STATE OF MICHIGAN

COURT OF CLAIMS

MICHAEL A. COX and MIKE COX 2026,

Plaintiffs,

v

Case No. 26-000151-MZ

MICHIGAN DEPARTMENT OF STATE and JOCELYN BENSON, in her official capacity as Secretary of State,

Hon. Michael F. Gadola

Defendants.
_____ /

OPINION AND ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY DISPOSITION AND DENYING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY DISPOSITION

In April 2026, plaintiffs—Michael A. Cox and Mike Cox 2026—submitted a request under the Freedom of Information Act (FOIA), MCL 15.231 *et seq*., to defendants—the Michigan Department of State (MDOS) and Secretary of State Jocelyn Benson—for certain records relating to Benson and an entity called the Southern Poverty Law Center, Inc. (SPLC). MDOS responded by granting the request as to any nonexempt documents in MDOS's possession and estimating a 10-week timeframe for production of responsive records and written notice of any claimed exemptions. Plaintiffs filed this lawsuit in mid-July 2026 before the 10-week estimated timeframe expired. After plaintiffs filed this lawsuit, MDOS provided plaintiffs with 30 pages of responsive records and indicated that processing of plaintiffs' FOIA request was ongoing. With leave of the Court, plaintiffs amended their complaint, raising a number of FOIA claims, and defendants answered the amended complaint. Both parties moved for summary disposition before the close

of discovery. Defendants requested summary disposition under MCR 2.116(C)(10), and plaintiffs requested partial summary disposition of Count III of the amended complaint under MCR 2.116(C)(9) and (10). The Court GRANTS defendants' motion for summary disposition, DENIES plaintiffs' motion for partial summary disposition of Count III of the amended complaint, and DISMISSES the amended complaint WITH PREJUDICE.

I. FACTUAL BACKGROUND

On April 27, 2026, Cox[1] submitted a FOIA request to MDOS and Benson, requesting six categories of public records relating to "communications, meetings, coordination, collaboration, partnerships, agreements, official contacts, or internal discussions involving [Benson], the [MDOS], and [the SPLC], including any SPLC officers, employees, agents, contractors, representatives, board members, affiliated entities, or related organizations." The FOIA request sought documents spanning a seven-year period and included over two dozen requested search terms, several custodians of records, and multiple locations of potentially responsive records. The request asked for any responsive records located on personal email accounts to the extent that those accounts were used to conduct public business and requested that any redactions be supported by specific FOIA exemptions. Plaintiffs indicated a willingness to discuss rolling production with MDOS.

According to MDOS, when a FOIA request is received, it is placed in a queue for response. In this instance, MDOS Associate Legal Director Erin Lillie, who was also serving as MDOS's

[1] Benson is the Democratic gubernatorial candidate in the November 3, 2026 general election. Cox was a Republican gubernatorial candidate at the time he filed this lawsuit in July 2026; his campaign is one of the two named plaintiffs.

Interim FOIA Coordinator, was tasked with processing the FOIA request. Upon receipt of the FOIA request, Lillie informed another MDOS employee that MDOS's initial response was due on May 5, but that Lillie intended to take an extension "[d]ue to the volume of requested materials," and would likely be sending a deposit letter to plaintiffs on May 15, 2026.

On May 5, 2026, Lillie informed plaintiffs that MDOS was extending the response period by 10 business days, or by May 19, 2026. According to Lillie, an initial search by the Department of Technology, Management, and Budget revealed approximately 3.2 gigabytes of potentially responsive records. Additionally, Lillie attested in a declaration attached to defendants' motion for summary disposition that MDOS had received over 3,000 FOIA requests this year, and the total number of FOIA requests for 2026 was already double the number of requests received in 2025. She also attested that MDOS does not have a designated FOIA staff.

On May 15, 2026, Lillie responded to plaintiffs' FOIA request, stating, "Your request is granted as to existing, nonexempt public records that are determined to be responsive to your request." Lillie informed plaintiffs that MDOS required plaintiffs to pay a deposit of $5,154.97, which was ½ of the $10,309.94 estimate to fulfill the FOIA request. MDOS estimated that it would take MDOS employees approximately 109 hours to review the responsive records. Lillie provided plaintiffs with an itemization of the estimated costs. Lillie concluded that the failure to charge a fee would result in unreasonably high costs to the agency because plaintiffs' "requests involve a number of documents and would require employee(s) to be diverted from their original duties to process this request and will be required to expend additional time to complete their regularly assigned duties."

Lillie informed plaintiffs that MDOS would continue processing their request upon receipt of the deposit. She stated: "It is anticipated that the Department can process your request in approximately 10 weeks. Again, this is an estimate only issued today, and may vary depending on staffing (vacations, illnesses, etc.) and workload." According to MDOS, the 10-week estimate took into consideration that the FOIA Coordinator role was in a state of transition and that plaintiffs made the request at the height of the election season when MDOS employees were working under tight deadlines.

Plaintiffs paid the deposit on May 22, 2026, and MDOS deposited the funds into its account on May 28, 2026. On July 16, 2026, plaintiffs filed this lawsuit. Plaintiffs acknowledge that the 10-week period elapsed, at the earliest, on July 31, 2026. Thus, plaintiffs filed this lawsuit *before* the 10-week period elapsed. Benson was personally served with a copy of the summons and complaint on July 29, 2026, and MDOS was served on August 3, 2026.

According to Lillie, on July 20, 2026, MDOS received a request for information from the House Oversight Committee involving at least some overlap in subject matter, and Lillie responded to that request by providing 30 pages of documents. The House Oversight Committee's request was *not* a FOIA request. The responsive records consisted mainly of press-inquiry emails and a 2019 email thread regarding coordination of a visit by 20 or more Secretaries of State to the SPLC's office for lunch and a tour while the Secretaries of State were attending another event in the same city. The unredacted portions of the emails show that Benson was the author of some, but not all, of the emails relating to the 2019 SPLC visit. Before the documents were produced, Lillie redacted "a personal email address" that appeared on four pages of the document production within the thread relating to the 2019 SPLC visit, which plaintiffs assert is a personal email address associated with Benson.

On July 28, 2026, Lillie provided plaintiffs with the same 30 pages of records that were provided to the House Oversight Committee. Lillie informed plaintiffs that the documents had become "readily available" and appeared responsive to plaintiffs' FOIA request. Lillie explained that the 30 pages of documents were provided as part of an ongoing response to plaintiffs' FOIA request because of plaintiffs' indication in their FOIA request of their "openness to a rolling production schedule."[2] Lillie noted that these documents were being provided free of charge. She explained that MDOS would inform plaintiffs when the processing of their FOIA request was complete, at which time MDOS would also inform plaintiffs of any statutory basis for exemptions claimed, the fee balance due, and the statutory remedial rights available to plaintiffs. According to Lillie, the redactions were included in the four pages of documents provided to plaintiffs because they were previously redacted as part of a response to a request by the House Oversight Committee—*not* because MDOS was necessarily claiming an exemption in response to plaintiffs' FOIA request.

On August 10, 2026, plaintiffs' counsel contacted MDOS to request a status report on the FOIA request. MDOS explained that it continued to process the request and estimated the review would be completed "in a matter of weeks absent unexpected events that could pull staff away from review." Plaintiffs' counsel asked MDOS to define the term "a number of weeks." MDOS did not respond to that inquiry.[3]

[2] Plaintiffs do not contest that rolling production would facilitate a swift FOIA response, and they requested a rolling production schedule in the requested relief section of their first amended complaint.

[33] According to Lillie, MDOS had not provided an updated estimated completion date because of other pressing matters, such as preparing for the November 3 general election, responding to

On August 18, 2026, plaintiffs' counsel submitted a second FOIA request to defendants, requesting copies of public records relating to the redacted email address that appeared on MDOS's July 28 document production, as well as all email addresses used by Benson that were not otherwise associated with her role as Secretary of State. In mid-September 2026, MDOS provided a substantive response to the second FOIA request, denying the request under the litigation exemption, MCL 15.243(1)(v), and referring plaintiffs to this action.

II. PROCEDURAL HISTORY

With leave of the Court, plaintiffs amended their complaint after this lawsuit was filed and raised the following claims relating to the April 27 FOIA request:

- Count I: Defendants wrongfully withheld requested records and constructively denied plaintiffs' FOIA request, in violation of MCL 15.240(1)(b) and (4);
- Count II: Defendants violated a duty to provide a good-faith time estimate under MCL 15.234(8);
- Count III: Defendants partially denied plaintiffs' FOIA request without providing notice of redactions, in violation of MCL 15.235(2), (4), and (5), and MCL 15.243(1)(a);
- Count IV: Defendants' refusals and delays were arbitrary and capricious, in violation of MCL 15.240(7);
- Count V: Defendants willfully and intentionally violated FOIA, in violation of MCL 15.240b;
- Count VI: Plaintiffs are entitled to a declaratory judgment that defendants violated their obligations to provide a good-faith estimate for fulfillment and produce records within a reasonable time or, alternatively, a writ of mandamus compelling production within a reasonable time based on a "compliant" best-efforts estimate.

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plaintiffs' filings in this matter, and responding to four additional FOIA requests plaintiffs submitted between July and September.

Plaintiffs asserted that their FOIA request was relevant to the November 3, 2026 general election and requested a complete production before that date. Defendants answered the complaint. In response to plaintiffs' allegation in the amended complaint that "[o]n pages 1 through 4 of the July 28 production, defendants blacked out the email address Secretary Benson used to send and receive the 2019 SPLC-visit emails," defendants responded, "Admitted, pursuant to MCL 15.243(1)(a)."[4] Defendants also asserted that the processing of plaintiffs' FOIA request was ongoing and that MDOS had yet to issue a final determination. This Court issued a scheduling order, and the parties engaged in initial discovery.

Within a month of entry of the scheduling order, both parties filed dispositive motions. Defendants moved for summary disposition of the amended complaint under MCR 2.116(C)(10). Defendants first argue that MDOS has not denied plaintiffs' FOIA request. They contend that the alleged delay in fulfillment was not a denial under FOIA, and MDOS complied with FOIA by demanding a deposit and providing a 10-week fulfillment estimate. Additionally, defendants contend that MDOS provided plaintiffs with 30 pages of responsive records as a courtesy because those documents became readily available. The July 28 production was not a complete production, and FOIA did not require MDOS to claim all statutory exemptions for any redacted information at the time of production. Defendants contend that MDOS is acting in good faith to fulfill plaintiffs' FOIA request, and that plaintiffs have not demonstrated any arbitrary and capricious conduct or a willful violation of FOIA. In defendants' view, plaintiffs cannot support a mandamus

[4] MCL 15.243(1)(a) provides an exemption from disclosure under FOIA for "[i]nformation of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy."

or declaratory-judgment claim because defendants have not violated FOIA, and FOIA provides an adequate remedy for any violation of its provisions.

Plaintiffs responded to the motion for summary disposition, arguing that (1) the July 28 production included a partial denial requiring written notice of the statutory exemption claimed for any redactions, (2) defendants constructively denied plaintiffs' FOIA request through their delay in providing a final determination, (3) whether the best-efforts estimate was made in good faith and whether the delay was reasonable are both fact questions to be explored in discovery, and (4) plaintiffs have stated cognizable claims for declaratory and mandamus relief. Plaintiffs request partial summary disposition of Count III under MCR 2.116(I)(2) for the reasons noted in their motion for partial summary disposition. Defendants have replied.

Plaintiffs moved for partial summary disposition of Count III of the amended complaint under MCR 2.116(C)(9) and (10), arguing that defendants were required to identify the statutory basis for the redacted email addresses in the July 28 production. They contend that the privacy exemption cited in defendants' answer to the complaint seven weeks after production did not cure the missing notice. Plaintiffs request an order that defendants serve a "written notice" under MCL 15.235(5) and (6) of the basis for the redactions and provide unredacted copies of the production for this Court's *in camera* review. Defendants responded to the motion, arguing that MDOS has not denied plaintiffs' FOIA request, that MDOS did not redact the 30 pages as part of its FOIA response, and that MDOS has not made a final determination on plaintiffs' FOIA request that would require written notice of any claimed exemptions. Defendants requested summary disposition of Count III in their favor under MCR 2.116(I)(2). Plaintiffs have replied.

Defendants moved to stay discovery pending this Court's decision on their motion for summary disposition. Plaintiffs filed a response in opposition to the motion and provided an affidavit of plaintiffs' counsel outlining the discovery needed from defendants, and defendants have replied. Because the briefing is sufficiently detailed to address the issues presented in the competing motions for summary disposition, the Court dispenses with oral argument.

III. ANALYSIS

A. STANDARD OF REVIEW

Plaintiffs moved for summary disposition under MCR 2.116(C)(9) and (10), and defendants moved for summary disposition under MCR 2.116(C)(10). "Summary disposition under MCR 2.116(C)(9) is proper if a defendant fails to plead a valid defense to a claim." *Village of Dimondale v Grable*, 240 Mich App 553, 564; 618 NW2d 23 (2000). A motion under this subrule examines the sufficiency of the defendant's pleadings by accepting the well-pleaded allegations as true and examining whether the defenses are so clearly untenable that, as a matter of law, no factual development could deny the plaintiff's right of recovery. *Id*.

A motion for summary disposition under MCR 2.116(C)(10) examines the factual support for the claims by reviewing the evidence in the light most favorable to the nonmoving party. *Coblentz v Novi*, 475 Mich 558, 567-568; 719 NW2d 73 (2006). "Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law." *Id*. at 568 (quotation marks and citation omitted). When a motion for summary disposition is filed under MCR 2.116(C)(10) before the close of discovery, the question becomes whether summary disposition would be premature because 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 264 (2009).

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

> The goal of statutory interpretation is to give effect to the Legislature's intent as determined from the language of the statute. In order to accomplish this goal, this Court interprets every word, phrase, and clause in a statute to avoid rendering any portion of the statute nugatory or surplusage. [The Court will] give the words of a statute their plain, ordinary meaning unless the Legislature employs a term of art. [*Bukowski v Detroit*, 478 Mich 268, 273-274; 732 NW2d 75 (2007).]

B. COUNTS I AND II: WRONGFUL DENIAL/VIOLATION OF BEST-EFFORTS ESTIMATE

Counts I and II of the amended complaint raise claims for wrongful withholding and denial of plaintiffs' FOIA request under MCL 15.240(1) and violation of MCL 15.234(8), which requires a public body to provide a best-efforts estimate of the timeframe for production.

Section 10(1) of FOIA, MCL 15.240(1), provides:

> 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. [Emphasis added.]

MCL 15.240(4) adds, in relevant part, "In an action commenced under subsection (1)(b), a court that determines a public record is not exempt from disclosure shall order the public body to cease

withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record."

Section 5 of FOIA, MCL 15.235, outlines several duties on the part of a public body that receives a request for a public record:

> (2) Unless otherwise agreed to in writing by the person making the request, a public body shall, subject to subsection (10), respond to a request for a public record within 5 business days after the public body receives the request by doing 1 of the following:
>
> (a) Granting the request.
>
> (b) Issuing a written notice to the requesting person denying the request.
>
> (c) Granting the request in part and issuing a written notice to the requesting person denying the request in part.
>
> (d) Issuing a notice extending for not more than 10 business days the period during which the public body shall respond to the request. A public body shall not issue more than 1 notice of extension for a particular request. [MCL 15.235(2)(a)-(d).]

MCL 15.235(5) clarifies, "A written notice denying a request for a public record in whole or in part is a public body's final determination to deny the request or portion of that request," and outlines certain requirements that the notice must contain.

Regarding the timeframe for fulfillment of a FOIA request, MCL 15.234(8) explains, in relevant part, that the public body's initial FOIA 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 best-efforts 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," as well as "the nature of the request in the particular instance."[5] *Id*.

Plaintiffs identify the May 15 response as the final determination for purposes of the timeliness of their July 16 complaint. See MCL 15.240(1)(b) (requiring that a lawsuit be commenced within 180 days of the final determination). However, there is no dispute about the initial decision outlined in the May 15 response, which granted plaintiffs' FOIA request as to any nonexempt documents in MDOS's possession. Plaintiffs' claim is instead focused on the 10-week estimated timeframe for fulfillment, which did not lapse until after plaintiffs filed this lawsuit. In other words, plaintiffs maintain that a delay in fulfillment may constitute a final determination to deny all or part of a FOIA request, allowing plaintiffs to sue under MCL 15.240(1)(b), or may be actionable as a violation of the good-faith estimate requirement in MCL 15.234(8).

MCL 15.240(1)(b) does not expressly create a claim for constructive denial through delay in production of responsive records. To support that FOIA inherently recognizes that a final determination to deny a FOIA request may be inferred through delay in fulfillment, plaintiffs rely on one published appellate opinion: *Cramer v Village of Oakley*, 316 Mich App 60; 890 NW2d 895 (2016), vacated in part 500 Mich 964 (2017). In *Cramer*, the Court of Appeals held, in Part III of its opinion, that a public body is not allowed *carte blanche* control over when to produce

[5] Section 1(2) of FOIA, MCL 15.231(2), provides:

> 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.

responsive documents. *Id*. at 68. The Court explained that "nothing precludes a plaintiff, if faced with an inordinate delay in the production of requested documents, from filing suit on the ground that a public body's actions in response to a FOIA request effectively constitute a denial in whole or in part, notwithstanding that body's labeling of a response as a 'grant' of the request" *Id*. Additionally, the Court held that the public body's failure to meet a good-faith time estimate under MCL 15.234(8) "may in some circumstances tend to show that a public body's response was effectively a denial notwithstanding its choice of labels." *Id*. at 69. The Court did not specify what circumstances tend to show that a delayed response amounts to a denial; nor did the Court indicate that a delayed response is, as a matter of law, a denial for purposes of MCL 15.240(1)(b).

More important, the Michigan Supreme Court later vacated Part III of the Court of Appeals' opinion as moot and remanded the case to the trial court for dismissal of the plaintiff's FOIA claims. *Cramer v Village of Oakley*, 500 Mich 964, 964, (2017). Thus, this portion of the Court of Appeals' opinion, which was vacated, is not precedentially binding. See *People v Akins*, 259 Mich App 545, 550 n 8; 675 NW2d 863 (2003) ("A Court of Appeals opinion that has been vacated by the majority of the Supreme Court without an expression of approval or disapproval of [the] Court's reasoning is not precedentially binding."). Plaintiffs do not cite binding appellate precedent for the position that a delay beyond the public body's good-faith estimate may constitute a "final determination" to deny all or part of the FOIA request.

In contrast, 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 relating to the defendant's delays in fulfilling other FOIA requests. *Id*. at 1. The defendant responded, estimating that it would take the defendant 2 hours

and 15 minutes to process the plaintiffs' FOIA request, but that it would take 8 to 10 months to fulfill the request and provide responsive records. *Id*. The plaintiffs paid the deposit and filed an administrative appeal with the defendant, asserting that the 8-to-10-month best-efforts timeframe amounted to a constructive denial. *Id*. The defendant 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 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 Court of Appeals panel addressed whether FOIA requires public bodies to fulfill requests within a reasonable time. *Id*. Both parties agreed that FOIA does not contain a strict fulfillment deadline. *Id*. at 3. Although MCL 15.240(7) provides certain remedies when the public body has arbitrarily and capriciously violated FOIA through a delay in disclosure, the plaintiffs did not allege an arbitrary and capricious violation of FOIA. *Id*. The panel affirmed the trial court's ruling, reasoning that FOIA did not require a specific timeframe for disclosure of records. *Id*. at 4. The panel rejected the plaintiffs' argument that MCL 15.234(8) implies a period of reasonableness binding the public body. *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*. *ACLU* therefore supports defendants' position

that FOIA does not recognize a cause of action premised solely on delay in disclosure, absent a finding of arbitrary and capricious conduct.

The ACLU applied for leave to appeal to the Michigan Supreme Court. In July 2026, the Michigan Supreme Court directed 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[,]" as well as "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). The Michigan Supreme Court has not scheduled argument on the application for leave to appeal. As it stands, plaintiffs have not cited any binding caselaw to support that FOIA recognizes a constructive denial based on a delay in fulfillment.[6]

Additionally, Attorney General Bill Schuette addressed the issue whether MCL 15.234(8) requires a public body to fulfill a FOIA request within a particular timeframe in a 2017 Attorney General Opinion. OAG, 2017-2018, No. 7300, p 42, at 43 (December 12, 2017). In this opinion, Attorney General Schuette opined, "It is my opinion, therefore, that [MCL 15.234(8)] does not impose a specific time by which a public body must fulfill a request for public records that it has granted." *Id*. at 45. Rather, the public body must be "guided by but is not bound by" the best-efforts estimated it provided in its initial FOIA response. *Id*. The estimate must be made with an "honest intent to fulfill the public body's duty to provide public records in keeping with the purpose

[6] The issue whether FOIA *should* recognize constructive denial is not before this Court as that is a matter to be decided by the Legislature. See *Rembert v Ryan's Family Steak Houses, Inc*, 235 Mich App 118, 131; 596 NW2d 208 (1999) ("Unquestionably, public policy pronouncements of the Michigan Legislature, enacted as statutes, are binding on this Court.").

of FOIA." *Id*. at 46. As Attorney General Schuette recognized, the Legislature granted public bodies "significant latitude" for the time to fulfill a public records request. *Id*.[7]

Nevertheless, to support that a violation of MCL 15.234(8) may give rise to a cause of action for violation of FOIA, plaintiffs rely on *Dynamic Transp, LLC v Mich State Police*, opinion of the Court of Claims, issued August 15, 2023 (Case No. 23-000018-MZ) (*Dynamic I*). In *Dynamic I*, the plaintiff submitted a FOIA request to the defendant, which granted the request, estimated a six-figure fee, and estimated that it would take 1,800 business days to complete the review and produce responsive materials. *Id*. at 2. The plaintiff filed a second, narrower FOIA request, which resulted in a reduction of both the fee and the best-efforts estimates. *Id*. at 3. The plaintiff then sued the defendant in this Court, challenging the fee estimate and the first and second time estimates on the basis that those estimates deprived the plaintiff of a reasonable opportunity for inspection and examination of public records, constituted a constructive denial, and supported that the agency acted in bad faith. *Id*. at 4-5. The defendant moved for summary disposition under MCR 2.116(C)(8) and (10) at the outset of the case. *Id*. at 5.

This Court, Judge REDFORD presiding, ruled that the record as developed through partial discovery was inadequate to assess whether the defendant's best-efforts estimate complied with MCL 15.234(8). *Id*. at 8. In particular, the defendant's own evidence suggested inconsistencies in how it reached its best-efforts estimate. *Id*. The Court reasoned that while the plaintiff faced "a potentially insurmountable burden of proving that [the defendant] acted in bad faith and

[7] As with unpublished Court of Appeals opinions, OAG opinions are not binding but may be considered for their persuasive value. *Attorney General v PowerPick Player's Club of Mich, LLC*, 287 Mich App 13, 34; 783 NW2d 515 (2010).

provided an unreasonable time-to-completion estimate," the plaintiff was "at least entitled to the opportunity to make such a showing where the current record is insufficient to resolve the issue presented." *Id*. at 9.

Following discovery, the defendant again moved for summary disposition. *Dynamic Transp, LLC v Mich State Police*, opinion of the Court of Claims, issued March 18, 2025 (Docket No. 23-000018-MZ), p 1 (*Dynamic II*). The Court denied the motion, finding a single triable question of fact on whether it was reasonable for the defendant to calculate the time for completion of the processing of the plaintiff's second FOIA request at a rate of one hour of labor per day. *Id*. The Court concluded that the defendant's own evidence revealed inconsistencies in how the defendant estimated the fulfillment period, which the Court could not resolve without making findings of fact. *Id*. at 9.

In the present case, MDOS timely responded to plaintiffs' FOIA request by granting the FOIA request except as to any exempt materials and provided a fee itemization and deposit information. MDOS estimated that it would take the agency 10 weeks to produce responsive records after receipt of the deposit, thus fulfilling its obligation to provide a best-efforts estimate under MCL 15.234(8). As the *ACLU* panel and the Attorney General Opinion cited earlier recognized, the plain language of MCL 15.234(8) does not impose a binding timeframe on the public body or give rise to any actionable claims based on delays of the best-efforts estimate. Therefore, plaintiffs cannot sustain this portion of Count II.

Additionally, Count II of the amended complaint alleges that the 10-week estimate was not made in good faith because MDOS estimated 50 total business days to perform 13.7 business days of estimated labor and because defendants allowed the estimate to lapse. However, there is nothing

in MCL 15.234(8) that would prohibit MDOS from splitting up the labor among business days to accommodate other FOIA requests and departmental responsibilities. Even if FOIA recognized a claim for constructive denial based on the length of the initial assessment, plaintiffs do not present an argument to support that the assessment in this case was unreasonable. And unlike in *Dynamic I* and *Dynamic II,* plaintiffs do not allege an inconsistency in MDOS's FOIA procedures or in the timeframe estimate that would create a factual question on this issue.

Furthermore, defendants have not wrongfully withheld any responsive records for purposes of Count I because MDOS continues to process plaintiffs' FOIA request and has not provided a final determination. Accordingly, plaintiffs cannot establish a "final determination" to deny their FOIA request under MCL 15.240(1)(b). For the reasons discussed, discovery would not stand a fair chance of uncovering factual support for plaintiffs' position, and summary disposition in favor of defendants is warranted under MCR 2.116(C)(10) on Counts I and II of the amended complaint.

C. COUNT III: PARTIAL DENIAL THROUGH REDACTIONS

In Count III, plaintiffs maintain that defendants partially denied their FOIA request by redacting an email address on four pages of a 30-page partial document production. Section 5(5) of FOIA, MCL 15.235(5) outlines the requirements for a final determination:

> A written notice denying a request for a public record in whole or in part is a public body's final determination to deny the request or portion of that request. The written notice must contain:
>
> (a) An explanation of the basis under this act or other statute for the determination that the public record, or portion of that public record, is exempt from disclosure, if that is the reason for denying all or a portion of the request.
>
> (b) A certificate that the public record does not exist under the name given by the requester or by another name reasonably known to the public body, if that is the reason for denying the request or a portion of the request.

(c) A description of a public record or information on a public record that is separated or deleted under section 14, if a separation or deletion is made.

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

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

(*ii*) Seek judicial review of the denial under section 10.

Plaintiffs' theory is that the redaction was a "separation or deletion" under MCL 15.244(1), which provides, "If a public record contains material which is not exempt under [MCL 15.243], as well as material which is exempt from disclosure under [MCL 15.243], the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying." In plaintiffs' view, because the redacted information was "separated" on or before July 28, defendants had a duty to provide written notice under MCL 15.235(5)(c) at the time of production. The Court disagrees.

Defendants' processing of plaintiffs' FOIA request is ongoing, and the 30 pages of responsive documents is not necessarily the complete response. MDOS informed plaintiffs when producing the records, "When the Department has completed processing the FOIA request, it will notify you in writing of the balance due, if any, *the statutory basis for any exemptions taken*, and the statutory remedial rights, if applicable." (Emphasis added.) There is nothing in the language of FOIA that prohibits the type of rolling production present here, and rolling production fulfills the purpose of FOIA to facilitate access to information about government affairs. See MCL 15.231(2). Plaintiffs also indicated in their FOIA request their willingness to accept a rolling production. When defendants' processing is complete, MDOS must provide an explanation of any basis for claiming an exemption, as well as a description of any public record that is separated or

deleted.[8] Because the July 28 rolling production did not violate FOIA, and defendants have yet to provide a full document production or their final written notice on plaintiffs' FOIA request, defendants are entitled to summary disposition of Count III in their favor under MCR 2.116(C)(10).

D. COUNTS IV AND V: ARBITRARY AND CAPRICIOUS DELAY/WILLFUL VIOLATION OF FOIA

In Count IV, plaintiffs allege that defendants refused to produce or delayed in disclosing copies of public records in violation of MCL 15.240(7). MCL 15.240(7) provides, in relevant part:

> If the court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act *by refusal or delay* in disclosing or providing copies of a public record, the court shall order the public body to pay a civil fine of $1,000.00, which shall be deposited into the general fund of the state treasury. The court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of $1,000.00 to the person seeking the right to inspect or receive a copy of a public record. [Emphasis added.]

Count V alleges a violation of 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.

"The generally accepted meaning of arbitrary is 'determined by whim or caprice,' or 'arrived at through an exercise of will or caprice, without consideration or adjustment with

[8] Plaintiffs cite an unpublished Court of Appeals opinion, *Anklam v Delta College Dist*, unpublished per curiam opinion of the Court of Appeals, issued June 26, 2014 (Docket No. 317962), as persuasive authority for the position that defendants were required to provide a written notice of the exemptions claimed along with the July 28 production. But *Anklam* involved the adequacy of a written notice accompanying a final determination—not a rolling production. *Id*. at 1, 4. Here, defendants have not yet provided their final determination, which distinguishes this case from *Anklam*.

reference to principles, circumstances, or significance, . . . decisive but unreasoned,' and [t]he generally accepted meaning of capricious is 'apt to change suddenly; freakish; whimsical; humorsome.' " *In* re *TEM*, 343 Mich App 171, 177; 996 NW2d 850 (2022) (quotation marks and citation omitted; alterations in original). "Even if defendant's refusal to disclose or provide the requested materials was a statutory violation [under FOIA], it was not necessarily arbitrary or capricious if defendant's decision to act was based on consideration of principles or circumstances and was reasonable, rather than 'whimsical.' " *Meredith Corp v City of Flint*, 256 Mich App 703, 717; 671 NW2d 101 (2003) (quotation marks and citation omitted).

Plaintiffs cite several examples of alleged arbitrary or willful conduct, including (1) evidence from email correspondence that MDOS intended upon receipt of the FOIA request to use every day allowed under FOIA before providing its May 15 initial response, (2) evidence of MDOS's refusal to provide an updated best-efforts estimate beyond indicating that the response will be provided within a "matter of weeks," and (3) evidence of MDOS's decision to produce redacted records without the required written notice. Plaintiffs assert no factual basis beyond mere speculation to find that the delay in fulfillment was based on anything other than reasonable principles and circumstances, such as competing FOIA obligations and the demands of the upcoming election season. Nor does the fact that MDOS intended to use each statutorily authorized day under FOIA to provide an initial response to plaintiffs' FOIA request suggest a willful or arbitrary failure to comply with FOIA. Defendants' representation after this lawsuit was filed that the FOIA response would be fulfilled within a matter of weeks does not support that MDOS arbitrarily and capriciously failed to comply with FOIA or otherwise acted willfully and in bad faith. Discovery would not stand a fair chance of uncovering factual support for plaintiffs' position, which is based on a speculative theory that defendants are intentionally delaying in

responding to the FOIA request. Defendants are entitled to summary disposition of Counts IV and V of the amended complaint under MCR 2.116(C)(10).

E. COUNT VI: MANDAMUS/DECLARATORY RELIEF

Finally, in Count VI, plaintiffs ask the Court to declare under MCR 2.605 that defendants violated their obligation under MCL 15.234(8) to provide a best-efforts estimate, as well as their obligation to produce responsive records within a reasonable time after accepting the deposit. MCR 2.605(A)(1) provides, "In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted." Declaratory relief is an extraordinary remedy that will be issued only when there is no adequate remedy at law. *Davis v Detroit Fin Review Team*, 296 Mich App 568, 613-614; 821 NW2d 896 (2012).

Alternatively, plaintiffs request a writ of mandamus to compel production of the responsive records and issuance of an estimate of the timeframe for fulfillment.

> 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) (quotation marks and citation omitted).]

For the reasons discussed earlier, FOIA does not recognize a claim for constructive denial based on an alleged violation of the best-efforts estimate. Thus, plaintiffs do not have a clear legal right to the performance of the specific duty sought (production of the records and issuance of a "compliant estimate"), and defendants do not have a clear legal duty to perform the requested act.

Plaintiffs also have an adequate remedy under FOIA to address any violations of the statute once the final determination is made. So this case does not present a situation in which there is no adequate remedy at law. Accordingly, defendants are entitled to summary disposition of Count VI under MCR 2.116(C)(10).

Because the Court concludes that summary disposition in defendants' favor is appropriate, defendants' motion to stay discovery is moot.

IV. CONCLUSION

For the reasons stated in this Opinion and Order,

IT IS ORDERED that defendants' motion for summary disposition under MCR 2.116(C)(10) is GRANTED.

IT IS FURTHER ORDERED that plaintiffs' motion for partial summary disposition under MCR 2.116(C)(9) and (10) is DENIED.

IT IS FURTHER ORDERED that plaintiffs' partial countermotion for summary disposition under MCR 2.116(I)(2) is DENIED.

IT IS FURTHER ORDERED that the amended complaint is DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED that defendants' motion to stay discovery is DENIED AS MOOT.

IT IS SO ORDERED. This is a final order that resolves the last pending claim and closes the case.

Date: October 26, 2026

Hon. Michael F. Gadola
Chief Judge, Court of Claims