

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO**

MICHAEL L. BUSCHE,
Complainant/Plaintiff,

Case No.: 14- 0600 -CZ
Honorable Pamela L. Lightvoet

v.

CITY OF PORTAGE,
Respondent/Defendant

PHILIP L. ELLISON (P74117)
OUTSIDE LEGAL COUNSEL PLC
Attorney for Complainant/Plaintiff
PO Box 107
Hemlock, MI 48626
(989) 642-0055
(888) 398-7003 - fax
pellison@olcplc.com

**COMPLAINT/PETITION FOR ENTRY OF ORDER
DIRECTING FOIA DISCLOSURE & SEEKING OTHER RELIEF**

NOW COMES Complainant/Plaintiff MICHAEL L. BUSCHE, by and through counsel, Outside Legal Counsel PLC, and as his complaint/petition states as follows:

PARTIES

1. Complainant MICHAEL L. BUSCHE is a resident of the State of Michigan.
2. Respondent CITY OF PORTAGE is a municipal/governmental entity created under the laws of the State of Michigan.
3. Respondent CITY OF PORTAGE is a public body as that term is defined by Michigan's *Freedom of Information Act*, MCL 15.232(d)(iii).

JURISDICTION

4. This action is commenced pursuant to MCL 15.240(1)(b).
5. This Court has jurisdiction by statute pursuant to MCL 15.240(1)(b).
6. Venue is proper in this court by statute pursuant to MCL 15.240(4).

7. This Court must advance this matter expeditiously as MCL 15.240(5) requires that “[a]n action commenced under this section... shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.”

FACTS

8. In July 2014, Complainant MICHAEL L. BUSCHE personally appeared at the offices of the City of Portage and filled out a Freedom of Information Act (“FOIA”) request for the public safety/police reports in regards to the list of cases shown below and paid for, in full, the deposit amount requested.

Incident Date	Report No.	Description
2/10/14	14-2580	4721 W. Milham Fire
5/9/14	14-7758	4721 W. Milham Larceny
5/15/14	14-8140	421 Connecticut Civil
5/17/14	14-8254	421 Connecticut B&E
5/29/14	14-9030	421 Connecticut Larceny
6/3/14	14-9380	421 Connecticut B&E
5/17/14	14-8282	Connecticut (MIR) Person Needs Assist Car Engine

9. A copy of the FOIA request should be within the records and files of Respondent CITY OF PORTAGE pursuant to MCL 15.233(2), which requires Respondent CITY OF PORTAGE to maintain keep a copy of all written requests for public records on file for no less than 1 year.
10. On July 31, 2014, the City of Portage responded by denying the request in full citing FOIA Sections 13(a), 13(1)(b)(i), 13(1)(b)(iii), and 13(1)(b)(v).
11. A fair and accurate copy of the denial letter is attached as **Exhibit A**.
12. Complainant MICHAEL L. BUSCHE disagreed with this assessment of the applicability of FOIA exemptions invoked by Respondent CITY OF PORTAGE.
13. As part of the work of Complainant’s insurance company, it was revealed that Respondent CITY OF PORTAGE had, on information and belief, previously released certain reports to the insurance company despite denying them to Complainant MICHAEL L. BUSCHE.
14. On June 9, 2014, Frankenmuth Insurance, by its property claims adjuster Eric MacKinnon, had requested and, on information and belief, received the following reports:

Report Nos: 14-2580, 14-7758, 14-8140, 14-8254, and 14-9030
(hereinafter “Released Incident Reports”).

15. The Released Incident Reports, as requested *and received* by Frankenmuth Insurance, were the same reports requested *but denied to* Complainant MICHAEL L. BUSCHE.
16. A copy of Frankenmuth Insurance's request for the Released Incident Reports is attached as **Exhibit B**.

COUNT I
WRONGFUL DENIAL OF REQUESTED RECORDS

17. Complainant MICHAEL L. BUSCHE incorporates by reference the previous allegations as if set forth word for word herein.
18. Respondent CITY OF PORTAGE has wrongfully withheld records, which Complainant MICHAEL L. BUSCHE is entitled to receive under Michigan's Freedom of Information Act and the doctrine of public domain.
19. Complainant MICHAEL L. BUSCHE has incurred and will incur attorney fees, costs, and disbursements in seeking the rightful fulfillment of his request under Michigan's *Freedom of Information Act*.

COUNT II
DAMAGES PURSUANT TO MCL 15.235(3)/MCL 15.240(7)

20. Complainant MICHAEL L. BUSCHE incorporates by reference the previous allegations as if set forth word for word herein.
21. Because there is no debatable justification for denying disclosure of the Released Incident Reports as Respondent CITY OF PORTAGE has already made public said reports.
22. As such, Respondent CITY OF PORTAGE arbitrarily and capriciously violated this act by refusing to provide copies of requested public records.
23. The Court is requested to award \$500.00 as punitive damages to Respondent CITY OF PORTAGE, being the person seeking the right to receive a copy of said public records.

RELIEF REQUESTED

24. WHEREFORE, Respondent CITY OF PORTAGE requests this Court—
 - a. enter an order expediting this case pursuant to MCL 15.240(5);
 - b. enter an order against Respondent CITY OF PORTAGE compelling the disclosure of the public records requested by Complainant MICHAEL L. BUSCHE's FOIA request as submitted in July 2014;

- c. to declare the exemption(s) invoked for Complainant MICHAEL L. BUSCHE's FOIA request was in violation of the doctrine of public domain;
- d. enter an order awarding all reasonable attorney fees, costs, and disbursements required by MCL 15.240;
- e. award \$500.00 as punitive damages pursuant to MCL 15.240; and
- f. grant all other relief that Court deems equitable and just.

RESPECTFULLY SUBMITTED:

Philip L Ellison

OUTSIDE LEGAL COUNSEL PLC
BY PHILIP L. ELLISON (P74117)
Attorney for Complainant
PO Box 107 · Hemlock, MI 48626
Phone: (989) 642-0055
Fax: (888) 398-7003
Email: pellison@olcplc.com

Date: November 20, 2014



Department of Public Safety

July 31, 2014

Mr. Michael L. Busche
PO Box 20421
Kalamazoo, MI 49019

Dear Mr. Busche:

RE: Request for Portage Department of Public Safety
Case Numbers: 14-8282, 14-9380, 14-9030, 14-8254, 14-8140, 14-7758& 14-2580

Your request for information falls under the "Freedom of Information Act of 1976" guidelines. A review of this report has determined release of this information, at this time, would interfere with law enforcement proceedings because the investigation of the complaint remains open, would also constitute a clearly unwarranted invasion of an individual's privacy, and would hinder the ability to gather additional information or identify additional witnesses. Release of this information is, therefore, exempt from disclosure. {Act No. 442, P.A. 1976, Sec. 13(1)(a), Sec. 13(1)(b)(i), Sec. 13(1)(b)(iii), and Sec. 13 (1)(b)(v)}.

Unless this request is rescinded in writing, once the investigation has been concluded, your request will be reviewed again, and, if eligible for release, will be forwarded to you.

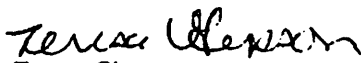
Since you have been denied a copy of this report, you are advised that you have the right to do either of the following:

1. Submit to the head of the public body a written appeal that specifically states the work "appeal" and identifies the reason or reasons for reversal of the disclosure; or
2. Seek judicial review of the denial under Section 10 of the Act.

If you see judicial review, you must file suit in Circuit Court within 180 days after the denial by the head of the public body to compel disclosure. Should you prevail, you may be entitled to reasonable attorney fees, costs, and disbursements as ordered by the court. If the public body has been arbitrary and capricious, you will be awarded punitive damages, in the amount of \$500.00, in addition to actual or compensatory damages.

Our Records Section is open Monday through Friday, 8a.m. to 5p.m. You may contact us at (269) 329-4568.

Sincerely,


Teresa Gipson
Records Team Leader

TG:cjg

c: James R. Hudson, City Clerk

Portage Police Division

7810 Shaver Road ♦ Portage, Michigan 49024 ♦ (269) 329-4567 ♦ Fax (269) 329-4569
www.portage.mi.gov

PDPS 14-2580



PFD 14-509

June 9th, 2014

Portage City Police & Fire Department

COPY

RE: Insured: Michael Busche
Our Claim No.: 000100120384
 000100137986
 000100139378
 000100141917
 000100143201 (Kalamazoo PD)
Adjuster(s): Kevin Allard, Eric MacKinnon,
 Dustin Kapral, & Luke Nickens
Policy No.: HP 9363116 & PA 1201402
Loss Date: 2/10/13, 5/9/14, 5/15/14, 5/29/14
Type Loss: Fire & (4) Thefts
Your Report No. Portage Fire Dept. Report #Unknown
 Portage Police: 14-7758, 14-8140, 14-8254, 14-9030, 14-9252

14-509

Dear Portage City Police & Fire Department Detective Hess:

Pursuant to Chapter 45 of the insurance code, specifically *MCL 500.4501 et seq.*, copy enclosed. I am requesting that you provide Frankenmuth Insurance with any and all information regarding police reports, fire reports, photos, and proof of loss for the above reports/investigations involving our insured Michael Busche.

Please forward the records to my attention at fax number 989-652-6231 or email eric.mackinnon@fmins.com. Thank you in advance for your consideration and your prompt attention to this request pursuant to the statute. If you have any questions or concerns, please call me at 800-234-4433 ext. 2141.

Sincerely,

Eric MacKinnon
Property Claims Adjuster

EHM

Enclosure

The People of the State of Michigan enact:

50301196.DOC

1 Mutual Ave
Frankenmuth, MI

48787-0040

