

November 25, 2019

Mr. Brendan Quealy
Traverse City Record Eagle
120 Front Street
Traverse City, MI 49684

Re: FOIA Appeal Record Eagle No. 2 (RE FOIA Rqt. No. 1)

Dear Mr. Quealy:

On October 10, 2019, you filed a Freedom of Information Act request with Traverse City Area Public Schools requesting in part “All written communications (including but not limited to emails, cell phone text messages, written letters and memos) sent or received during the period of August 1, 2019-October 10, 2019, by any Traverse City Area Public Schools Board of Education member or any member of the TCAPS executive team regarding Ann Cardon’s job performance, Cardon’s standing with the Board, Cardon’s employment with the district and complaints filed by or against Cardon.” On October 29, 2019, your response was denied, in part, as evidenced by the redaction of portions of provided communications.

On November 6, 2019, you appealed the partial denial and again requested the disclosure of all redacted information as noted above. The TCAPS Board of Education received your appeal at its November 11, 2019, regularly scheduled meeting.

Specifically you appeal the following:

1. The denial of your request regarding “written communications redacted without reason.” You request that the redacted information be provided under FOIA

2. The denial of your request for a complaint regarding Ann Cardon whether contained in her personnel file or a copy of the letter distributed to Traverse City Area Public Schools Board of Education members on Oct. 7, 2019, regarding a complaint against TCAPS Superintendent Ann Cardon. At the outset it is reaffirmed that no complaint is contained in Ann Cardon’s personnel file.

On November 25, 2019, the Board of Education authorized me to sign the FOIA appeal partially reversing the denial. By way of further explanation, the information that remains redacted includes portions of an email Board Trustee Erica Moon Mohr sent to members of the District’s Board of Education on October 10, 2019, which she subsequently read aloud at a public Board meeting later that day. The reacted portions are not subject to disclosure under Section 13(1)(d) of the FOIA and Section 7(2) of the Open Meetings Act (OMA). (MCL 15.267(2)).

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As a separate matter, the denial of your request for “a copy of the letter distributed to Traverse City Area Public Schools Board of Education members on Oct. 7, 2019, regarding a complaint against TCAPS Superintendent Ann Cardon” is also upheld. Section 13(1)(d) of the FOIA provides that a public body ‘may exempt from disclosure records or information specifically described and exempted from disclosure by statute. The relevant statute in this case, MCL 15.267(2) of the OMA, governing closed-session meetings of a public body, provides:

“...A separate set of minutes shall be taken by the clerk or the designated secretary of the public body at the closed session. These minutes shall be retained by the clerk of the public body, are not available to the public, and shall only be disclosed if required by a civil action...”

Moreover, MCL 15.272 states, in relevant part: “(1) A public official who intentionally violates this act is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00.” In your request, the documents sought to be disclosed are part of the minutes of the closed session. *Titus v Shelby Charter Township*, 226 Mich App. 611(1997).

Finally, any personal email addresses have remained redacted as allowed under Section 13(1)(a) of the FOIA.

Since your appeal has been denied in part, it is my responsibility to inform you that you may seek judicial review under FOIA Section 10, MCL 15.240 by filing a civil action in the appropriate circuit court. A party who prevails in such an action may be awarded its reasonable costs, attorney fees and disbursement. Additionally, the court may award punitive damages in the amount of \$1000.00 if it determines the District arbitrarily or capriciously violated FOIA. A copy of Section 10 is enclosed.

Sincerely,



Sue Kelly
Board President

FREEDOM OF INFORMATION ACT (EXCERPT)
Act 442 of 1976

15.240 Options by requesting person; appeal; actions by public body; receipt of written appeal; judicial review; civil action; venue; de novo proceeding; burden of proof; private view of public record; contempt; assignment of action or appeal for hearing, trial, or argument; attorneys' fees, costs, and disbursements; assessment of award; damages.

Sec. 10. (1) If a public body makes a final determination to deny all or a portion of a request, the requesting person may do 1 of the following at his or her option:

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

(b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, the court of claims, to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request.

(2) Within 10 business days after receiving a written appeal pursuant to subsection (1)(a), the head of a public body shall do 1 of the following:

(a) Reverse the disclosure denial.

(b) Issue a written notice to the requesting person upholding the disclosure denial.

(c) Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.

(d) Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the head of the public body shall respond to the written appeal. The head of a public body shall not issue more than 1 notice of extension for a particular written appeal.

(3) A board or commission that is the head of a public body is not considered to have received a written appeal under subsection (2) until the first regularly scheduled meeting of that board or commission following submission of the written appeal under subsection (1)(a). If the head of the public body fails to respond to a written appeal pursuant to subsection (2), or if the head of the public body upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requesting person may seek judicial review of the nondisclosure by commencing a civil action under subsection (1)(b).

(4) In an action commenced under subsection (1)(b), a court that determines a public record is not exempt from disclosure shall order the public body to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record. Venue for an action against a local public body is proper in the circuit court for the county in which the public record or an office of the public body is located has venue over the action. The court shall determine the matter de novo and the burden is on the public body to sustain its denial. The court, on its own motion, may view the public record in controversy in private before reaching a decision. Failure to comply with an order of the court may be punished as contempt of court.

(5) 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.

(6) 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).

(7) If the court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall order the public body to pay a civil fine of \$1,000.00, which shall be deposited into the general fund of the state treasury. The court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of \$1,000.00 to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

History: 1976, Act 442, Eff. Apr. 13, 1977;—Am. 1978, Act 329, Imd. Eff. July 11, 1978;—Am. 1996, Act 553, Eff. Mar. 31, 1997;—Am. 2014, Act 563, Eff. July 1, 2015.

Popular name: Act 442

Popular name: FOIA