



We bring East Lansing the news.

November 20, 2018

East Lansing City Council
410 Abbot Road
East Lansing, MI 48823

Dear Council:

I write to appeal the City of East Lansing's denial of FOIA order 18-137.

In her written denial of 18-137, the City Clerk indicates that one is supposed to make appeals to the City Manager, however, a legal expert on Michigan FOIA advises that the City Council is the proper body to which to make appeals, as per the finding of the Michigan Court of Appeals in Ann Anklam v. Delta College District and Delta College Board of Trustees.

I therefore expect City Council to discuss and rule on my appeal, and to do so in a manner in keeping with the Michigan Open Meetings Act.

The material facts are as follows:

On November 7, 2018, East Lansing's City Council had on its agenda a "Quarterly litigation status report" from City Attorney Tom Yeadon. The document was not made public. At the meeting, Mr. Yeadon asked Council if any members wanted to go into closed session to discuss his report. Council members indicated they did not see a reason to do so, and Council did not enter closed session.

On November 8, 2018, I submitted an order for a copy of this document through the Freedom of Information Act as a volunteer (unpaid) reporter for East Lansing Info, a nonprofit news organization incorporated in Michigan in 2014 and operating continuously since. East Lansing Info is a recognized 501c3 nonprofit organization and is a member of the national Institute for Nonprofit News. (continued on next page)

eastlansinginfo.org
501c3 tax-exempt organization
PO Box 115, East Lansing, MI 48826-0115

This FOIA order was assigned number 18-137 by the City Clerk.

On November 14, 2018, I received a "request denied" letter, as attached. The denial is based on the claim that "the document in question is subject to attorney-client privilege."

You cannot reasonably claim that everything in that document, from the letterhead (or email headings) to the salutation to the names of lawsuits, is covered by attorney-client privilege. You can certainly redact the parts of the document that are reasonably covered by attorney-client privilege. However, when doing so, you should keep in mind the following.

Commenting on this particular denial, Adam Marshall, Knight Foundation Litigation Attorney for D.C.-based Reporters Committee for Freedom of the Press, said, "The public has a right to know what governmental bodies and officials are doing, including, to the maximum extent permitted by law, their involvement in any litigation. Lawsuits are frequently a costly and time-consuming affair, and the public should be informed as to how their tax dollars are being spent."

Marshall has previously explained for our readers, "The whole notion of attorney-client privilege in the context of a government body is a little odd because the ultimate client is the people."

Please be reasonable and follow the law, so that we don't have to be in the position of costing the taxpayers yet more in legal bills by bringing suit to defend our rights to public information.

Thank you.

Sincerely,



Alice Dreger
President and Publisher



November 14, 2018

SENT VIA EMAIL

Alice Dreger

Re: Freedom of Information Act Request (18-137)
Request Denied

Dear Alice:

On November 8, 2018, the City of East Lansing received your Freedom of Information Act request via e-mail as follows:

“Under the Freedom of Information Act and as a reporter for East Lansing Info, I order an electronic copy of the quarterly litigation status report as referred to by the City Attorney at Council last night.”

Your request is denied as the document in question is subject to attorney-client privilege.

Since your request has been denied in whole or in part, we must inform you that you have the right to do either of the following:

- A. Submit to the City Manager of the City of East Lansing a written appeal that specifically states the word “appeal” and identifies the reason or reasons for the reversal of disclosure denial; or
- B. Seek judicial review of this denial in the circuit court under Section 10 of the Michigan Freedom of Information Act, MCL15.240, a copy of which is enclosed.

If the court determines that the records which you seek are not exempt from disclosure, it shall order the public body to produce the record. The circuit court for the county in which the complainant resides or has his/her principal place of business, or the circuit court for the county in which the public record, or an office of the public body is located, has jurisdiction.

If you seek judicial review and prevail in whole or in part, the court may award you reasonable attorney’s fees, costs, disbursements, other actual, or compensatory, or punitive.

A copy of MCL 15.240(1) is provided to further explain your right to appeal and the procedures thereunder. If you have any questions, you may contact me at (517) 319-6914.

Sincerely,

Kathryn Gardner

Kathryn Gardner
Deputy City Clerk