is commenced against the public body under this subdivision, the public body is not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute. An action shall not be filed under this subdivision unless 1 of the following applies:
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> (*i*) *The public body does not provide for appeals under subdivision (a)*.
>
> (*ii*) The head of the public body failed to respond to a written appeal as required under subsection (2).
>
> (*iii*) The head of the public body issued a determination to a written appeal as required under subsection (2). [Emphasis added.]

MCL 15.240a(1)(a) allows a requesting person to submit a fee appeal to the public body *only if* that public body provides for a fee appeal in its procedures and guidelines. Similarly, the requesting person may commence a civil action in the circuit court or, if the public body is a state entity, in this Court under three circumstances, including when the public body does not provide for fee appeals. The word "if" is a conditional word that means "in the event that." *Merriam-Webster.com Dictionary*, if <https://www.merriam-webster.com/dictionary/if> (accessed October 6, 2026). 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). The use of the conditional word "if" supports that the public body need not provide a fee appeal in its procedures and guidelines.

This interpretation is further supported by Section 10 of FOIA, which requires an appeal for substantive FOIA disputes. Section 10 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.
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> (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).]

Unlike the language of Section 10a, the language of Section 10 of FOIA does not leave the decision whether to conduct an appeal to the discretion of the public body. Rather, the requesting party "at his or her option" has the choice to submit a written appeal to the head of the public body identifying the reasons for reversal of the denial of the FOA request. There is no conditional phrasing, such as the use of the word "if," that would suggest that the public body has the option not to allow for a substantive FOIA appeal. Section 10a, in contrast, leaves the decision whether to permit fee appeals to the public body, conditioning the requesting party's ability to pursue a fee appeal on whether the public body allows for a fee appeal. Had the Legislature intended to make the fee appeal process mandatory on the part of the public body, then presumably it would have used the same language in Section 10a that appears in Section 10. See *Honigman Miller Schwartz & Cohn LLP v Detroit*, 505 Mich 284, 293; 952 NW2d 358 (2020) ("Simply put, the use of

different terms within similar statutes generally implies that different meanings were intended.") (cleaned up).

Plaintiff also relies on MCL 15.234(14) to support that FOIA grants him the right to a fee appeal. MCL 15.234(14) relates to the process of requiring a fee deposit and provides, in relevant part:

> If a deposit that is required under subsection (8) or (11) is not received by the public body within 45 days from receipt by the requesting person of the notice that a deposit is required, and *if the requesting person has not filed an appeal of the deposit amount pursuant to section 10a*, the request shall be considered abandoned by the requesting person and the public body is no longer required to fulfill the request. [Emphasis added.]

Plaintiff argues that defendants' interpretation of FOIA would render the language of MCL 15.234(14) nugatory because, without the fee appeal, the 45-day safe-harbor period to avoid abandonment of the FOIA request would not apply. In other words, without the ability to appeal, plaintiff would either have to pay the deposit or risk abandonment of his FOIA request.

FOIA does not define the term "appeal." See MCL 15.232. However, MCL 15.234(14) must be read in harmony with MCL 15.240a(1), which provides that the requesting party may commence a civil action in the circuit court (or this Court) within 45 days after receiving the notice of the required fee *or* the appeal determination. MCL 15.240a(1)(b). See *Potter v McLeary*, 484 Mich 397, 411; 774 NW2d 1 (2009) (explaining that a "statute must be interpreted in a manner that ensures that it works in harmony with the entire statutory scheme"). MCL 15.240a(1)(b)(*i*), clarifies that the requesting party may commence a civil action when "[t]he public body does not provide for appeals under subdivision (a)," thus giving the requesting party a cause of action when the public body does not have a fee-appeal procedure. In that circumstance, the requesting party may commence a civil action within 45 days after receiving the notice of the fee, and "the public

body is not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute." MCL 15.240a(1)(b). Reading these two statutes in harmony, the "appeal" referenced in MCL 15.234(14) was intended to encompass a civil action filed after or in lieu of an internal fee appeal under MCL 15.240a(1).[3] Plaintiff will not be deemed to have abandoned his FOIA request while this lawsuit is pending. Therefore, plaintiff does not state a claim in Count II that MSU violated FOIA by failing to provide a fee appeal.

Count III is a claim for a writ of mandamus to require Guskiewicz, as head of the public body, to process plaintiff's fee appeal. Plaintiff claims that MSU's failure to provide for a fee appeal violated his right to due process of the law and argues he has no other adequate remedy because the internal appeal is a "low-cost administrative resolution" that would have avoided the need to file a lawsuit in this Court.

> To obtain the extraordinary remedy of a writ of mandamus, the plaintiff must show that (1) the plaintiff has a clear, legal right to performance of the specific duty sought, (2) the defendant has a clear legal duty to perform, (3) the act is ministerial, and (4) no other adequate legal or equitable remedy exists that might achieve the same result. In relation to a request for mandamus, a clear, legal right is one clearly founded in, or granted by, law; a right which is inferable as a matter of law from uncontroverted facts regardless of the difficulty of the legal question to be decided. [*Berry v Garrett*, 316 Mich App 37, 41; 890 NW2d 882 (2016) (cleaned up).]

For the reasons discussed earlier, plaintiff has not pleaded that he has a clear legal right to a fee appeal under FOIA. Such a right is not provided in the plain language of the statute, and plaintiff has not cited any other legal basis for the right to a fee appeal, whether in FOIA or in the

[3] Notably, in this case, plaintiff *did* file an appeal with the head of the public body, thus fulfilling any obligation he may have had under MCL 15.240a to file an appeal. The appeal was not accepted by MSU because MSU does not allow for fee appeals.

Michigan Constitution. Additionally, plaintiff cannot show that no other adequate legal remedy exists that might achieve the same result. Although plaintiff argues that a lawsuit is more costly than an appeal to the head of the public body, had plaintiff's fee appeal been denied, the next step in the process would have been to file a lawsuit in this Court. Because this lawsuit adequately preserves plaintiff's legal rights in relation to the fee, plaintiff has an adequate legal remedy. Plaintiff does not state a claim on which relief may be granted in Count III. Therefore, defendants are entitled to summary disposition under MCR 2.116(C)(8).

Count IV asserts a claim for ultra vires activity on the basis that Nelson "intercepted" plaintiff's FOIA appeal that was addressed to Guskiewicz and informed him that MSU had "opted out" of the fee-appeal process. Plaintiff argues that he had a right to have his fee appeal processed and that MSU was required to comply with FOIA as a condition of accepting state funding. Ultra vires activity is activity on the part of a government agency that is not expressly or impliedly mandated or authorized under the law. *Richardson v Jackson Co*, 432 Mich 377, 381; 443 NW2d 105 (1999). For the reasons discussed earlier, FOIA does not require MSU to process fee appeals. MSU's decision not to process fee appeals did not constitute ultra vires activity. In the context of Count IV, plaintiff also argues that defendants' refusal to process his fee appeal constituted an arbitrary and capricious FOIA violation under MCL 15.240a(7). Because plaintiff has not pleaded a FOIA violation in Counts II through IV, plaintiff does not have a claim for relief under MCL 15.240a(7). Defendants are entitled to summary disposition of Counts II through IV under MCR 2.116(C)(8).

C. COUNT I: FOIA COORDINATOR

Defendants also move for summary disposition of Count I of the amended complaint under MCR 2.116(C)(8). Count I raises a claim for violation of various constitutional rights on the basis

that MSU did not submit plaintiff's fee appeal to Guskiewicz as "head of the public body" under MCL 15.240a(1)(a). The Court need not interpret whether a FOIA coordinator may be considered the "head of the public body" for purposes of processing FOIA appeals because, even if plaintiff were correct that Guskiewicz was the appropriate individual to conduct a fee appeal, plaintiff did not have a statutory or constitutional right to a fee appeal under FOIA for the reasons discussed earlier. Defendants are entitled to summary disposition of Count I under MCR 2.116(C)(8).[4]

D. COUNT V: ASSESSMENT OF AN UNREASONABLE FEE

In Count V, plaintiff asserts that MSU assessed an unreasonable fee to respond to his FOIA request. He alleges that MSU impermissibly charged him for redaction costs in violation of MCL 15.234(3) and violated FOIA by imposing a blanket policy of assessing fees when costs will exceed $50 instead of conducting an individualized assessment of each FOIA request. Plaintiff argues that MSU improperly conflated the $50 threshold for requiring a deposit under MCL 15.234(8) with the unreasonably-high-cost standard for assessing a fee under MCL 15.234(3). Plaintiff further alleges that MSU "artificially inflated its labor estimate to 110.5 hours by assuming a human must manually review records at 'approximately one minute per record.' " (Emphasis omitted.) He contends that MSU can use e-discovery tools to segregate the emails in question, which would cut down on the total hours to review and respond to his FOIA request.

Defendants argue that Count V of the amended complaint should be dismissed under MCR 2.116(C)(10). To support their request for summary disposition, defendants rely on Nelson's

[4] Because the Court concludes that defendants are entitled to summary disposition on Count I, the Court need not address defendants' alternative argument that plaintiff abandoned this claim through failure to cite legal support for his position in his response brief.

affidavit, in which she attests that defendants complied with FOIA when concluding that plaintiff's FOIA request would result in an unreasonably high cost and in assessing a fee.

MCL 15.234 outlines the requirements for the assessment of fees for searching for and providing copies of public records. The statute provides, in relevant part:

> (1) 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). Subject to subsections (2), (3), (4), (5), and (9), 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. . . .
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> (2) . . . 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. . . .
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> * * *
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> (3) 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 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.
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> (4) A public body shall establish procedures and guidelines to implement this act and shall create a written public summary of the specific procedures and guidelines relevant to the general public regarding how to submit written requests to the public body and explaining how to understand a public body's written responses, deposit requirements, fee calculations, and avenues for challenge and appeal. . . .
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> * * *
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> (8) In either the public body's initial response or subsequent response . . . , the public body may require a good-faith deposit from the person requesting information before providing the public records to the requestor if the entire fee estimate or charge authorized under this section exceeds $50.00, based on a good-faith calculation of the total fee described in subsection (4). Subject to subsection

> (10), the deposit must not exceed ½ of the total estimated fee, and a public body's request for a deposit must include a detailed itemization as required under subsection (4). The response must also 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. The time frame estimate is nonbinding upon the public body, but the public body shall provide the estimate in good faith and strive to be reasonably accurate and to provide the public records in a manner based on this state's public policy under section 1 and the nature of the request in the particular instance. If a public body does not respond in a timely manner as described under section 5(2), it is not relieved from its requirements to provide proper fee calculations and time frame estimates in any tardy responses. Providing an estimated time frame does not relieve a public body from any of the other requirements of this act. [MCL 15.234(1)-(8).]

The burden is on the public body to establish that the fee complied with its procedures and guidelines, as well as Section 4 of FOIA. MCL 15.240a(4). The remedy in a fee reduction case is a reduction of the fee to a permissible amount. *Id*.

Nelson represented in her affidavit that she calculated the number of hours to complete the processing of plaintiff's FOIA request at 110.5 hours and multiplied that number by the lowest hourly wage of the lowest paid employee capable of performing the work, which was $25.26 per hour.[5] She stated that the total amount was multiplied by 40%, and the resulting figure was added to the total to partially cover fringe benefit costs,.[6]

Plaintiff argues that Nelson improperly included redaction costs and failed to consider the use of e-discovery tools to reduce the total number of hours spent reviewing and responding to plaintiff's FOIA request. He argues that e-discovery would reduce the total time to review the

[5] According to Nelson, this hourly wage is less than the wage earned by any current employee of MSU's FOIA Office.

[6] According to Nelson, the 40% figure is the figure "used uniformly by the MSU FOIA office as a benefits % multiplier, and was reviewed by the MSU Finance Office in order to confirm that it is an accurate representation of the associated fringe benefit costs to MSU."

potentially responsive emails. A factual dispute exists on whether the one-minute-per-email estimate was reasonable and whether e-discovery tools were available to reduce that estimated timeframe. A factual dispute also exists on whether redaction costs were necessary in this circumstance. In particular, plaintiff has not had the opportunity to depose Nelson or any information technology employees associated with MSU to determine whether e-discovery tools were available and could be used to reduce the total number of hours, and therefore the fee.

Plaintiff is also entitled to discovery on how MSU developed the policy that a $50 threshold would be used to determine whether the failure to charge a fee would result in unreasonably high costs under MCL 15.234(3). The $50 threshold presumably relates to MCL 15.234(8), which permits a public body to require a good-faith deposit when the fee estimate exceeds $50 based on a good-faith calculation of the total fee. However, FOIA does not provide that any request over $50 automatically results in an unreasonably high cost to the public body. See MCL 15.234(3). Rather, the determination whether the failure to charge a fee would result in unreasonably high costs to the public body is dependent on "the nature of the request in the particular instance." See *id*. Plaintiff has asserted a cognizable claim that MSU failed to make an individualized determination on whether the failure to charge a fee would result in unreasonably high costs to MSU in this instance based on the nature of plaintiff's request.

Finally, plaintiff maintains that Nelson's qualification in her January 26 letter that the $3,900 estimate "serves as an approximation only, and does not guarantee or limit the final, total fees which may be incurred and assessed" violated MCL 15.234(8), which requires a good-faith calculation of the total fee and requires the public body to strive to be reasonably accurate. The Court disagrees that the disclaimer is inconsistent with MSU's obligation to provide a fee estimate. MCL 15.234(1) permits the public body to estimate or charge a fee in accordance with FOIA. In

circumstances like this one, the public body may not be able to provide a precise fee estimate due to the volume of the potentially responsive documents. There is nothing in the language of MCL 15.234(8) that would prevent MSU from qualifying its fee estimate in such a manner. However, for the reasons noted earlier, the issue whether the fee estimate violated FOIA involves factual questions that will need to be developed in discovery. Therefore, defendants' motion for summary disposition of Count V of the complaint under MCR 2.116(C)(10) is denied. Denial is without prejudice to defendants' ability to file a renewed motion for summary disposition following discovery.

E. COUNT VI: FEE-WAIVER DENIAL

Defendants next move for summary disposition of Count VI of the amended complaint under MCR 2.116(C)(8) or (10). In Count VI, plaintiff alleges that MSU arbitrarily denied his public-interest fee waiver under MCL 15.234(2). Again, MCL 15.234(2) provides, in relevant part:

> 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.

Plaintiff alleges that MSU had a mandatory duty under FOIA to evaluate his request in good faith and violated FOIA by denying his request without assessing if plaintiff's request was in the public interest. He argues that his FOIA request would "shed[] light on the operations of a publicly funded state university and primarily benefits the general public's right to oversee its government." MCL 15.234(2) does not incorporate a good-faith requirement or an arbitrary and capricious standard. Instead, the statute gives the public body discretion to decide whether a request is in the public interest.

The use of the word "may" in a statute is ordinarily considered to mean that the action is permissive in nature. *Dep't of Health & Human Servs v NRK RX, Inc*, ___ Mich ___, ___; ___ NW3d (2026) (Docket No. 167917); slip op at 9. The public body has discretion over whether to grant a fee waiver. Without any guideposts on the discretion, plaintiff cannot show that the failure to grant a public-interest fee waiver gave rise to a fee exceeding the amount permitted under Section 4, for purposes of sustaining this claim under MCL 15.240a(1).

To the extent that plaintiff relies on MCL 15.240a(7) to support his claim, that subsection only applies to arbitrary and capricious violations of FOIA by charging an excessive fee. Because FOIA grants the public body discretion over whether to grant a public-interest fee waiver, the failure to do so cannot support an excessive-fee claim. Therefore, defendants are entitled to summary disposition of Count VI under MCR 2.116(C)(8).[7]

F. COUNT VII: CONSTRUCTIVE FOIA DENIAL

Plaintiff's final claim is one for willful and intentional constructive denial. MCL 15.235(2) provides:

> 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.

[7] Because the Court concludes that defendants are entitled to summary disposition on Count VI, the Court need not address defendants' alternative argument that plaintiff abandoned this claim through failure to cite legal support for his position in his response brief.

> (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(3) adds:

> 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, 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.

Although MSU responded to the FOIA request on January 26, plaintiff's theory is that the 52-week timeframe for processing plaintiff's FOIA request constituted a willful and intentional failure to respond to plaintiff's FOIA request under MCL 15.235(3)(a) and a constructive denial of his FOIA request. He argues the 52-week estimate was "not based on logical necessity but on a deliberate policy of 'queuing' to delay transparency." Plaintiff further alleges that the delay in disclosing public records constituted arbitrary and capricious conduct under MCL 15.240(7). Plaintiff requests a civil fine under MCL 15.240b, which provides, in relevant part:

> If the court determines, in an action commenced under this act, that a public body willfully and intentionally failed to comply with this act or otherwise acted in bad faith, the court shall order the public body to pay, in addition to any other award or sanction, a civil fine of not less than $2,500.00 or more than $7,500.00 for each occurrence.

Defendants argue that FOIA does not recognize a claim for constructive denial based solely on the timeframe for fulfillment. Defendants note that MCL 15.234(8) requires a public body to

make a "best efforts" estimate of the timeframe for providing the public records to the requestor. MCL 15.234(8) clarifies:

> The time frame estimate is nonbinding upon the public body, but the public body shall provide the estimate in good faith and strive to be reasonably accurate and to provide the public records in a manner based on this state's public policy under section 1 and the nature of the request in the particular instance.[8]

To support that FOIA lacks any specific timeframe for fulfillment, defendants rely on *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) (*ACLU*), oral argument gtd on the application 36 NW3d 788 (Mich, 2026). In *ACLU*, the plaintiffs submitted a FOIA request to the defendant relating to the defendant's delays in fulfilling other FOIA requests. *Id*. at 1. In its response, the defendant estimated that it would take 2 hours and 15 minutes to process the plaintiffs' FOIA request, but that it would take 8 to 10 months to provide responsive records. *Id*. The plaintiffs paid the deposit and filed an administrative appeal with the defendant's FOIA Appeals Committee, asserting that the 8-to-10-month timeframe was a constructive denial. *Id*. The Committee rejected the appeal, and the plaintiffs filed a FOIA lawsuit *Id*. at 1-2. The plaintiffs acknowledged that FOIA does not require public bodies to fulfill FOIA requests within a specific timeframe but argued that the processing delay violated FOIA's requirement that public bodies give a requesting person a reasonable opportunity for inspection and examination of public

[8] Section 1 of FOIA, MCL 15.231(2) states:

> It is the public policy of this state that all persons, except those persons incarcerated in state or local correctional facilities, are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with this act. The people shall be informed so that they may fully participate in the democratic process.

records. *Id*. at 2. The defendant produced responsive records while the lawsuit was pending, which was 13 months after the FOIA request was made, taking only 3 hours and 30 minutes to process the request. *Id.* at 2-3. The trial court granted the defendant's motion for summary disposition under MCR 2.116(C)(10). *Id*.

On appeal, the Michigan Court of Appeals panel addressed whether FOIA requires public bodies to fulfill FOIA requests within a reasonable time. *Id.* In that instance, both parties agreed that FOIA does not contain a strict deadline to fulfill a FOIA request. *Id*. at 3. The panel acknowledged that MCL 15.240(7) provides certain remedies when the public body has arbitrarily and capriciously violated FOIA through a delay in disclosure. *Id*. But in that case, the plaintiffs did not allege an arbitrary and capricious violation of FOIA. *Id*. Ultimately, the panel affirmed the trial court's ruling, reasoning that MCL 15.231(2) did not require a specific timeframe for disclosure of records. *Id.* at 4. Regarding MCL 15.234(8), the panel rejected the plaintiffs' argument that the statute implies a period of reasonableness. *Id.* The panel explained that "Michigan's FOIA does not now contain a deadline within which public bodies must fulfill FOIA requests," and the plaintiffs did not identify any ambiguities in the statute, so the panel declined to "impose deadlines that the Legislature has not seen fit to impose." *Id.*

The ACLU applied for leave to appeal to the Michigan Supreme Court. In July 2026, the Michigan Supreme Court granted oral argument on the application and requested that the parties file supplemental briefing addressing three questions, including "whether under [FOIA] a public body is required to fulfill a FOIA request within a reasonable time[,]" and "whether the case was rendered moot by defendant's fulfillment of the FOIA request." *American Civil Liberties Union of Mich v Grand Rapids*, 36 NW3d 788, 788-789 (Mich, 2026). To date, the Michigan Supreme Court has not taken further action on the application for leave to appeal.

The Court finds *ACLU* persuasive for its holding that FOIA has no specific deadline in which a public body must fulfill a FOIA request as a matter of law. Plaintiff argues that *ACLU* is unpublished, and therefore nonbinding.[9] See MCR 7.215(C)(1). However, an unpublished opinion of the Court of Appeals may be considered for its persuasive value. See *Cox v Hartman*, 322 Mich App 292, 307; 911 NW2d 219 (2017). Plaintiff also argues that the central issue in *ACLU* became moot when the defendant produced requested records, and the panel's reasoning was dicta. However, the Court of Appeals panel did not hold that the claims were moot, and the Court's holding was necessary to resolving the dispute.[10] See *Auto-Owners Ins Co v Seils*, 310 Mich App 132, 160 n 7; 871 NW2d 530 (2015) ("Obiter dicta are not binding precedent. Instead, they are statements that are unnecessary to determine the case at hand and, thus, lack the force of an adjudication.") (cleaned up).

Where plaintiff's claim differs from the claim in *ACLU* is that plaintiff alleges an intentional violation of FOIA under MCL 15.235(3)(a) and MCL 15.240b, as well as arbitrary and capricious delay under MCL 15.240(7). As noted earlier, the *ACLU* panel expressly noted that the plaintiffs were *not* alleging that the defendant engaged in arbitrary or capricious conduct, which would have been a separate basis for relief. Plaintiff's claim extends beyond a claim of mere

[9] Plaintiff argues that the opinion is unsigned. This is not true. The opinion was signed by the three judges on the panel: Judge M. J. KELLY, Judge REDFORD, and Judge FEENEY. *ACLU*, unpub op at 5.

[10] Plaintiff relies on *Cramer v Village of Oakley*, 316 Mich App 60, 68; 890 NW2d 895 (2016), vacated in part 500 Mich 964 (2017), for the position that FOIA permits a claim to proceed on the basis of constructive denial. However, the quoted portions of the opinion appear in Part III, which was later vacated as moot by the Michigan Supreme Court. *Cramer v Village of Oakley*, 500 Mich 964, 964 (2017). "A Court of Appeals opinion that has been vacated by the majority of the Supreme Court without an expression of approval or disapproval of this Court's reasoning is not precedentially binding." *People v Akins*, 259 Mich App 545, 550 n 8; 675 NW2d 863 (2003).

constructive denial based solely on the length of the best-efforts estimate and asserts intentional conduct on the part of MSU to delay production of responsive materials and shield certain information from public scrutiny. Plaintiff asserts that the 52-week estimate was part of a broader plan to deprive him of responsive records because of the nature of the requested records. Plaintiff's claim relies on the content of his record request, which he characterizes as involving issues that would be in the public interest. Plaintiff has stated a claim for relief, and defendants are not entitled to summary disposition of Count VII under MCR 2.116(C)(8).

Defendants also move for summary disposition of Count VII under MCR 2.116(C)(10), explaining that Nelson stated in her affidavit that the 52-week production estimate was based on the number of responsive emails, the size of MSU's FOIA Office, the number of total FOIA requests MSU typically receives in a given year, and the number of other outstanding projects for which the MSU FOIA Office had received payment. Nelson also attested to the fact that the 52-week timeframe was not intended to prevent plaintiff from accessing responsive records. However, as he explains in his affidavit, plaintiff has not had the opportunity in discovery to depose Nelson or any other MSU officials. It is also noteworthy that should plaintiff prevail on his claim regarding the total number of hours to respond to his fee request, the ruling may also impact the best-efforts estimate for purposes of fulfillment. For these reasons, summary disposition under MCR 2.116(C)(10) would be premature because discovery stands a fair chance of uncovering factual support for plaintiff's position.

G. MOTION FOR *IN CAMERA* INSPECTION

Plaintiff moves for an *in camera* inspection. He asks this Court to review the 6,634 emails that may be responsive to his FOIA request in their entirety, or through a randomly selected representative sample, to determine whether a manual review of each email in question at a speed

of one minute per record would be reasonable and whether e-discovery tools could reduce the processing time. Plaintiff also asks this Court to review *in camera* the materials withheld as exempt in response to plaintiff's third FOIA request, which is not at issue in this lawsuit.

Plaintiff argues that this Court should conduct an *in camera* inspection following the three-step procedure outlined in *Evening News Ass'n v City of Troy*, 417 Mich 481, 516; 339 NW2d 421 (1983). However, as the Court of Appeals has clarified, the procedure outlined in *Evening News* applies when the issue in the case involves a FOIA exemption and is not applicable in cases involving allegedly excessive fees. *Arabo v Mich Gaming Control Bd*, 310 Mich App 370, 405; 872 NW2d 223 (2015). In *Arabo*, the Court of Appeals held that allowing *in camera* review under the *Evening News* process would require the public body to effectively process the FOIA request by retrieving and examining the requested information in advance of payment of the required fee. *Id*.

In this case, plaintiff requests that the Court review approximately 6,634 emails that are potentially responsive to his FOIA request (or a sample portion of the emails) to determine whether the fee estimate is reasonable and whether e-discovery tools could reduce the processing time. As discussed earlier, discovery is required on the basis of the fee and the feasibility of e-discovery use to reduce the processing time. The Court cannot make a determination on the fee reduction in advance of discovery and through review of the emails alone. Plaintiff's request is premature. Additionally, as in *Arabo*, requiring MSU to divulge all potentially responsive emails at this stage in the proceedings may cause MSU to incur additional expenses to produce the emails before payment of the deposit or successful challenge to the fee. Plaintiff's amended complaint does not a state a claim in relation to the February 11, 2026 FOIA request, so *in camera* review of those

records would not reveal any relevant information. Therefore, the Court denies plaintiff's motion for an *in camera* inspection.

H. MOTION TO STRIKE PLAINTIFF'S NOTICE OF SUPPLEMENTAL FACTUAL DEVELOPMENTS

Defendants move to strike plaintiff's March 5, 2026 and March 12, 2026 notices of supplemental factual developments under MCR 2.115(B). MCR 2.115(B) provides, "On motion by a party or on the court's own initiative, the court may strike from a pleading redundant, immaterial, impertinent, scandalous, or indecent matter, or may strike all or part of a pleading not drawn in conformity with these rules." Plaintiff does not cite any legal source that would permit him to file notices with the Court with supplemental factual allegations and exhibits. He has not moved to amend his complaint under MCR 2.118(A)(2). To the extent that plaintiff seeks leave to supplement or amend the allegations in his amended complaint, plaintiff may file a motion for leave to amend the complaint in accordance with MCR 2.118(A)(2).

III. CONCLUSION

IT IS ORDERED:

1. Defendants' motion for summary disposition of Counts I-IV and VI of the amended complaint is GRANTED.
2. Counts I-IV and VI of the amended complaint are DISMISSED WITH PREJUDICE.
3. Defendants' motion for summary disposition of Counts V and VII is DENIED.
4. Plaintiff's motion for an *in camera* inspection is DENIED.
5. Defendants' motion to strike the March 5 and March 12 notices of supplemental factual developments is GRANTED.
6. Defendants shall file an answer within 21 days of this Opinion and Order.

7. This order does not resolve the last pending claim and does not close the case.

Date: October 15, 2026

Sima G. Patel
Judge, Court of Claims