STATE OF MICHIGAN

COURT OF CLAIMS

MARK L. GREBNER,

Plaintiff,

v Case No. 26-000140-MZ

MICHIGAN DEPARTMENT OF STATE, Hon. Michael J. Riordan

Defendant.
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OPINION AND ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

Plaintiff, Mark L. Grebner, submitted a request to defendant, the Michigan Department of State (MDOS), under the Freedom of Information Act (FOIA), MCL 15.231 *et seq*., seeking to inspect and self-copy certain petitions filed with the Bureau of Elections (BOE). MDOS assessed a fee in association with plaintiff's request, which plaintiff appealed to the head of MDOS. That appeal was denied, and plaintiff filed this lawsuit. MDOS moves for summary disposition at the outset of this case, arguing that because plaintiff failed to pay the required deposit or file this lawsuit within the 45-day limitations period, he has abandoned his FOIA request, which divests this Court of subject-matter jurisdiction over any substantive FOIA claim.

Because the complaint raises a claim for a fee reduction under § 10a of FOIA, and plaintiff did not commence this lawsuit within 45 days after receiving the notice of denial of his fee appeal, his lawsuit is untimely. See MCL 15.240a(1)(b). Accordingly, MDOS's motion for summary

disposition under MCR 2.116(C)(7) is GRANTED, and plaintiff's complaint is DISMISSED WITH PREJUDICE.

I. BACKGROUND

On March 23, 2026, plaintiff electronically submitted the following FOIA request to MDOS:

> I would like to examine the petitions filed by "Citizen Voting" or whatever they call themselves, recently filed with the Secretary of State. I don't know exactly how they are organized, but I believe they are in the same condition as when original filed. That is, they may be unnumbered and in the original boxes. In any case, I would like to open many of the boxes and remove a few sheets from each, to run through a very small portable scanner. The process would involve either one or two people, and would probably take about 20 hours to complete. If the [BOE] insists on assigning a babysitter to watch us handle the sheets – which is totally unnecessary as long as we work within view of [BOE] employees performing their regular tasks – we would not object, provided that the [BOE] employee assists our work by moving boxes, taking out a few sheets for us to scan, then returns those sheets to the box and grabs the next one. I or my employee will do the actual scanning.

On March 31, 2026, MDOS responded, informing plaintiff that his request was "granted as to existing, non-exempt records in the possession of the Agency that fall within the scope of your request." MDOS assessed a $6,375.20 processing fee, explaining that the failure to charge a fee "would result in unreasonably high costs to [MDOS]" because fulfillment of the request would require the diversion of employees from their ordinary duties. The fee included labor costs associated with searching, locating, and examining potentially responsive records, as well as labor costs associated with duplicating the records. MDOS demanded a $3,187.60 deposit before it would begin to process the FOIA request. MDOS estimated a 12-week timeframe for fulfillment.

On April 1, 2026, in an e-mail with the subject line "Appeal of Estimated Fee – FOIA #14271," plaintiff appealed the fee assessment to MDOS's FOIA Appeals Division on the basis

that the assessed fee was unreasonable. Plaintiff's theory was that MDOS employees did not need to search the records, supervise his inspection, or make copies of requested records to fulfill the request. He explained in a letter attached to the e-mail, "As my request explicitly stated, I am not requesting that [MDOS] provide copies; rather, I am requesting the right to inspect the records and produce my own copies." He argued that § 4 of FOIA, MCL 15.234, permits MDOS to charge a fee for the expense of making copies, but not for mere inspection of the records. He argued that even if fees were permissible in this instance, charging a fee for 160 hours of staff time was unreasonable when inspection would take fewer than 20 hours to complete. He argued there was no need for MDOS to search, locate, or examine the documents because, according to plaintiff, the petitions in question would be consolidated in their original boxes, and no confidential information would be included in the documents.

On April 15, 2026, MDOS employee Khyla Craine sent an e-mail to plaintiff denying his fee petition. Craine informed plaintiff that, in accordance with MCL 15.233(3), "[t]o prepare the original documents for inspection and 'prevent excessive and unreasonable interference with the discharge of its functions', [MDOS] would have to hand stamping [sic] each petition sheet, even if you only desire to obtain a random sample of the submitted petitions." She explained, "There are estimated 122,000 sheets that were submitted," and each had to be individually and manually stamped. MDOS maintains that its response was consistent with a BOE Sampling Procedure for Canvassing Petitions.

Plaintiff responded to Craine's e-mail on April 20, 2026, outlining what he characterized as "several misunderstandings and ambiguities." Plaintiff and Craine also discussed the possibility

of obtaining electronic copies of the petition sheets at a lower cost, but plaintiff did not submit a supplemental FOIA request. There is also no dispute that plaintiff did not pay the required deposit.

On July 1, 2026—77 days after MDOS upheld the fee estimate—plaintiff filed this lawsuit. On July 8, 2026, plaintiff 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. Count I of the amended complaint alleges that MDOS's responses and actions constituted a final determination denying plaintiff's FOIA request under MCL 15.240, as well as a violation of plaintiff's right to inspect and make copies of public records under MCL 15.233. He requests his attorney fees, costs, and disbursements under MCL 15.240(6). In Count II, plaintiff alleges that MDOS intentionally, arbitrarily, and capriciously violated FOIA by charging excessive and unreasonable fees.[1]

MDOS moved for summary disposition at the outset of the case. MDOS argues that plaintiff did not pay the fee deposit or commence this lawsuit within 45 days of the April 15 final decision on his fee appeal (or by June 1, 2026). Instead, he sued MDOS on July 1, 2026, one month after the limitations period expired on his fee claim. Thus, MDOS argues that plaintiff's claim is untimely under § 10a of FOIA. Because plaintiff never paid the fee deposit, MDOS's responsibility to fulfill the request was never triggered. Additionally, to the extent this Court is inclined to address the matter as one involving a final determination on plaintiff's FOIA request,

[1] Although plaintiff does not cite a provision of FOIA in relation to this claim, he is presumably referring to MCL 15.240(7), which authorizes a civil fine and punitive damages when the public body arbitrarily and capriciously violates FOIA.

MDOS argues that this Court lacks subject-matter jurisdiction because plaintiff did not pay the deposit, resulting in the abandonment of his FOIA request under MCL 15.234(14).

Plaintiff responds that this lawsuit is not a fee dispute but is a substantive challenge to the Sampling Procedures policy on which MDOS based its initial response to his FOIA request. Plaintiff casts his claim as a dispute over an alleged denial of his right to inspect and self-copy public records. In plaintiff's view, because he appealed the fee to the head of the agency within 45 days, his FOIA request should not be deemed abandoned. He argues that Craine's April 15 response was a final determination on his FOIA request. He contends that the Sampling Procedure on which MDOS relied is outdated and constitutes ultra vires governmental activity because the practice of hand stamping the records has already been replaced by electronic scanning and numbering, per MDOS policy. Plaintiff argues that he timely filed his complaint in this Court within 180 days of MDOS's final decision, as required under MCL 15.240(1)(b). Plaintiff requests summary disposition in his favor under MCR 2.116(I)(2) because, in his view, he was entitled to inspect and scan the records without payment of a fee. Alternatively, plaintiff requests leave to amend his complaint under MCR 2.118(A)(2) to clarify that the April 15 decision was the final determination on his FOIA request and to incorporate his arguments about MDOS's Sampling Procedure policy.

MDOS replies that plaintiff's claim is a disguised fee challenge and is time-barred under MCL 15.240a(1)(b). MDOS argues that plaintiff was required to either file this lawsuit within 45 days of the April 15 determination upholding the fee estimate or pay the good-faith deposit to trigger MDOS's obligation to process his FOIA request. He did neither. Plaintiff's argument that the Sampling Procedure resulted from an exercise of ultra vires activity was raised for the first

time in the response brief and should be rejected. MDOS argues that any amendment to the complaint would be futile because, no matter how it is characterized, this lawsuit is a fee challenge and is barred by the 45-day limitations period in MCL 15.240a(1)(b). Because the briefing is sufficient to address the issues, the Court dispenses with a hearing.

II. ANALYSIS

Because the Court concludes that the dispositive issue is whether the lawsuit is barred by the statute of limitations, the Court will address this motion for summary disposition under MCR 2.116(C)(7).

> When reviewing a motion under MCR 2.116(C)(7), [the Court] must accept all well-pleaded factual allegations as true and construe them in favor of the plaintiff, unless other evidence contradicts them. If any affidavits, depositions, admissions, or other documentary evidence are submitted, the court must consider them to determine whether there is a genuine issue of material fact. If no facts are in dispute, and if reasonable minds could not differ regarding the legal effect of those facts, the question whether the claim is barred is an issue of law for the court. However, if a question of fact exists to the extent that factual development could provide a basis for recovery, dismissal is inappropriate. [*Dextrom v Wexford Co*, 287 Mich App 406, 428-429; 789 NW2d 211 (2010) (quotation marks and citation omitted).]

The Court concludes that the core of this action is a challenge to the fee assessed for what plaintiff deems the inspection and self-copying of records under FOIA. Section 4 of FOIA outlines the procedures for assessing a fee for a public record search or the necessary copying of public records for inspection:

> (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). . . .
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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 . . . 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. . . . . A public body's procedures and guidelines must include the use of a standard form for detailed itemization of any fee amount in its responses to written requests under this act. . . .
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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). [MCL 15.234(1)-(8).]

Plaintiff argues that his lawsuit is premised on MDOS's denial of his "statutory right to inspect and self-copy public records under MCL 15.233 and MCL 15.240—not a dispute over the amount of an otherwise-authorized fee under MCL 15.240a." Section 10 of FOIA, MCL 15.240, provides that a plaintiff may sue a public body in this Court within 180 days of the public body's "final determination to deny all or a portion of a request," in order to "compel . . . disclosure of the public records." MCL 15.240(1)(b). Plaintiff argues that his lawsuit articulates a violation of § 3 of FOIA, MCL 15.233, which outlines a "right to inspect, copy, or receive copies" of public records, as well as a right to have the public body provide a reasonable opportunity for inspection and examination of public records. MCL 15.233(1) and (3).

The critical flaw in plaintiff's argument is that MDOS was not obligated to provide a final determination or allow the inspection to occur until plaintiff paid the deposit or timely and successfully challenged the fee. In *Arabo v Mich Gaming Control Bd*, 310 Mich App 370, 382; 872 NW2d 223 (2015), the Michigan Court of Appeals held that the public body's obligation to make a final determination on the plaintiff's FOIA request was not triggered because the plaintiff had not yet tendered the required deposit. Like in this case, the public body in *Arabo* responded to the plaintiff's FOIA request within the required timeframe, stating that it granted the "request for existing, non-exempt information in our possession that is relevant to your request.' " *Id*. at 383. The public body also assessed a fee to process the request and required payment of a 50% deposit, as permitted under § 4 of FOIA. *Id*. On appeal of a ruling in favor of the public body, the Court of Appeals concluded:

> [T]he Board's response in this case. . . did not constitute a "grant" of plaintiff's FOIA request, but rather is indicative, at least preliminarily, of a partial grant and partial denial. However, we hold that the dismissal of plaintiff's claim was nonetheless proper, because the Board was not then required to make a final determination to deny all or part of plaintiff's request. [*Id*. at 386.]

The Court explained that the conclusion that the public body's obligation to respond to the FOIA request is only triggered once the deposit is paid "would enable the public body to recover a portion of its costs before processing the request, as is clearly contemplated by the language of § 4(2) of the FOIA." *Id*. at 387. The Court explained that the public body's ability to require a deposit "clearly contemplates that the public body may recover part of its costs up front *before* processing the request," i.e., before responding with its final determination. *Id.* (emphasis in original). Thus, "a final determination by the Board is a prerequisite to plaintiff's commencement of a cause of action to compel disclosure of the requested records . . . under § 10 of the FOIA, . . .

but a final determination is not required until plaintiff has paid the deposit required by the Board." *Id*. at 388.

As a Court of Appeals panel recently acknowledged in *Mich Record Co v Dep't of State Police*, unpublished per curiam opinion of the Court of Appeals, issued August 17, 2023 (Docket No. 363736), p 5, although the relevant sections of FOIA have been amended multiple times since the opinion in *Arabo* was published, "the statutory scheme may still be reasonably construed so as to obligate the public body to respond with its final determination . . . once the requestor has paid the required deposit authorized under MCL 15.234(8) of the FOIA."[2] The takeaway from *Arabo* is that the individual requesting public records must either pay the deposit or successfully challenge the fee under § 10a of FOIA before commencing a cause of action to compel disclosure or inspection of the requested records. Any claim premised on an alleged final determination would be premature because MDOS did not (and was not required to) issue a final determination.

Nevertheless, here, the Court's reading of plaintiff's complaint reveals that it asserts a claim challenging an excessive fee—not a claim challenging a final decision on the substance of the FOIA request. Section 10a of FOIA, MCL 15.240a, outlines the procedures for disputing an excessive fee. The statute provides, in relevant part:

> (1) 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

[2] Although *Mich Record Co* is unpublished, and therefore nonbinding, the Court considers it for its persuasive value on this particular issue. See MCR 7.215(C)(1); *Cox v Hartman*, 322 Mich App 292, 307; 911 NW2d 219 (2017).

> 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).
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> (*ii*) The head of the public body failed to respond to a written appeal as required under subsection (2).
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> (*iii*) The head of the public body issued a determination to a written appeal as required under subsection (2). [MCL 15.240a(1) (emphasis added).]

Plaintiff filed this lawsuit after MDOS denied his fee appeal. He asserts in his amended complaint that MDOS "failed to allow inspection and copying [of] the requested items by charging prohibitive, exorbitant, and unreasonable fees that impose an unreasonable economic barrier on Plaintiff that is contrary to FOIA and its relevant jurisprudence." The crux of the claim is a dispute over the fees. See *Trowell v Providence Hosp & Med Ctr, Inc*, 502 Mich 509, 519; 918 NW2d 645 (2018) (explaining that a court must "disregard the labels given to the claims and instead read the complaint as a whole, seeking the gravamen of the claims").

Section 10a of FOIA outlines a specific procedure that must be followed when a requesting party challenges an assessed fee. Plaintiff was required to submit a written appeal to the head of the public body for a fee reduction, which he did. See MCL 15.240a(1)(a). Craine, as head of the public body for purposes of plaintiff's FOIA request, issued a determination denying the written appeal, thus allowing plaintiff to commence a civil action in this Court *within 45 days* after receiving the notice of the determination of the appeal. See MCL 15.240a(1)(b)(*iii*). There is no

dispute that the denial of the fee appeal occurred on April 15, 2026, or that plaintiff received the decision that day via e-mail. Therefore, under MCL 15.240a(1)(b), plaintiff was required to commence this lawsuit 45 days after April 15, or by June 1, 2026. Plaintiff filed this lawsuit on July 1, 2026—a month after the limitations period expired. He does not claim any legal basis for extending the limitations period. Therefore, plaintiff's fee claim is untimely.

Plaintiff also moves for leave to amend his complaint to recharacterize his claim as one premised on alleged ultra vires activity on the part of MDOS in issuing its Sampling Procedure policy. Plaintiff seeks to clarify that the April 15 decision was the "operative final determination" and to "incorporate[] the Sampling Procedure policy [MDOS]'s own motion has now placed in the record," referring to a Sampling Procedure document attached to MDOS's motion for summary disposition. He claims that such an amendment would clarify that his lawsuit is subject to the 180-day limitations period for challenges to final determinations of the public body under MCL 15.240(1)(b). Although leave to amend the complaint should be freely granted when justice so requires, the Court may deny leave when the amendment would be futile. *Wormsbacher v Phillip R Seaver Title Co, Inc*, 284 Mich App 1, 8; 772 NW2d 827 (2009).[3]

Plaintiff contends that because he is challenging certain MDOS policies as interfering with his inspection rights under § 3 of FOIA, he is not challenging "a fee that exceeds the amount permitted under its publicly available procedures and guidelines." See MCL 15.240a(1). He seeks to clarify that he is challenging the procedures and guidelines themselves. But plaintiff ignores a critical component of MCL 15.240a(1). The statute allows a requesting party to appeal a fee

[3] Plaintiff stated in his response brief that he has prepared a second amended complaint, but he has not provided that document to the Court.

assessment "[i]f a public body requires a fee that exceeds the amount permitted under its publicly available procedures and guidelines *or* section 4." See *id*. (emphasis added). Section 4 of FOIA outlines the requirements for a public body to charge a fee for a public record search. To the extent plaintiff is challenging MDOS's Sampling Procedure policy as violating FOIA, § 4 is the provision of FOIA that would govern such a claim because that is the provision that governs what fees a public body may charge for copies or inspection of public records. Plaintiff's complaint and briefing clarifies that he is not challenging the hand stamping itself, which would not interfere with his right to inspect or copy the records. He is challenging the fact that MDOS is assessing a fee for this activity. Again, plaintiff cannot challenge MDOS's final determination on his FOIA request until he pays the deposit or successfully challenges the fee. Thus, amendment of the complaint would be futile because it would not change the inherent nature of plaintiff's claim.

To support his request for leave to amend his complaint, plaintiff relies on the Michigan Supreme Court's published order in *Hubka v Pennfield Twp*, 443 Mich 864 (1993), as well as two Michigan Court of Appeals cases—*Cashel v Regent of the Univ of Mich*, 141 Mich App 541; 367 NW2d 841 (1985), and *Cashel v Smith*, 117 Mich App 405; 324 NW2d 336 (1982). That reliance is misplaced. In this instance, MDOS did not deny plaintiff the right to inspect the records. MDOS granted plaintiff's request as to any nonexempt records in the agency's possession but charged what plaintiff characterizes as an impermissible fee to hand stamp each record and make copies associated with the inspection. At this stage, MDOS has not withheld any records or claimed any exemptions. Furthermore, as MDOS notes in its briefing, FOIA has been amended significantly since these cases were decided, rendering their applicability in this context questionable, at best.

In sum, plaintiff's claim is *not* a claim for wrongful denial of a FOIA request under MCL 15.240(1)(b), no matter how he attempts to re-characterize it. Such a claim would be premature for the reasons outlined in *Arabo*. There is no dispute that plaintiff has not paid the deposit, and his internal fee appeal has concluded. The instant lawsuit challenging the fee is untimely. Therefore, MDOS is entitled to summary disposition in its favor on both Counts I and II under MCR 2.116(C)(7). Finally, because the Court concludes that this lawsuit is a fee challenge, the Court need not resolve whether plaintiff abandoned his FOIA request.[4]

III. CONCLUSION

Accordingly, the Court orders:

1. The Court GRANTS MDOS's motion for summary disposition under MCR 2.116(C)(7).
2. The Court DENIES plaintiff's motion for summary disposition under MCR 2.116(I)(2).
3. Plaintiff's request to amend the complaint under MCR 2.118(A)(2) is DENIED.

[4] This case differs from the situation presented in *Mich Record Co*, where the Court of Appeals held that this Court lacked subject-matter jurisdiction over the dispute. In that case, the plaintiff sued the defendant after the defendant failed to respond timely to the FOIA request. *Mich Record Co*, unpub op at 2. The defendant found and responded to the FOIA request sometime after the plaintiff filed a lawsuit in this Court, but the plaintiff failed to pay the requested deposit or appeal the public body's fee assessment within the 45-day period. *Id*. On appeal of a decision by this Court granting the request, the issue became whether the plaintiff had abandoned its FOIA claim by failing to pay the deposit or appeal the decision within 45 days. *Id*. at 5-6. In other words, the substance of the FOIA request was very much in dispute in *Mich Record Co*. This case, in contrast, is a lawsuit challenging the fee, which is a claim over which this Court has subject-matter jurisdiction under MCL 15.240a(1)(b).

4. Plaintiff's complaint is DISMISSED WITH PREJUDICE.

5. This is a final order resolving all issues in the case.

Date: 09/24/2026

Michael J. Riordan
Judge, Court of Claims