



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF STATE POLICE
LANSING



COL. EDDIE L. WASHINGTON, JR.
DIRECTOR

December 22, 2010

Mr. William H. Horton, Esq.
Giarmarco, Mullins & Horton, P.C.
101 W. Big Beaver, 10th Floor
Troy, MI 48084

RE: CR-17346-10

Dear Mr. Horton:

As you know, the Michigan Department of State Police (Department) completed your request for information under the Freedom of Information Act (FOIA), MCL 15.231 *et seq*, which was processed along with the FOIA request submitted by Mr. Christopher K. King. The Department understands that Christopher King is the son of Barry L. King, an attorney with Giarmarco, Mullins & Horton, P.C. Last week, your office's courier delivered to the Attorney General's office a \$4,904.11 check for the balance of the processing fee and picked up the box of records.

The above-described processing and manner of delivery were arranged by the parties' respective attorneys in *Barry L. King and Christopher K. King v Michigan Department of State Police*, Oakland County Circuit Court Case No. 10-109674-CZ. For this reason, the Department's attorney is copied on this written notice.

The request was granted in part and denied in part.

As to the partial grant, using the hourly wages of the lowest paid Department employees capable of performing the necessary tasks, the processing fee was calculated as follows: 178.1 hours of labor at an average of \$52.03/hour to search for and retrieve the records and to examine and review the records to separate exempt from nonexempt material - \$9,267.47, and photocopying of 3,437 pages at \$.36/page, including redacting tape - \$1,399.68, for a total fee of \$10,667.15.

As to the partial denial, the following exemptions were raised:

Under section 13(1)(a) of the FOIA, MCL 15.243(1)(a), those portions of records containing the names, addresses, personal e-mails, dates of birth, telephone numbers, drivers' license numbers, incomes, or other identifiers of third parties are withheld from public disclosure, where disclosure of the personal information would constitute a clearly unwarranted invasion of individuals' privacy. The Department relies on *Mager v Dep't of State Police*, 460 Mich 134; 595 NW2d 142 (1999), where the Court determined that disclosure that does not foster the FOIA's core purpose—to aid participation in the

democratic process—is not required, particularly, against the balance of personal privacy.

Under section 13(1)(w) of the FOIA, MCL 15.243(1)(w), those portions of records containing Social Security Numbers are withheld from public disclosure, where section 13(1)(w) expressly exempts the information.

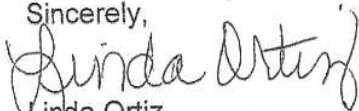
Under section 13(1)(d) of the FOIA, MCL 15.243(1)(d), those portions of records composed of information specifically described and exempted from disclosure by statute likewise are withheld from public disclosure under the FOIA. In this particular instance, information obtained from or through, or contained in, DNA profiles; the Law Enforcement Information Network (LEIN); the Sex Motivated Crimes Report (DD-79); investigative subpoena; and polygraphs is withheld, respectively, under MCL 28.176; MCL 28.214(3); MCL 28.247; MCL 767A.8; and MCL 338.1728. In addition, documents presently known to, and protected from disclosure under the seal of, the 48th District Court, the Hon. Kimberly F. Small, cannot be disclosed publicly without further court order directing otherwise.

Also, under section 13(1)(d), specifically, MCL 28.214(3) and MCL 767A.8, respectively, LEIN printouts and an interview of a potential witness secured under an investigative subpoena are withheld in full.

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 Department head, Colonel Eddie L. Washington, Jr., P.O. Box 30364 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 his designee, must respond to your appeal within 10 days of its receipt. Under unusual circumstances, the time for response to your appeal may be extended by 10 business days.
- 2) File an action in circuit court 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, costs, and disbursements. Further, if the court finds the partial denial to be arbitrary and capricious, you may receive punitive damages in the amount of \$500.00.

Sincerely,



Linda Ortiz
Assistant FOIA Coordinator

Enc.

c: Daphne M. Johnson, Assistant Attorney General