

STATE OF MICHIGAN JUDICIAL DISTRICT Court of Claims JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS	CASE NO. 22-000161-MZ
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Court address
 925 W. Ottawa St., P.O. Box 30185, Lansing, MI 48909

Court telephone no.
 517-373-2252

Plaintiff's name(s), address(es), and telephone no(s).

Eric L. VanDussen
 P.O. Box 30
 Benzonia, MI 49616
 231-651-9189
 ericlvandussen@gmail.com

v

Defendant's name(s), address(es), and telephone no(s).

DANA NESSEL, in her official capacity as the
 Attorney General of the State of Michigan
 G. Mennen Williams Building
 525 W. Ottawa Street
 P.O. Box 30212
 Lansing, MI 48909
 517-335-7622

Plaintiff's attorney, bar no., address, and telephone no.
 In pro per

Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (form MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case

- ☐ There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.
- ☐ There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. I have separately filed a completed confidential case inventory (form MC 21) listing those cases.
- ☐ It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

- ☐ This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.
- ☐ MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).
- ☒ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- ☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has

been previously filed in ☐ this court, ☐ _____ Court, where

it was given case number _____ and assigned to Judge _____.

The action ☐ remains ☐ is no longer pending.

Summons section completed by court clerk.

SUMMONS



NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date September 29, 2022	Expiration date* December 29, 2022	Court clerk <i>Jerome W. Zimmer Jr.</i>
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*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

PROOF OF SERVICE**SUMMONS**

Case No. 22-000161-MZ

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE☐ **OFFICER CERTIFICATE**

OR

☐ **AFFIDAVIT OF PROCESS SERVER**

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)

Being first duly sworn, I state that I am a legally competent adult, and I am not a party or an officer of a corporate party (MCR 2.103[A]), and that: (notarization required)

- ☐ I served personally a copy of the summons and complaint,
☐ I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint,

together with _____

List all documents served with the summons and complaint

_____ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

- ☐ I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

I declare under the penalties of perjury that this proof of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Service fee \$	Miles traveled	Fee \$	
Incorrect address fee \$	Miles traveled	Fee \$	TOTAL FEE \$

Signature _____

Name (type or print) _____

Title _____

Subscribed and sworn to before me on _____, _____ County, Michigan.
DateMy commission expires: _____ Date Signature: _____
Deputy court clerk/Notary public

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with _____ Attachments
_____ on _____
Day, date, time

Signature _____ on behalf of _____

RECEIVED by MCOC 9/29/2022 11:38:49 AM

STATE OF MICHIGAN
COURT OF CLAIMS

ERIC L. VANDUSSEN,

Plaintiff,

Case No. 22 - 000161 MZ

v

DANA NESSEL, in her official capacity as the
Attorney General of the State of Michigan

Defendant.

COMPLAINT TO COMPEL COMPLIANCE WITH
MICHIGAN'S FREEDOM OF INFORMATION ACT

*There is no other pending or resolved civil action arising
out of the transition or occurrence alleged in this Complaint*

NOW COMES Plaintiff, Eric L. VanDussen, and for his Complaint to Compel

Compliance with Michigan's Freedom of Information Act, MCL 15.231 et seq., alleges that:

INTRODUCTION

This action under the Michigan Freedom of Information Act ("FOIA") seeks to remedy a state agency invoking inapplicable FOIA exemptions to shield from the public certain records that Defendant's agents and employees have previously disclosed in open court, as admitted exhibits, during preliminary examination proceedings in Antrim and Jackson Counties.

Defendant has asserted that an unknown number of public records responsive to Plaintiff's FOIA requests are exempt from disclosure. Defendant's expansive interpretation of Michigan's FOIA exemptions prevents the public from obtaining "full and complete information regarding the affairs of government," that is the purpose of the FOIA. MCL 15.231.

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff resides in Michigan and is “Media” or [a] “media agency” [which is defined as] “any person or organization engaging in news gathering or reporting and includes any newspaper, radio or television station or network, news service, magazine, trade paper, professional journal, or other news reporting or news gathering agency.” Michigan Supreme Court Admin. Order 1989-1(1)(b).

2. Defendant Attorney General Dana Nessel is the head of the Department of Attorney General, which is a “public body” as defined in MCL 15.232(h)(i) that creates and maintains “public records” as defined in MCL 15.232(i).

3. The Court of Claims has jurisdiction over this matter pursuant to MCL 15.240(1)(b) and MCL 600.6419(1)(a).

4. The FOIA, at MCL 15.240(5), mandates that:

An action commenced under this section and an appeal from an 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.

VIOLATIONS OF MICHIGAN’S FREEDOM OF INFORMATION ACT

5. Plaintiff hereby incorporates the preceding paragraphs as if fully restated herein.

6. During a hearing on September 1, 2022, Assistant Attorney General Sunita Doddamani informed Antrim County District Court Judge Michael Stepka, in part, that:

Judge, from what I understand, and we discussed in the back with all attorneys present, is that I will -- all admitted exhibits in this hearing I put into a folder, an official folder, and I’m going to send them to the Court to make its decision. **These are our documents.** At least I’m doing my exhibits and the Defense whatever they got they’re doing theirs. And that you would be able to reference those in making your decision because **they are admitted exhibits.**

We maintain custody and control of those exhibits, Judge. Which I have and if -- if reporters would like access to those, they can FOIA them and go through the procedures. And under the FOIA law because they're -- they're public at this point we could release them. And that's my understanding of it. So as long as procedures are followed, exhibits -- admitted exhibits that are redacted can be -- can be acquired. That's my understanding. [emphasis added] (EXHIBIT 1)

7. On September 2, 2022, reporter Mardi Link wrote in the Traverse City Record Eagle that during said Antrim County preliminary examination:

[...] The state has so far provided the judge more than 100 exhibits — audio and video recordings, photographs, screen shots of encrypted group chats and text messages, for example.

These exhibits became a separate issue of law Thursday morning, after a freelance videographer who has been following the case for a possible documentary film, filed a motion seeking immediate access to the material.

Stepka said he consulted with the state court administrator before ruling against Eric VanDussen's motion, stating that these exhibits were not the property of the court, but rather the property of the parties that filed them. [...] (EXHIBIT 2)

8. Defendant's agents proffered numerous other exhibits during the associated Jackson County preliminary examination that was held in March of 2021.

9. On September 6, 2022, Plaintiff submitted a FOIA request to Defendant for the following public records:

1. All exhibits that were admitted during the preliminary examination held on or around August 29, 2022, through September 1, 2022, which in any way pertain to the Antrim County prosecutions of Shawn Fix, Brian Higgins, Eric Molitor, Michael Null and William Null.
2. All exhibits that were admitted during the preliminary examination held on or around March 3, 2021, through March 5, 2021, which in

any way pertain to the Jackson County prosecutions of Joseph M. Morrison, Pete Musico and Paul Bellar.

3. All exhibit lists related to the exhibits that were admitted during the aforementioned preliminary examinations held in Antrim County and Jackson County. **(EXHIBIT 3)**

10. On September 8, 2022, an Order endorsed by Judge Stepka was filed in the 86TH District Court for Antrim County. Said Order indicated, in pertinent part:

VanDussen Productions filed with this court a Motion to Access Preliminary Examination Exhibits admitted by the Court at the preliminary examination of the Defendants in the above cases. The motion was filed pursuant to MCR 8.119 (I) (sealed records) and is DENIED for the reason that **the exhibits in these matters have not been filed with the court nor sealed by the Court.** Pursuant to MCR 1.109(A) (2), **these exhibits are not court records and not subject to the Court's control.** Further, under MCR 2.518(B), at the conclusion of the hearing the Court is required to have the parties retrieve their respective exhibits from the Court and the parties did so.

The Attorney General will submit to the Court their exhibits in redacted form for the Court to use in making its bind over decision, which exhibits are not to be filed with the court and will be returned to the Attorney General after the Court makes its bind over decision. [emphasis added] **(EXHIBIT 4)**

11. On September 28, 2022, Defendant issued a response to Plaintiff's September 6, 2022, FOIA request and Defendant indicated, in pertinent part:

Your request is granted in part and denied in part.

As to the partial grant, after a search for records, to the best of the Department's knowledge, information, and belief, the enclosed copied records represent the only nonexempt records in the Department's possession that fall within the scope of your request.

Because the processing of your request took minimal time and involved duplicating a limited number of pages, there is no fee.

As to the partial denial, the request seeks information related to an open and ongoing Department investigation, and the public disclosure of such information must be denied at this time.

The FOIA provides for the nondisclosure of, “[i]nvestigating records compiled for law enforcement purposes [] to the extent that disclosure [] would [i]nterfere with law enforcement proceedings [;] [d]eprive a person of the right to a fair trial or impartial administrative adjudication [;] [c]onstitute an unwarranted invasion of personal privacy.” MCL 15.243(1)(b)(i), (ii), and (iii).

The FOIA does not permit a public body to consider the requesting person’s identity and motivation or purpose for making the request or the intended use of the information. *State Employees Ass’n v Dep’t of Mgt and Budget*, 428 Mich 104, 121, 126 (1987). Further, the FOIA provides no mechanism to prevent the ongoing dissemination of the information after an initial disclosure under the act. *Kestenbaum v Michigan State Univ*, 414 Mich 510, 528 (1982); *State Employees Ass’n*, 428 Mich at 125-126.

The public disclosure of the material composing the open investigation would adversely impact the investigation by having a chilling effect on the Department’s ability to conduct an unhindered and thorough investigation, and would interfere with any prosecutorial determinations yet to be made. Disclosure further would jeopardize a constitutional right to a fair and impartial adjudication, and would result in the unwarranted invasion of the personal privacy of persons involved in the investigation by making public their names, addresses, and other personal information. The nondisclosure of witness information protects the integrity of evidence by preventing witness tampering and witness harassment by third parties.

Thus, to ensure a thorough investigation; to protect evidence; to encourage the cooperation of witnesses; to give due deference to privacy considerations; and to assure fairness, including the right to fair and impartial adjudication, the Department must withhold the information from public disclosure at this time.

As to the partial denial of your request, under section 10 of the FOIA, MCL 15.240, the Department is obligated to inform you that you may [...]

2) Commence an action in the Court of Claims within 180 days after the date of the final determination to partially deny the request. If you prevail in such an action, the court is to award reasonable attorney fees, where applicable, costs, and disbursements, and possible damages. (EXHIBIT 5)

12. MCL 15.231(2) states:

It is the public policy of this state that all persons, except those persons incarcerated in state or local correctional facilities, are entitled to fully 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 participate in the democratic process.

13. MCL 15.243 provides, in relevant part:

(1) A public body may exempt from disclosure as a public record under this act any of the following:

(a) Information of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy.

(b) Investigating records compiled for law enforcement purposes, but only to the extent that disclosure as a public record would do any of the following:

(i) Interfere with law enforcement proceedings.

(ii) Deprive a person of the right to a fair trial or impartial administrative adjudication.

(iii) Constitute an unwarranted invasion of personal privacy.

14. Defendant's response to Plaintiff's FOIA request is contrary to law, as it misapplies the exemptions enumerated at MCL 15.243(1)(b)(i), (ii), and (iii).

15. The public body has the burden of proof in applying an exemption. MCL 15.235(5)(a)-(c); *Peterson v Charter Township of Shelby*, 2018 WL 2024578 (Mich Ct App).

16. The FOIA is a pro-disclosure statute and "exemptions to disclosure are to be narrowly construed." *Swickard v Wayne Como Medical Examiner*, 438 Mich 536, 544 (1991).

17. Defendant bears the burden of demonstrating that its application of the privacy exemption is appropriate. *Herald Co v University of Beg University*, 463 Mich 111, 119 (2000).

18. Defendant cannot demonstrate that disclosure to Plaintiff of the withheld public records would interfere with law enforcement proceedings; deprive a person of the right to a fair trial; or constitute an unwarranted invasion of personal privacy

19. It is Defendant's burden to demonstrate that each particular public record that Plaintiff was seeking would (a) interfere with law enforcement proceedings; (b) deprive a person of the right to a fair trial; or (c) constitute an unwarranted invasion of personal privacy, not merely that release could possibly or potentially interfere with or jeopardize the investigation.

20. In determining whether information satisfies a FOIA exemption, courts should:

(1) receive a complete particularized justification for the exemption that is not mere repetition of statutory language; (2) conduct a hearing in camera to determine whether justification exists; or (3) consider allowing the plaintiff's counsel access to the information in camera under a special agreement whenever possible. *Evening News Ass'n v. City of Troy*, 417 Mich. 481, 503, 516, 339 N.W.2d 421 (1983).

21. In *Evening News*, Michigan's Supreme Court held that it was not sufficient to demonstrate an exemption under MCL 15.243(1)(b)(i) to simply determine that disclosure of the requested records would interfere with law enforcement proceedings and it identified six factors for consideration by a court analyzing a claimed exemption under MCL 15.243(1)(b)(i):

1. The burden of proof is on the party claiming exemption from disclosure.
2. Exemptions must be interpreted narrowly.
3. [T]he public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying.

4. [D]etailed affidavits describing the matters withheld must be supplied by the agency.

5. Justification of exemption must be more than conclusory, i.e., simple repetition of statutory language. A bill of particulars is in order. Justification must indicate factually how a particular document, or category of documents, interferes with law enforcement proceedings.

6. The mere showing of a direct relationship between records sought and an investigation is inadequate. [*Evening News*, 417 Mich. at 503, 339 N.W.2d 421 (quotation marks and citations omitted; alterations in original).]

22. In *Pennington v. Washtenaw Co. Sheriff*, 125 Mich. App. 556, 566, 336 N.W.2d 828 (1983), the Court held that appropriate nondisclosure of requested information on the basis of subsection 13(1)(b)(iii) is limited to “ ‘intimate details of a highly personal nature.’ ”

23. All of the public records that Defendant withheld from Plaintiff were previously (a) disclosed, displayed and viewed in open court; and (b) admitted as exhibits, under Michigan’s rules of evidence, during preliminary examination proceedings in Antrim and Jackson Counties.

24. Defendant’s improper withholding of the requested public records was arbitrary and capricious under MCL 15.240(7), thereby subjecting Defendant to a civil fine of \$1,000.00 payable to the general treasury and a separate \$1,000.00 to Plaintiff.

25. Defendant’s inappropriate application of exemptions constitutes a willful and intentional failure to comply under MCL 15.240b, thereby subjecting it to a civil fine of \$2,500 to \$7,500 payable to the state treasury.

26. Pursuant to MCL 15.240(6), Plaintiff is entitled to attorneys' fees and costs:

If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in an action commenced under this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or public body prevails in part, the court

may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages under subsection (7).

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that this Court:

- (a) assigned this action for hearing, trial or argument at the earliest practicable date, pursuant to MCL 15.240(5), and expedite this action in every way;
- (b) issue a declaratory judgement finding that Defendant has violated the FOIA and Order Defendant to forthwith provide detailed affidavits describing with particularity each specific public record that they withheld from Plaintiff;
- (c) issue a preliminary injunction and Order Defendant to cease their withholding of all public records sought by Plaintiff within his September 6, 2022, FOIA request,
- (d) award punitive damages to Plaintiff, pursuant to MCL 15.240(7), for Defendant's arbitrary and capricious withholding of public records;
- (e) apply the full penalties against Defendant, which are available under MCL 15.234(9) and MCL 15.240b;
- (f) award attorneys' fees and costs under MCL 15.240(6); and
- (g) award any other relief this Court determines to be just and equitable to remedy the Defendant's improper utilization of FOIA exemptions, which necessitated the filing of this lawsuit.

September 29, 2022

Respectfully submitted,



Eric L. VanDussen
Plaintiff in pro per
P.O. Box 30
Benzonia, MI 49616
(231) 651-9189
ericvandussen@gmail.com

VERIFICATION

Pursuant to the requirements of MCL 600.6434(2) and *Progress Michigan v. Attorney General*, 506 Mich. 74 (2020), I, Eric L. VanDussen depose and say the following:

1. I am duly authorized to sign this Verification in this matter.
2. Pursuant to MCR 1.109(D)(3)(b), I declare under the penalties of perjury that this Complaint to Compel Compliance with Michigan's Freedom of Information Act has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

September 29, 2022



Eric L. VanDussen
Plaintiff in pro per
P.O. Box 30
Benzonia, MI 49616
(231) 651-9189
ericvandussen@gmail.com

Subscribed and sworn to before me on September 29, 2022

My commission expires on 8/5/28


Deputy clerk/Notary public signature

Lori S. Cline
Name (type or print)

Notary public, State of Michigan, County of Benzie. Acting in the County of Benzie.

EXHIBIT 1

STATE OF MICHIGAN

IN THE 86TH DISTRICT COURT FOR THE COUNTY OF ANTRIM

PEOPLE OF THE STATE OF MICHIGAN,

v

File No(s) .: 20-2912-FY-3
20-2915-FY-3
20-2918-FY-3
20-2921-FY-3
20-2924-FY-3

MICHAEL JOHN NULL, WILLIAM GRANT NULL,
ERIC MOLITOR, SHAW MICHAEL FIX,
BRIAN HIGGINS,

Defendant(s).

PRELIMINARY EXAMINATION - DAY FOUR OF FOUR

EXCERPT OF PROCEEDINGS:

MOTION BY VANDUSSEN PRODUCTIONS FOR ACCESS TO PRELIMINARY

EXAMINATION EXHIBITS

BEFORE THE HONORABLE MICHAEL S. STEPKA, DISTRICT COURT JUDGE

Bellaire, Michigan - Thursday, September 1, 2022

APPEARANCES:

For the People:

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1
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18 RECORDED BY:

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Ms. Mary Wenger-Townsend, CER#8729
Certified Electronic Reporter

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WITNESSES: PEOPLE

None.

WITNESSES: DEFENDANT

None.

OTHER MATERIALS IN TRANSCRIPT

None.

EXHIBITS

IDENTIFIED

ADMITTED

None.

1 Bellaire, Michigan

2 Thursday, September 1, 2022 - 1:37 p.m.

3 (At 1:37 p.m., excerpt of proceedings)

4 THE COURT: All right. So the last thing to address
5 is, let's see, it's a motion by VanDussen Productions for
6 access to preliminary examination exhibits. I believe that
7 the -- there's another news agency that has made a request,
8 but I want to address this now.

9 Mr. VanDussen requested in his motion that we take
10 this up at the end of the hearing today; so that's what we're
11 going to do.

12 Well, Mr. VanDussen, would you like to come on up,
13 sir.

14 MR. VANDUSSEN: Have -- have you had a chance to
15 read the motion and brief, Your Honor?

16 THE COURT: Well I have and a couple things, Mr.
17 VanDussen. Your motion characterizes the documents as being
18 sealed. They aren't sealed.

19 MR. VANDUSSEN: Effectually they are is my argument
20 because they're not available if I go up to the court window
21 and try to obtain them. And that's why I look to this court
22 rule and that allows myself or any other person standing to
23 try and obtain records that are basically under seal. And
24 it's my understanding that you have a book of exhibits and
25 you're only going to keep the ones that were admitted is my

1 understanding. And that the ones that aren't admitted are not
2 going to be available obviously.

3 But if there is a redacted version, proposed
4 redactions from the Attorney General's office or any submitted
5 by the Defense Counsels, I would request that those be
6 provided to the Court. So that if they're -- and to the other
7 parties, maybe under seal, to determine whether or not the
8 redactions are appropriate. And that the Court could then
9 make a determination on each specific requested redaction and
10 address those in a written order if some of that information
11 needs to be sealed in the Court's opinion.

12 So that -- that's in a nutshell what I'm requesting.

13 THE COURT: Well, all right.

14 So under MCR 1.109(A)(2), "exhibits that are
15 maintained by the court reporter or other authorized staff
16 pursuant to MCR 2.518 or MCR 3.390 during the pendency of a
17 proceeding are not court records." So they're -- they are
18 defined as not being court records.

19 And then MCR 2.518(B), I'll just read it:

20 "Return or Disposal of Exhibits. At the conclusion
21 of a trial or hearing, the court shall direct the parties to
22 retrieve the exhibits submitted by them except for weapons."

23 So exhibits are not -- they're not filed with the
24 court. They're not court documents, and so I -- I don't have
25 any control over those.

1 And I reached out to our State Court Administrating
2 -- Administrative representative on this issue as well and he
3 indicated that they're not court records and the court has no
4 control over them. They have to go back to the parties, and
5 that's what I'm going to do with the records I've been --

6 MR. VANDUSSEN: So --

7 THE COURT: -- provided.

8 MR. VANDUSSEN: If -- if you look at paragraph two
9 of my -- of my motion, it may be an error when I assert that,
10 "The Court admitted into evidence the majority of the exhibits
11 submitted by the parties and the Court will expressly rely on
12 those exhibits when determining whether to bind the Defendants
13 over to the 13th Circuit Court for trial." Is that
14 inaccurate?

15 THE COURT: No. They were admitted into evidence,
16 okay, but that doesn't make them a court document.

17 MR. VANDUSSEN: Is the Court retaining them is my
18 question.

19 THE COURT: Well --

20 MR. VANDUSSEN: For the bind over decision.

21 THE COURT: Well -- well what's going to happen is a
22 redacted -- well it doesn't matter if I retain them for
23 purposes of the decision or not.

24 MR. VANDUSSEN: It does for purposes of appeal, Your
25 Honor.

1 THE COURT: Well -- so would the People like to
2 weigh in on this? The majority of these are your exhibits. I
3 don't --

4 MS. DODDAMANI: Judge, from what I understand, and
5 we discussed in the back with all attorneys present, is that I
6 will -- all admitted exhibits in this hearing I put into a
7 folder, an official folder, and I'm going to send them to the
8 Court to make its decision. These are our documents. At
9 least I'm doing my exhibits and the Defense whatever they got
10 they're doing theirs. And that you would be able to reference
11 those in making your decision because they are admitted
12 exhibits.

13 We maintain custody and control of those exhibits,
14 Judge. Which I have and if -- if reporters would like access
15 to those, they can FOIA them and go through the procedures.
16 And under the FOIA law because they're -- they're public at
17 this point we could release them. And that's my understanding
18 of it. So as long as procedures are followed, exhibits --
19 admitted exhibits that are redacted can be -- can be acquired.

20 That's my understanding.

21 THE COURT: Okay --

22 MR. VANDUSSEN: So Your Honor, I --

23 THE COURT: Thank you, but -- hang on.

24 MS. DODDAMANI: Hang on a second, sir.

25 MR. VANDUSSEN: I apologize.

1 THE COURT: The fact that you're sending them to the
2 court, you're not filing them.

3 MS. DODDAMANI: No, Judge.

4 THE COURT: They're coming to me so that I can use
5 them in making my decision.

6 MS. DODDAMANI: Because these are admitted exhibits.

7 THE COURT: Right.

8 MS. DODDAMANI: That the Court can rely upon to
9 render its decision.

10 THE COURT: To make a decision.

11 MS. DODDAMANI: Thank you.

12 THE COURT: But they're not -- they don't become
13 court documents by that and because they're not filed --

14 MR. VANDUSSEN: Briefly, Your Honor.

15 THE COURT: Go ahead.

16 MR. VANDUSSEN: One of the exhibits is a request
17 form that I submitted to the court that I was instructed to
18 submit to the court to obtain these exhibits and that was a
19 catalyst for my motion when I didn't get a response from that
20 at all. And everyone I talk to, the parties, no one wanted to
21 discuss the production of the exhibits. But I was instructed
22 to submit a form. Is -- are you saying that my form is just
23 going to be ignored, that I was instructed by court personnel
24 to submit?

25 THE COURT: No.

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MR. VANDUSSEN: For the exhibits?

THE COURT: No. Your form is considered, Mr. VanDussen but -- along with your request, but the request is denied.

MR. VANDUSSEN: Are you going to issue a written order, Your Honor?

THE COURT: Yes.

MR. VANDUSSEN: Thank you very much.

THE COURT: Thank you.

(At 1:44 p.m., proceeding concluded)

* * * *

1 STATE OF MICHIGAN)
2)
3 COUNTY OF ANTRIM)
4

5 I certify that this transcript, consisting of 10 pages, is a
6 complete, true and correct transcript of the proceedings and
7 testimony taken in this case on Thursday, September 1, 2022.
8

9 September 16, 2022

/s/Amanda Sieffert

Amanda Sieffert, CER #9453
Certified Electronic Reporter
280 Washington Street, Suite 121
Traverse City, MI 49684

EXHIBIT 2

https://www.record-eagle.com/news/fbis-undercover-mark-testifies-in-kidnap-hearing/article_7ab53854-2a3e-11ed-a6ae-bb2361796398.html

FBI's "Undercover Mark" testifies in kidnap hearing

By Mardi Link mlink@record-eagle.com
Sep 2, 2022



Judge Michael Stepka speaks with defense attorney Thomas Siver as he cross-examines FBI Special Agent Henrik Impola during a preliminary hearing in 86th District Court on Wednesday for men accused in a plot to kidnap Michigan Gov. Gretchen Whitmer. Cameras were not allowed during Thursday's testimony by an undercover FBI agent.

Record-Eagle/Jan-Michael Stump



TRAVERSE CITY — An FBI agent identified only as “Undercover Mark” testified for the state in 86th District Court Thursday, detailing his role in an investigation into an accused plot to kidnap the governor, adding specifics of a nighttime surveillance of the

governor's lakeside vacation home.

"The group rallies at an AMVETS parking lot there in Elk Rapids right around midnight," Undercover Mark said, of a Sept. 12, 2020, surveillance by several men who he said gathered in the parking lot of a Cadillac Walmart, then drove north in a three-vehicle caravan.

"They all had long guns," the agent said, naming four of the five men currently facing charges in 86th District Court. "Each of the vehicles was given a specific assignment."

Shawn Fix, Eric Molitor, Michael Null and William Null, all of Michigan, are charged with one count each of providing material support or resources for an act of terrorism and one count each of possession of a firearm during the commission of a felony.

Brian Higgins, a resident of Wisconsin, is charged with one count of providing material support or resources for an act of terrorism.

All five men have been in court this week, some accompanied by one or more family members, as Judge Michael Stepka considers whether the state has presented enough evidence for him to bind the case over to 13th Circuit Court for trial.

The state is represented by four attorneys from the Michigan Attorney General's office, which is prosecuting the case, and the five defendants are represented by six defense attorneys, one of whom is local, with the others hailing from Cadillac, Grand Rapids and Flint.

The state has so far provided the judge more than 100 exhibits — audio and video recordings, photographs, screen shots of encrypted group chats and text messages, for example.

These exhibits became a separate issue of law Thursday morning, after a freelance videographer who has been following the case for a possible documentary film, filed a motion seeking immediate access to the material.

Stepka said he consulted with the state court administrator before ruling against Eric VanDussen's motion, stating that these exhibits were not the property of the court, but rather the property of the parties that filed them.

VanDussen, who is not an attorney but was allowed to argue his motion per court rules, questioned whether the court retained the exhibits and, if so, how they were not then court documents, which should be public.

"It doesn't matter if I retain them for purposes of this decision," Stepka said.

"It does for purposes of appeal, your honor," VanDussen replied.

The lead prosecutor, Assistant Attorney General Sunita Doddamani, weighed in, stating that exhibits created by the AG's office were subject to the Freedom of Information Act, and could be accessed that way.

The Record-Eagle on Wednesday sought copies of the exhibits by filing a request with the 86th District Court administrator, using a form specified on the court's website, but has thus far received no response. VanDussen said he, too, filed this form and received no response, which prompted his motion requesting immediate access.

VanDussen said he has requested a transcript and is awaiting that document, along with Stepka's written order, before making a decision on whether to appeal the judge's ruling.

VanDussen also filed a motion seeking to record video in the courtroom during Undercover Mark's testimony, stipulating he'd point his camera away from the witness.

Stepka denied that request as well, stating reporters could record audio, but all were barred from taking video or photographs in the courtroom while the witness was testifying.

“This is an undercover FBI agent, whose undercover identity is critical to his job, his safety and the safety of other agents and other confidential human sources,” Stepka said.

Undercover Mark on Thursday corroborated previous testimony from Agent Impalo, as well as some information contained in audio and video recordings they and other sources had captured, specifically regarding the Sept. 12 surveillance.

The Null brothers rode in the truck Undercover Mark was driving, witnesses testified, and their assignment was to surveil the general area, but not to drive past the governor’s vacation home.

A confidential human source known in court as “CHS Dan,” drove the second vehicle, witnesses said, with Adam Fox, Barry Croft — both later found guilty in federal court of conspiracy — Steve Robeson, also, for a time, a confidential human source for the FBI, and an undercover FBI Agent known as “Undercover Red,” as passengers.

The second vehicle’s assignment, witnesses said, was to drive to a public boat launch and signal the the third vehicle, which was assigned to drive by the governor’s vacation home.

The third vehicle was driven by Higgins, witnesses said, his passengers were Ty Garbin and Kaleb Franks, who later each pleaded guilty in federal court to conspiracy in relation to the kidnap plot, and testified against Fox and Croft, Jr.

Assignments, witnesses said, were handed out by Fox.

Court testimony this week by Impalo detailed an earlier daytime surveillance of the governor's lakeside home, where some of the men visited the Oasis Red Bull Tavern in Kewadin, got out of their vehicles at the tennis courts at Milton Township Park and cased the Elk Rapids Police Station to gauge possible response time by local officers.

Fix was not present during the nighttime surveillance on Sept. 12, 2020, Undercover Mark said, though Impalo previously testified Fix assisted by attempting to provide the address of the governor's vacation home.

Fix's initial efforts were faulty and he provided the men with the wrong address, witnesses said. Defense attorneys have used this error and others to argue the men did not provide the kind of resources typically considered to aid in an act of terrorism — money, housing and caches of weapons, for example.

Witnesses said Fix repeatedly told the men he had trained as a U.S. Navy Seal and could provide and pilot a Blackhawk helicopter, which turned out to be untrue, his attorney, Flint-based Nichole Dougherty, said.

One resource Eric Molitor provided, witnesses said, was a device called an RF power detector, available online for less than \$100, and which he waved in the air during a training exercise, or FTX, held on Garbin's property in Luther, in September 2020.

The device is designed to detect hidden cameras, wires or recording devices, and did alert at least once during the FTX, Undercover Mark testified, although no one present was "outed" because of the alert, he said.

The presence of the device did concern the undercover agent, he said, and he immediately moved away from where Molitor was using it.

Under questioning by William Rollstin, an attorney with the state Attorney General's office, Undercover Mark said Undercover Red was established with the defendants as someone who could provide explosives, for a discussed plan to blow up a bridge on M-

131 near Elk Rapids, in an effort to slow down law enforcement should they be called during any actually kidnapping.

“Why introduce an individual who can acquire explosives to this group?” Rollstin asked.

“One reason is so people who are interested in obtaining explosives are not going out and obtaining explosives from people that actually have them,” Undercover Mark said.

Judge Stepka will consider briefs filed in the coming weeks by the state and by the defense, and will then decide whether to bind the case over for trial.

The judge’s decision could be weeks, or even months from now, court records indicate.

A defense motion requesting the removal of ankle monitors the men have been wearing, and paying for the use of, for nearly two years will be argued in an upcoming hearing that is not yet scheduled, the judge said.

The state expressed preliminary arguments against removal, while acknowledging, despite ongoing speculation, the AG’s office had no plans to add conspiracy to the charges the men face.

Trending Video

Mardi Link

EXHIBIT 3

Wendling-Richards, Christy (AG)

From: Eric VanDussen <ericvandussen@gmail.com>
Sent: Tuesday, September 6, 2022 12:54 PM
To: AG-FOIA; Doddamani, Sunita (AG)
Subject: FOIA re: preliminary examination exhibits admitted in the Antrim Co. & Jackson Co. prosecutions of Shawn Fix, Brian Higgins, Eric Molitor, Michael Null, William Null, Joseph M. Morrison, Pete Musico and Paul Bellar

CAUTION: This is an External email. Please send suspicious emails to abuse@michigan.gov

To the Michigan Department of Attorney General's Freedom of Information Act (FOIA) Coordinator and Assistant AG Sunita Doddamani:

I am hereby requesting, under the authority of Michigan FOIA, digital video/audio files and scanned PDF copies of the following public records, which were prepared, owned, used, in the possession of, or retained by the Michigan Department of Attorney General:

1. All exhibits that were admitted during the preliminary examination held on or around August 29, 2022, through September 1, 2022, which in any way pertain to the Antrim County prosecutions of Shawn Fix, Brian Higgins, Eric Molitor, Michael Null and William Null.
2. All exhibits that were admitted during the preliminary examination held on or around March 3, 2021, through March 5, 2021, which in any way pertain to the Jackson County prosecutions of Joseph M. Morrison, Pete Musico and Paul Bellar.
3. All exhibit lists related to the exhibits that were admitted during the aforementioned preliminary examinations held in Antrim County and Jackson County.

Please be advised that during a hearing on September 1, 2022, Assistant AG Sunita Doddamani informed Antrim County District Court Judge Michael Stepka that: *"Judge, from what I understand and discussed with all attorneys present is that I will, all admitted exhibits in this hearing, uh, I put into a folder, the folder and, and gonna send them to the Court to make it's decision. These are our documents, at least I'm doing my exhibits, and the defense, whatever they've got, they're doin' theirs. And that you would be able to reference those making your decision, 'cause they are admitted exhibits. We maintain custody and control of those exhibits, Judge, which [unintelligible] if reporters would like access to those, they can FOIA them and go through the procedures, and under the FOIA law, because they're, they're public at this point, we could release them. That's my understanding of it. So as long as procedures are followed, exhibits, admitted exhibits that are redacted can be, can be, can be acquired."* [emphasis added]

However, I also want you to be aware that on September 7, 2021, I received a partial FOIA denial from the Michigan Department of Attorney General pertaining to a previous FOIA request I submitted on August 14, 2021, for the Jackson County preliminary examination exhibits. Said partial denial asserted: *"As to the partial denial, the Department states the following: 'The FOIA's preamble states that the act provides for, 'public access to certain public records of public bodies.' The records that you have described in item No. 4, quoted above, do not presently constitute public records. In the matters of People of the State of Michigan v Joseph M. Morrison, 2003172-FY, People of the State of Michigan v Pete Musico, 2003173-FY, and People of the State of Michigan v Paul Bellar, 2003171-FY, the 12th District Court issued protective orders for the pendency of the cases, which prohibit the disclosure of the records without the prior authorization of the Court."*

In the federal FOIA case, GTE Sylvania, Inc v Consumer's Union, 445 US 375, 384-86 (1980), the United States Supreme Court determined that, "[t]here is nothing in the legislative history to suggest that in adopting the Freedom of Information Act to curb agency discretion to conceal information, Congress intended to require an agency to commit contempt of court in order to release documents." In the Michigan FOIA case, Kestenbaum v Michigan State Univ, 414 Mich 510, 525 (1982), the Michigan Supreme Court noted that, "[the] similarity between the FOIA and the federal act invites analogy when deciphering the various sections and attendant judicial interpretations." [emphasis added]

If you intend to deny this request for the same reasons asserted in your September 7, 2021, partial denial, I'd respectfully request that you not issue an time extension to respond to this FOIA so that I am able to promptly file an appropriate appeal to obtain this newsworthy, public information.

I'd appreciate it if you would reply to this email to confirm receipt of this FOIA request and I am also requesting that all written responses, communications, public records and writings related to this FOIA request be provided in digital or scanned format and emailed to me at: ericvandussen@gmail.com.

Lastly, I would ask that you coordinate with Assistant AG Sunita Doddamani to expedite this FOIA request and that you waive all fees associated with producing the above requested items because searching for and furnishing copies of these newsworthy public records primarily benefits the general public.

Thank you.

Eric L. VanDussen
Videographer & Freelance Journalist
P.O Box 30
Benzonia, MI 49616
(231) 651-9189
<https://muckrack.com/eric-vandussen>
<http://vimeo.com/user1676477/videos>

EXHIBIT 4

FILED

Antrim 86th District Court
09/08/2022

STATE OF MICHIGAN
IN THE 86th DISTRICT COURT FOR THE COUNTY OF ANTRIM

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff,

v

SHAWN MICHAEL FIX,
BRIAN PAUL HIGGINS,
ERIC MOLITOR,
MICHAEL JOHN NULL, and
WILLIAM GRANT NULL,

Defendants.

Case Nos.: 20-2921-FY-3,
20-2924-FY-3, 20-2918-FY-3
20-2912-FY-3, 20-2915-FY-3

HON. MICHAEL S. STEPKA

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FILED

DISTRICT COURT NO.86

SEP 07 2022

BY _____

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ORDER

VanDussen Productions filed with this court a Motion to Access Preliminary Examination Exhibits admitted by the Court at the preliminary examination of the Defendants in the above cases. The motion was filed pursuant to MCR 8.119 (I) (sealed records) and is DENIED for the reason that the exhibits in these matters have not been filed with the court nor sealed by the Court. Pursuant to MCR 2.109(A) (2), these exhibits are not court records and not subject to the Court's control. Further, under MCR 2.518(B), at the conclusion of the hearing the Court is required to have the parties retrieve their respective exhibits from the Court and the parties did so.

The Attorney General will submit to the Court their exhibits in redacted form for the Court to use in making its bind over decision, which exhibits are not to be filed with the court and will be returned to the Attorney General after the Court makes its bind over decision.

IT IS SO ORDERED.

Date: 9/29/22

Michael S. Stepka
Hon. Michael S. Stepka
District Court Judge

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EXHIBIT 5

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



DANA NESSEL
ATTORNEY GENERAL

P.O. Box 30754
LANSING, MICHIGAN 48909

September 28, 2022

Eric L. VanDussen
P.O. Box 30
Benzonia, MI 49616

Sent by email
ericlvandussen@gmail.com

Dear Mr. VanDussen:

This notice responds to your September 6, 2022 email (copy attached), received by the Department of Attorney General (Department) on September 7, 2022, requesting information, under the Freedom of Information Act (FOIA), MCL 15.231 *et seq*, that you describe in your email.

A statutorily permitted extension of time to respond was taken through September 28, 2022.

Your request is granted in part and denied in part.

As to the partial grant, after a search for records, to the best of the Department's knowledge, information, and belief, the enclosed copied records represent the only nonexempt records in the Department's possession that fall within the scope of your request.

Because the processing of your request took minimal time and involved duplicating a limited number of pages, there is no fee.

As to the partial denial, the request seeks information related to an open and ongoing Department investigation, and the public disclosure of such information must be denied at this time.

The FOIA provides for the nondisclosure of, "[i]nvestigating records compiled for law enforcement purposes [] to the extent that disclosure [] would [i]nterfere with law enforcement proceedings [;] [d]eprive a person of the right to a fair trial or impartial administrative adjudication [;] [c]onstitute an unwarranted invasion of personal privacy." MCL 15.243(1)(b)(i), (ii), and (iii).

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The FOIA does not permit a public body to consider the requesting person's identity and motivation or purpose for making the request or the intended use of the information. *State Employees Ass'n v Dep't of Mgt and Budget*, 428 Mich 104, 121, 126 (1987). Further, the FOIA provides no mechanism to prevent the ongoing dissemination of the information after an initial disclosure under the act. *Kestenbaum v Michigan State Univ*, 414 Mich 510, 528 (1982); *State Employees Ass'n*, 428 Mich at 125-126.

The public disclosure of the material composing the open investigation would adversely impact the investigation by having a chilling effect on the Department's ability to conduct an unhindered and thorough investigation, and would interfere with any prosecutorial determinations yet to be made. Disclosure further would jeopardize a constitutional right to a fair and impartial adjudication, and would result in the unwarranted invasion of the personal privacy of persons involved in the investigation by making public their names, addresses, and other personal information. The nondisclosure of witness information protects the integrity of evidence by preventing witness tampering and witness harassment by third parties.

Thus, to ensure a thorough investigation; to protect evidence; to encourage the cooperation of witnesses; to give due deference to privacy considerations; and to assure fairness, including the right to fair and impartial adjudication, the Department must withhold the information from public disclosure at this time.

As to the partial denial of your request, under section 10 of the FOIA, MCL 15.240, the Department is obligated to inform you that you may do the following:

1) Appeal this decision in writing to the Attorney General, Department of Attorney General, 525 W. Ottawa, P.O. Box 30754, Lansing, MI 48909. The writing must specifically state the word "appeal" and must identify the reason or reasons you believe the partial denial should be reversed. The head of the Department or her designee must respond to your appeal within 10 business days after its receipt. Under unusual circumstances, the time for response to your appeal may be extended by 10 business days.

2) Commence an action in the Court of Claims within 180 days after the date of the final determination to partially deny the request. If you prevail in such an action, the court is to award reasonable attorney fees, where applicable, costs, and disbursements, and possible damages.

Eric L. VanDussen
Page 3
September 28, 2022

The Department's FOIA Procedures and Guidelines can be accessed at
www.michigan.gov/foia-ag.

Sincerely,

Christy Wendling-Richards

Christy Wendling-Richards
FOIA Coordinator
Department of Attorney General
517-335-7573

Encs.

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STATE OF MICHIGAN
COURT OF CLAIMS

Bundle Cover Sheet

Lower Court:	L Ct No.:	COC No.: TEMP-LD0HJK07
Case Title: ERIC L VANDUSSEN v. DANA NESSEL		
Priority: NONE	Filing Option: File Only	

Filer Information

<u>Filer</u> Eric VanDussen PO BOX 30 BENZONIA, MI 49616 (231) 651-9189 ericlvandussen@gmail.com	<u>Attorney</u> Eric VanDussen, PRO PER() PO BOX 30 BENZONIA, MI 49616 (231) 651-9189 ericlvandussen@gmail.com
---	---

Filing Summary

Filing Type	Filing Name	Fee
Summons and Complaint	ERIC L. VANDUSSEN v MI AG DANA NESSEL - FOIA COMPLAINT with Summons - 09-29-22	\$150.00
	eFiling System Fee:	\$25.00
	NON-REFUNDABLE Automated Payment Service Fee:	\$5.25
	Total:	\$180.25

Alternate Payment Reason: None

The document(s) listed above were electronically filed with the Michigan Court of Claims.

TEMP-LD0HJK07-27693482

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