STATE OF MICHIGAN

COURT OF CLAIMS

HASSAN M. AHMAD, ESQ.,

Plaintiff,

v

THE UNIVERSITY OF MICHIGAN,

Defendant.
_____/

OPINION AND ORDER

Case No. 17-000170-MZ

Hon. Elizabeth L. Gleicher

Pending before the Court in this action filed under the Freedom of Information Act (FOIA), MCL 15.231 *et seq.*, is plaintiff's motion for partial summary disposition under MCR 2.116(C)(10). The motion is GRANTED in part and DENIED in part.

I. BACKGROUND

The facts of this case have been explored by this Court and the Court of Appeals. For the convenience of any reader unfamiliar with the background of this case, the Court re-states the facts described in its previous opinions and orders and provides an update.

A. FACTUAL AND PROCEDURAL BACKGROUND UNTIL SEPTEMBER 2021

Between 1984 and 2010, Dr. John Tanton (Tanton) donated 25 boxes of his personal papers to the University of Michigan Bentley Library's collection. *Ahmad v Univ of Michigan*, unpublished per curiam opinion of the Court of Appeals, issued June 20, 2019 (Docket No.

341299), p 1. Tanton was an anti-immigration policy advocate. A 2019 obituary in the New York Times described him as a "quiet catalyst" who "had an outsize influence on national policy for an eye doctor living nearly 800 miles from Washington in a resort town on Lake Michigan." Tanton "founded or fostered the nation's leading anti-immigration groups" that helped shaped immigration policy during the administration of President Donald J. Trump. (https://www.nytimes.com/2019/07/18/us/john-tanton-dead.html.) This case concerns whether the public is entitled to access thousands of pages of documents that Tanton donated to the University of Michigan's Bentley Library chronicling his life and work.

Tanton's initial agreement to gift his personal papers to the University is dated April 6, 2010. In it, Tanton instructed that boxes 18-25 were to remain closed for 10 years from the date of accession. A few weeks later, Tanton extended the closure time to 15 years. Later still, he told the University that he wanted the papers in that eight-box portion of his collection to remain closed for 25 years from the date of their accession.

Three other boxes of papers donated by Tanton are also at issue. Tanton donated Box 15 in 2000 and boxes 16 and 17 in 2005. When he made those donations, Tanton did not place any access restrictions on the documents contained within these three boxes, and they were freely available to researchers for almost a decade. In 2013, Tanton instructed the University to restrict access to boxes 15-17 for 25 years, or until April 6, 2035.

Plaintiff Hassan Ahmad, an immigration attorney, sought access to the closed boxes in 2016 by serving the University with an FOIA request to inspect the content of boxes 15-25. The University denied access to the documents, claiming that they were not "pubic records" under the FOIA because they were not "utilized, possessed, or retained in the performance of any official

University function." In 2017, plaintiff sued in this Court, which granted the University's motion for summary disposition under MCR 2.116(C)(8). In 2019 the Court of Appeals reversed, holding that plaintiff's complaint "states a valid claim that the papers are public records." *Ahmad*, unpub op at p 5.

The Supreme Court granted the University's application for leave to appeal, and in a brief order affirmed the Court of Appeals by equal division. *Ahmad v Univ of Michigan*, 507 Mich 917 (2021). The case returned to this Court.

Plaintiff moved to require a *Vaughn*[1] Index before the University filed an amended answer to the complaint. Plaintiff's motion contended that a *Vaughn* Index was required because "[t]he University did not list which exemptions it would be utilizing or its factual basis for doing so," and that the University failed to list "which records, if any, the University was asserting [were] exempt."

The University opposed the motion, contending in part that this Court did not need a *Vaughn* Index to determine whether statutory exemptions to the FOIA precluded disclosure. In July 2021, this Court granted plaintiff's motion to compel a *Vaughn* Index, finding as follows:

> The Court anticipates that a *Vaughn* Index will be helpful in evaluating the University's exemption arguments. In reviewing the University's denials, this Court must determine that the rationale(s) offered support the denials—a task that is impossible to perform in an information vacuum. A *Vaughn* index [sic] not only provides plaintiff with fundamental information needed to meaningfully challenge the University's claims, it will assist this Court in understanding the nature and validity of the objections to disclosure and in assessing the merits of the motions yet to come. The Court notes that a *Vaughn* index [sic], standing alone, does not

[1] See *Vaughn v Rosen*, 157 US App DC 340; 484 F2d 820 (1973).

> supplant further discovery but may serve as a helpful starting point for focused and fruitful discovery.

The University then moved for summary disposition and to stay the effect of this Court's *Vaughn* Index order. After conducting a hearing, the Court entered a stipulated order granting the stay. In this August 2021 order, the Court agreed to address the University's legal arguments in support of summary disposition "based on the terms of the [Tanton] gift agreements, the Community Foundation Act, and the Library Privacy Act." The order continued:

> [T]he Court will only address the personal-privacy . . . exemption in MCL 15.243(1)(a) to the extent it is based on Defendant's argument that the gift agreements preclude disclosure of the Closed Tanton Records as a whole and will not address any arguments regarding the applicability of the personal-privacy exemption to specific documents. The Court will revisit the *Vaughn* index [sic] issue, and the application of the personal-privacy exemption to specific documents, if the case survives the Motion for Summary Disposition.

As discussed below, several issues survived the University's July 2021 motion for summary disposition.

B. FACTUAL AND PROCEDURAL BACKGROUND: JULY 2021 TO PRESENT

The University's July 2021 motion for summary disposition rested on three grounds: the documents in boxes 15-25 were protected from disclosure under (1) the FOIA's personal-privacy exemption, MCL 15.243(1)(a); (2) the provision of the Michigan Community Foundation Act that allows a public library to restrict disclosure under the terms expressed in the instrument of gift, MCL 123.905(3); and (3) the provision of the Library Privacy Act that allows an employee of a library to determine what library materials are included in the library's collection, MCL 397.605(1). In a September 30, 2021 opinion and order the Court ruled that neither the Michigan Community Foundation Act nor the Library Privacy Act afforded the Bentley Library with authority to withhold production of the Tanton materials if the Court subsequently determined that

the FOIA compels their disclosure. The Court also found that the University had waived any application of the personal privacy exemption to the documents contained in boxes 15, 16, and 17. The Court lifted the stay on the preparation of the *Vaughn* Index.

The University sought leave to appeal the Court's decision. The Court of Appeals denied the application on November 9, 2021. *Ahmad v Univ of Michigan*, unpublished order of the Court of Appeals, issued November 9, 2021 (Docket No. 358997). The University did not seek leave to appeal in the Michigan Supreme Court.

The University filed a *Vaughn* Index on November 10, 2021. The *Vaughn* Index spanned 148 pages. Plaintiff promptly filed a motion to compel the University "to confirm that its November 10, 2021 *Vaughn* index is its full and final submission to 'sustain its denial' under MCL 15.240(4) or other[wise] direct the University to provide a corrected Vaughn index produced to the level of specificity required of *Vaughn* indexes."

At a hearing conducted on January 12, 2022, the Court essentially agreed with the thrust of plaintiff's motion, expressing frustration with the University's repeated invocation of a boilerplate, generic exception ("personal privacy") regarding the material contained in thousands of pages of documents. The Court proposed that the parties agree to a representative sampling *Vaughn* Index as described in *Lardner v Fed Bureau of Investigation*, 852 F Supp 2d 127 (D DC, 2012). Representative sampling, the Court hypothesized, would allow for a more detailed and precise *Vaughn* Index by identifying the grounds underlying the University's invocation of the "personal privacy" exception with more specificity. The Court requested that the attorneys for the parties meet, confer, and generate a stipulated representative sampling order.

In March 2022, plaintiff moved for partial summary disposition contending that the University had not offered any "particularized justification[s]" for withholding production of the Tanton papers on the basis of the personal privacy exemption, but rather had sought "a designation *en masse* of the Tanton papers as being exempt." Plaintiff urged that "[a]s it stands, the University lacks sufficient particularized justification to withhold all the documents it has for the extremely excessive amount of time it has."

The University responded that the "Closed Tanton Papers" were not subject to disclosure under the FOIA because (1) the Closed Tanton Papers" are not "public records" under the FOIA as they were not retained by a public body "in the performance of an official function" as required under MCL 15.232(e), and (2) the papers fall within the personal privacy exemption as they contain "information of a personal nature," the disclosure of which "would constitute a clearly unwarranted invasion of an individual's privacy." The University requested that if the Court rejected its position as to the withholding from disclosure of "the entire cache of documents," then the Court should exempt, at a minimum, the following categories of documents and sensitive information under the personal privacy exemption : (1) documents prepared by third parties; (2) the identity and personal information of third-party correspondents; (3) non-public documents containing information about Tanton's patient care, family, and personal life; (4) non-public communications about Tanton's medical practice; (5) non-public documents containing controversial private opinions on immigration; (6) financial records of non-public bodies, and (7) information regarding the individuals who donated to non-public organizations such as the American Civil Rights and Responsibilities Union.

In May 2022, the Court entered an order compelling the University to produce a *Vaughn* Index for a representative sampling of the Tanton papers and describing the methodology to be

used by the parties to create that index. The Court also agreed to re-visit the waiver issue, directing the parties to brief whether the University had waived any claimed exemptions to the production of boxes 15-17 of the Tanton papers. The Court's order provided as follows:

> 1. Within 56 days, Defendant, the University of Michigan, will produce a *Vaughn* Index for a represent sampling of the Tanton papers.
>
> 2. The representative sampling will be based on the following procedure:
>
> a. The Parties will pick six (6) boxes of the Tanton papers, either by agreement of with each Party selecting three (3) boxes each;
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> b. Within seven (7) days, each Party will select one (1) category of documents within each box; and
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> c. The University will produce a document-by-document *Vaughn* Index covering 50 pages from each category selected. The *Vaughn* Index may contain an additional column containing additional detail on the material withheld. The material withheld that is described in this *Vaughn* Index will be provided to the Court for *in camera* review.
>
> 3. Within 28 days, the Parties will submit briefing, limited to five pages, regarding whether there is a viable theory that the University has waived its claimed FOIA exemptions for Boxes 15-17 of the Tanton Papers [sic].
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> 4. If the Court determines that there is a viable theory that the University has waived claimed FOIA exemptions for Boxes 15-17, the parties will conduct discovery regarding the waiver issue within 56 days of the Court's decision.

As required under the stipulated order, plaintiff selected one category of documents within Tanton boxes 18, 19, and 22. Box 22 contained "WITAN meetings 1986-1988," according to information previously supplied by the University. Plaintiff sought a representative sampling *Vaughn* Index of this specific material.

On June 14, 2022, the University reminded plaintiff that it had previously notified him that the documents identified as "WITAN meetings 1986-1988" were no longer in the University's possession, custody, or control. Defendant's counsel requested that plaintiff "identify an alternative category to include in the new supplemental *Vaughn* Index."

The parties filed briefs regarding the waiver issue in July, 2022.

On July 13, 2022, the University filed a supplemental *Vaughn* Index along with samplings from boxes 15, 18, 19, 24 and 25 to be reviewed in camera. Plaintiff then moved the Court to determine whether materials "on loan" to the Bentley Library are public records subject to disclosure and requested that the Court order the University to produce a supplemental *Vaughn* Index regarding the "WITAN meetings 1986-1988" contained in box 22.

In April 2023, the Court issued an opinion and order finding that the "on loan" materials were properly returned to the Tanton family in 2011 and are not subject to disclosure. The Court ordered plaintiff to select another box or category of documents for representative sampling and ordered the University to prepare another *Vaughn* Index after plaintiff made his selection. On May 16, 2023, the University filed its supplemental *Vaughn* Index, and three days later plaintiff filed a "Response to University's Filing of 'Sampling' Vaughn Index on Sampled Tanton Papers." Plaintiff contended that the newest *Vaughn* Index suffered from the same infirmities as the previous one, in that it is "effectively nothing more than a repeat of the same index that the University has previously provided with generalized assertions of the personal privacy exemption" unsupported by"detailed justification[s]" for applying the exemption. Plaintiff requested a "prompt decision" on the still-pending March 11, 2022 motion for summary disposition.

II. ANALYSIS

Plaintiff brings his motion for partial summary disposition under MCR 2.116(C)(10). A motion for summary disposition made under MCR 2.116(C)(10) tests the factual sufficiency of a claim. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 160; 934 NW2d 665 (2019). When deciding a (C)(10) motion a court considers all substantively admissible evidence submitted by

the parties in the light most favorable to the party opposing the motion. *Id.* The motion may be granted only when there is no genuine issue of material fact. *Id.*

The parties agree that no disputed issues of material fact stand in the way of a summary disposition ruling. That said, the parties vigorously disagree regarding a threshold issue: whether the Tanton boxes contain "public records" subject to the FOIA

A. THE TANTON PAPERS ARE PUBLIC RECORDS

The core objective of the FOIA is to provide the people of this state full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees. MCL 15.231(2);see *Practical Political Consulting, Inc v Secretary of State*, 287 Mich App 434, 462; 789 NW2d 178 (2010).

The issue of whether the Tanton documents are "public records" first reached the Court of Appeals before any discovery had been conducted, so that Court considered the issue in the context of a motion brought under MCR 2.116(C)(8) and focused on whether plaintiff's complaint set forth a prima facie claim under the FOIA. In holding that the Tanton papers are "public records," the Court of Appeals relied exclusively on the text of MCL 15.232(i), which defines a "public record" as "a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created." According to the Court of Appeals, "there is no doubt that plaintiff adequately alleged that the University had 'possession of' or 'retained' the documents at issue," leaving the only remaining question "whether said possession or retention was alleged to have been done 'in the performance of an official function.' " *Ahmad*, unpub op at p 3. The Court answered that question affirmatively, holding that "the University's acts of collecting and preserving the papers were in furtherance of its official purpose.

Accordingly, we read the complaint as alleging that defendant 'maintained the records' in the performance of an official function, which, under the FOIA's definitions, renders them 'public records.'" *Id.* at 5. The Court of Appeals concluded:

> Thus, a public library receiving a gift is authorized by statute to "hold, use, and apply" the gift for the purposes set forth in the donor's agreement, subject to any conditions or limitations expressly made. Therefore, the Bentley Library carries out an "official function" as it relates to its gifts and donations when it holds onto such gifts and donations in accordance with the donation agreement. [*Id.* at 6].

The parties continue to agree that the University "possesses," stores, and "maintains" the Tanton papers (other than box 22). According to the Court of Appeals, "the act of keeping those materials is part of the Library's purpose." *Id.* at 5. Although the Court of Appeals' opinion is not altogether clear, the Court construes its holding as one of law: the Tanton papers held by the Bentley Library are "public records" under MCL 15.232(i), but disclosure may be precluded if some or all of the documents come within an FOIA exemption.

The years of discovery and argument that followed the release of the Court of Appeals' 2019 opinion have not changed the underlying fact that the University "possesses," stores, and "maintains" the Tanton papers as "part of the Library's purpose." No facts relevant to the "public record" issue have been presented to this Court that were unknown to the Court of Appeals. No facts have emerged challenging that the University "maintained" the Tanton papers in the performance of an official function. Rather, the University continues to argue that its maintenance of the documents has nothing to do with the transparency purposes of the FOIA, and plaintiff continues to rely on the language of the Court of Appeals' opinion in support of the argument that the documents are properly considered "public records." This Court concludes that the "public

record" question was resolved by the Court of Appeals. The Court of Appeals' interpretation and application of the statutory language remains applicable and is binding on this Court.[2]

The University points out that the Court of Appeals has elsewhere instructed that "[m]ere possession of a record by a public body does not, however, render it a public record; a record must be *used* in the performance of an official function to be a public record." *Hopkins v Duncan Twp*, 294 Mich App 401, 409–410; 812 NW2d 27 (2011) (emphasis added). The holding in *Hopkins* conflicts with the Court of Appeals' holding in this case, the University posits. The Court agrees. And the Court further agrees that there is no evidence that the Bentley Library has "used" the Tanton papers in furtherance of a government function. But the law of the case doctrine binds this Court to the Court of Appeals' legal determination that the Tanton papers are "public records." See *Grievance Administrator v Lopatin*, 462 Mich 235, 259-260; 612 NW2d 120 (2000) (Under the law of the case doctrine, an appellate court's determination of a legal question in a case binds lower tribunals on remand and the appellate court in subsequent appeals in the same case where the facts remain materially the same.).

Because the Tanton papers are "public records" under the FOIA, they must be provided to plaintiff unless an applicable exemption bars disclosure.

B. THE POTENTIAL EXEMPTIONS TO DISCLOSURE

[2] Were this Court writing on a clean slate, it would respectfully disagree with the Court of Appeals. The Tanton papers have nothing to do with the University's function, or with the function of the Bentley Library, or with the function of any government entity. In the Court's view, the Justices in dissent in the Supreme Court have the better argument in this regard. See *Ahmad*, 507 Mich at 917-924 (MCCORMACK, C.J., dissenting).

The Court has previously considered two potential statutory bars to disclosure, the Michigan Community Foundation Act, MCL 123.905(3), and the Library Privacy Act, MCL 397.605(1), and has ruled that they are not relevant to this dispute.

The sole exemption remaining, the applicability of which this Court has yet to determine, is the exemption found in § 13(1) of the FOIA, which provides in relevant part that a public body may exempt from disclosure "[i]nformation of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy." MCL 15.243(1)(a). This exemption has two prongs. "First, the information must be of a personal nature. Second, it must be the case that the public disclosure of that information would constitute a clearly unwarranted invasion of an individual's privacy." *Michigan Federation of Teachers & Sch Related Personnel, AFT, AFL-CIO v Univ of Michigan*, 481 Mich 657, 675; 753 NW2d 28 (2008) (quotation marks omitted).

Intimate, embarrassing, private, or confidential information is information "of a personal nature." *Id.* at 676. But the exemption analysis does not stop there. Only if an invasion of an individual's privacy is "clearly unwarranted" is a public body entitled to withhold information. *Id.* at 682. An invasion of an individual's privacy is "clearly unwarranted" when the interest in disclosure reveals "little or nothing about a governmental agency's conduct" or does not "further the stated public policy undergirding the Michigan FOIA," i.e. disclosure does not shed light on whether the unit of government and its employees are satisfactorily fulfilling their statutory and confidential obligations and their duties to the public. *Id.* (citations and quotation marks omitted).

The University contends that the entirety of the Tanton papers contain "information of a personal nature" because they "are Tanton's own documents" and "were not created,

commissioned, or used by the government." Therefore, the University reasons, the documents are "private or confidential information relating to a person." The argument elides both the Court of Appeals' holding and the fact that Tanton *gifted* the documents to the Bentley Library. The documents were delivered to the University; they remain in the University's possession and under its dominion and control. Tanton's gift of the documents was accomplished before his death and invested ownership in the documents beyond Tanton's power of recall. See *In re Casey Estate*, 306 Mich App 252, 263–264; 856 NW2d 556 (2014) (A gift *inter vivos* is immediate, absolute, and irrevocable.). And, by gifting the papers to the University, Tanton waived any personal privacy interest he may have had in them.

The gift agreements Tanton signed also support that he waived any claim that the documents were too private to ever see the light of day. The August 1984 gift agreement states in relevant part: "I relinquish any literary rights which I possess to the contents as well as to the contents of any of my letters or writings in other collections at the Michigan Historical Collections" unless a limiting condition applies.[3] The 1985 and 2010 gift agreements contain similar language. Tanton's agreement to give up his sole right or interest in the contents of the documents necessarily signals a waiver of any privacy interests he may have had.

Even were the Court to consider the personal privacy exemption applicable to the entire cache of documents, the Court would conclude that the University has failed to prove that *Tanton's* personal privacy interests would be compromised by their disclosure. Tanton is dead. The University has not explained how disclosure of the documents would invade his privacy, or why

[3] Tanton retained literary rights to his "outgoing correspondence, 1982-1983."

the Court should conclude that Tanton's interests in confidentiality or privacy would be harmed by disclosure, particularly since he gave the University the copyright to the documents. See *McDonnell v United States*, 4 F3d 1227, 1254 (CA 3, 1993) ("If he is deceased, then the Government must assert some privacy interest other than the individual's interest in keeping this personal information from public view in order to justify continued withholding of the requested information."). The Court's in camera review of the representatively sampled documents revealed that many of those documents contain Tanton's opinions, but are devoid of intimate, embarrassing, private, or confidential information. Regarding Tanton, the information is not "of a personal nature" and, therefore, does not satisfy the first prong of the personal privacy exemption.

C. BOXES 15-17

In the Court's opinion and order dated September 30, 2021, the Court rejected the proposition that the personal privacy exemption "could possibly apply to the documents contained in boxes 15, 16[,] and 17." The Court reasoned:

> . . . If information within those boxes does fall within the personal-privacy exemption, the University has waived that claim by intentionally abandoning any right it may have had to hold the material in confidence between 2000 and 2013 as to box 15, and between 2005 and 2013 as to boxes 16 and 17. . . .
>
> In sum, the University has failed to carry its burden of demonstrating that the personal privacy exemption applies to the materials in any of the[se] now closed boxes.

The University has provided the Court with nothing new that would cause the Court to question its earlier ruling.

Box 15 was included in the random sampling Vaughn Index prepared by the University. The Court has reviewed in camera the randomly sampled documents in Box 15 and found no

information of a personal nature that would constitute a clearly unwarranted invasion of any individual's privacy. Accordingly, the Court orders that boxes 15-17 shall be produced to plaintiff immediately.

The randomly sampled documents in box 15 include correspondence from Tanton to various individuals and public policy and news organizations, and concern various subjects. Some of the documents appear to be emails; the names of recipients are included, but not their addresses. At least one letter discusses articles about fire ants. That letter (000022) is addressed to a private individual. But the 1992 letter involves nothing of a private or personal nature, and the University has not offered the Court any explanation of how disclosure of the recipient's name and address would constitute a "clearly unwarranted" invasion of that person's privacy. For 13 years, that person's name and address were available to researchers. The University has presented no evidence that the recipient was harassed or otherwise bothered. Nor has the University articulated a cogent rationale for the Court to conclude that disclosure of the documents in this representative box would reveal any information of an intimate, confidential, private, or embarrassing nature about any of the private individuals with whom Tanton corresponded.

Accordingly, the Court orders that boxes 15-17 shall be immediately made available to plaintiff, pending payment of copying costs.

D. THE REMAINING RANDOMLY SAMPLED DOCUMENTS

When invoking the personal privacy exemption in its representative sampling Vaughn Index, the University repeatedly claims that most of the records "[were] not drafted with the intent that the[ir] contents would be made public." No other specific justification for applying the personal privacy exemption is identified. The Court is unpersuaded that the drafters' various

intents bear any relevance to the personal privacy exemption. The University has not explained why the drafters' intents are relevant. Nor has the University provided any evidence regarding the drafters' intents. Accordingly, the Court rejects this basis for an application of the exemption.

As mentioned above, the University broadly contends that the personal privacy exemption applies to: (1) documents prepared by third parties; (2) the identity and personal information of third-party correspondents; (3) non-public documents containing information about Tanton's patient care, family, and personal life; (4) non-public communications about Tanton's medical practice; (5) non-public documents containing controversial private opinions on immigration; (6) financial records of non-public bodies, and (7) information regarding the individuals who donated to non-public organizations such as the American Civil Rights and Responsibilities Union. The Court will address each of these categories seriatim.

Documents prepared by third parties. The representative documents contain letters and other materials sent to Tanton by third parties, as well as newspaper and magazine articles prepared by third parties. There are no personal privacy interests at stake regarding newspaper articles or copies of other widely-circulated media. And, the University's unsupported claim that the individuals with whom Tanton corresponded "have a privacy interest in their own correspondence" falls far short of any demonstration that the correspondence contains "intimate, embarrassing, private, or confidential information."

Box 23, for example, contains correspondence regarding the Immigrant Legal Reform Institution from 1985 to 1990. The Immigrant Legal Reform Institution was launched in 1986 as the legal arm of the Federation for American Immigration Reform, an organization Tanton founded. Tanton's correspondence in this box includes letters and notes to and from third parties.

Some of the third parties are public figures, while other names are not known to the Court. The University has not explained why disclosure of the names of Tanton's correspondents or the substance of the letters would qualify as "a clearly unwarranted invasion of an individual's privacy" in light of Tanton's decision to donate this box of his papers to the library. Nor has the University addressed whether any privacy concerns exist regarding those of Tanton's correspondents who are now deceased.

The University has had two opportunities to flesh-out the reasons that documents prepared by third parties should be exempt from disclosure, and has not done so. The Court rejects that documents prepared by third parties qualify for exemption under MCL 15.243(1)(a).

The identity and personal information of third-party correspondents. In the Court's estimation, this category is largely duplicative of "documents prepared by third parties." As discussed below, the Court agrees that medical information regarding Tanton's patients and friends is exempt from disclosure. Otherwise, the Court found nothing in the representative documents that would qualify as "private" information under MCL 15.243(1)(a).

Non-public documents containing information about Tanton's patient care, family, and personal life. The Court agrees with the University that medical information contained in the documents is exempt from disclosure. For example, page 000068 is a letter from Tanton to a physician seeking a referral for one of Tanton's patients. Page 000067 is a letter from Tanton to a friend or patient regarding low vision rehabilitation services, and page 0223 is a letter from a friend or patient of Tanton's who has vision problems. Page 0253 is one of several fund-raising letters for United States Vision Services, which apparently is or was an organization established by Tanton.

The Court would have thought that as a physician, Tanton would have been more respectful of his patients' privacy and would have omitted from his document collection letters involving individuals' health care. The Court finds that information in letters discussing the health care of Tanton's patients, friends, and correspondents qualifies as private under the FOIA. To protect the privacy of health-related information, the Court orders that the University identify every page on which such information is located, and that the University redact the names and addresses of Tanton's patients and correspondents. The remaining information shall be disclosed.

On the basis of the representative sampling reviewed in camera, however, the Court is not persuaded that the release of information about Tanton's family and personal life would constitute a "clearly unwarranted invasion of an individual's privacy" under MCL 15.243(1)(a). The University has not explained how such information would invade his or anyone else's privacy. The representative sampling reveals no "intimate, embarrassing, private, or confidential information." Rather, the information concerns mundane, quotidian activities that likely are of no interest whatsoever to Ahmad, but also do not touch on privacy interests recognized by the FOIA.

Non-public communications about Tanton's medical practice. The Court agrees that non-public communications regarding Tanton's medical practice are likely to fall within the personal privacy exemption. To protect the privacy of any health-related information, the Court orders that the University identify every page on which such information is located, and that the University redact the names and addresses of Tanton's patients and correspondents, and the substance of health-care related information. The remaining information shall be disclosed.

Non-public documents containing controversial private opinions on immigration. The University has not explained why disclosure of "controversial private opinions" about

immigration would be "a clearly unwarranted invasion of an individual's privacy" in light of Tanton's decisions to donate this box of his papers to the library and to open all of the boxes in 2035. As stated above, the authors of many of the letters contained in the boxes are deceased. For example, page 112 is a 1989 letter to Tanton from Harry F. Weyher. A quick Google search reveals that Weyher died in 2002. Page 113 is a 1989 letter written by Linda S. Gottfredson, then an associate professor at the University of Delaware, discussing "the Pioneer Fund." The University has not explained how or why disclosure of this letter would embarrass Professor Gottfredson, and conjuring such arguments is not the Court's responsibility.

Nor has the University attempted to explain why any of Tanton's personal opinions about immigration reflected in the documents, which are well-known as a consequence of his published writings, would be "embarrassing" to family members. The Court rejects the notion that this category of documents qualifies for exemption under MCL 15.243(1)(a).

Financial records of non-public bodies. The randomly-selected documents reviewed in camera by this Court contain an assortment of financial records generated for or by a number of private non-profit organizations, foundations, and family trusts. More specifically, the in-camera-reviewed documents include a number of grant requests prepared by Tanton on behalf of U.S., Inc., an organization founded by Tanton. These documents contain statements of the amount of grant funding requested, a generally-stated budget apportioning the funds requested to meet the operational, administrative, and programming needs of U.S., Inc., and a brief explanation of how the funds will be spent in each of these three categories of need. The reviewed documents also contain copies of correspondence advising Tanton and U.S., Inc. of the grant amounts awarded, photocopies of checks received from these organizational donors, and information from those donors regarding what programming they may or may not be interested in funding in the future.

The University asserts that these financial records should be exempt because they reveal confidential information "such as these non-public bodies' assets, liabilities, revenues, and expenses." Records are not automatically exempt under the FOIA merely because they contain information about privately-held assets. *Detroit Free Press, Inc v City of Southfield*, 269 Mich App 275, 293; 713 NW2d 28 (2005). Rather, private information included in the records of a public body is exempt only when it has an intensely personal character that justifies nondisclosure under the privacy exemption.

To the extent that the Tanton documents disclose the assets, liabilities, revenues, and expenses of "non-public bodies," those disclosures pertain to private non-profit organizations, foundations, and family trusts. The documents do not contain matters pertaining the private lives of individuals. Nor do they contain current information about the financial operations of private non-profit organizations, foundations, and family trusts. Instead, the financial information contained in these documents is roughly three decades old. Furthermore, a quick Google search reveals that the settlor of the family trust that bankrolled U.S., Inc., during the early 1990s died in January of 2005, and left the bulk of her assets to the Colcom Foundation, which that individual established in 1996 and which is publicly known to be one of the main sources of funding for the anti-immigration movement in the United States. A similar Google search reveals that the philanthropic bent of these private non-profit organizations, foundations, and family trusts is well-publicized. The University offers no compelling explanation of how this three-decades-old information has an intensely personal character that would justify nondisclosure under MCL 15.243(1)(a). It identifies no circumstances from which this Court may reasonably conclude that the information sought to be exempted from disclosure is of a sufficient personal character to

qualify for exemption. The University has failed to meet its burden to prove that the personal privacy exemption applies.

Donor information. Finally, the University seeks to exempt from production certain information relative to financial contributions made by donors to non-public charitable organizations, including donor names and the amounts of the donations made by each donor. A person's name alone is not information of a personal nature. *Rataj v City of Romulus*, 306 Mich App 735, 753; 858 NW2d 116 (2014). A person's name associated with other information may be information of a personal nature, however: "the relevant inquiry is whether the information associated with the name is information of a personal nature." *ESPN, Inc v Michigan State Univ*, 311 Mich App 662, 666; 876 NW2d 593 (2015). In *Clerical-Technical Union of Michigan State Univ v Bd of Trustees of Michigan State Univ*, 190 Mich App 300, 302-304; 475 NW2d 373 (1991), the Court of Appeals found that the home addresses of donors were exempted from production under the FOIA's personal privacy exemption. In *Bitterman v Village of Oakley*, 309 Mich App 53, 63-64; 868 NW2d 642 (2015), the Court of Appeals held that donor names were not exempt under the personal privacy exemption where the donors supplied private funds that were used to fund both police operations and general operations of the village. In the present case, information relative to private funds given by private individuals to non-public charitable organizations constitutes information of a personal nature for purposes of MCL 15.243(1)(a). The University has not shown, however, why the disclosure of this information "would constitute a clearly unwarranted invasion of an individual's privacy." A review of the Vaughn Index reveals that the information the University seeks to withhold was generated between 1987 and 1991. The Court notes that the right to privacy in Michigan is personal and that the death of the individual renders that right "virtually nonexistent." *Swickard v Wayne Co Medical Examiner*, 438 Mich 536, 548-

549, 553; 475 NW2d 304 (1991). Here, the University has not supplied the Court with any information from which the Court may conclude with any degree of certainty that a disclosure of the donor information contained in the Tanton papers will invade the privacy of any currently living individual. Thus, this Court cannot conclude that this category of documents qualifies for exemption under MCL 15.243(1)(a).

III. CONCLUSION

IT IS ORDERED that plaintiff's partial motion for summary disposition is DENIED in part. Defendant shall redact from the documents subject to production all healthcare-related information relative to Tanton's patients, friends, family, and correspondents, including the names and addresses of these individuals.

IT IS FURTHER ORDERED that plaintiff's partial motion if GRANTED in all other regards.

This order is not a final order that resolves the last pending claim and closes the case.

Date: September 15, 2023

Elizabeth L. Gleicher
Judge, Court of Claims