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ROSATI | SCHULTZ
JOPPICH | AMTSBUECHLER

May 19, 2021

Board of Trustees
Charter Township of Waterford
5200 Civic Center Drive
Waterford, MI 48329

RE: FOIA Appeal by Matthew Lemieux

Dear Township Board Members:

Under the Freedom of Information Act (FOIA), a person whose FOIA request is denied has a right to appeal that denial to the Township Board. The Board is allowed ten (10) business days after it is considered to have received an appeal to act on it by: (1) reversing the disclosure denial, (2) issuing a written notice upholding the disclosure denial, or (3) reversing the disclosure denial in part and issuing a written notice upholding the disclosure denial in part.

Under FOIA, Mr. Lemieux's Appeal received by the Township Clerk's office on 4/29/2021, was considered received by the Board on the date of your first regular meeting after that (5/10/2021.) That makes your 5/24/2021 meeting the last day for a timely decision unless you wish to extend your decision for another ten business days which is permitted under MCL 15.240 (1)(d). Your FOIA Coordinator has sent a letter to Mr. Lemieux, that provides notice of the hearing date and the process. His attendance is not required.

The following documents related to this FOIA appeal are also attachments to this letter:

4/12/2021 FOIA request received by Police Dept.

4/13/2021 Police Department FOIA Coordinator response letter

4/23/2021 Appeal letter, received 4/29/21

The question presented for the Township Board's decision on this appeal is whether the exemption from disclosure of the 911 audio recordings, police audio/video, private videos and search warrants should be upheld, reversed, or upheld in part and reversed in part. That decision should be based on the Board's consideration of the provisions of FOIA upon which the Police Department exempted the records from disclosure and whether a proper exemption still applies. The Police department stated in their denial that the reports requested were still under investigation, meaning they were records compiled for law enforcement purposes. Presently, Mr. Lemieux is scheduled for an examination in 51st District Court on June 16, 2021. The exemption for investigating records is found in MCL 15.243(1)(b), which read as follows:

- (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 a law enforcement proceeding.

The FOIA does not specify a standard of review for the Board is to apply in reaching its decision and does not require you to make findings or explain the reasons for the decision you make. In that context, my recommendation is that you simply base your decision on the language of the FOIA exemptions and whether you agree with the Police Department's determination that those exemptions were properly applied in exempting the records in question from disclosure.

For your use in deciding this Appeal, the final attachments to this letter are three (3) alternate Resolutions, one of which should be adopted to make the decision called for under FOIA. While you are certainly free to modify whichever Resolution reflects your decision, I would recommend that your motion be by reference to the applicable Resolution (Upholding, Reversing, or Upholding in Part and Reversing in Part), which will facilitate promptly providing written notice of your decision to Ms. Wilson.

I expect to be present at your meeting to provide any assistance you may request.

Very truly yours,

ROSATI SCHULTZ JOPPICH
& AMTSBUECHLER PC

Joellen Shortley

Joellen Shortley

JS/jes/elc
Attachments

**CHARTER TOWNSHIP OF WATERFORD
OAKLAND COUNTY, MICHIGAN**

**RESOLUTION UPHOLDING IN PART AND REVERSING IN PART
FOIA DISCLOSURE DENIAL**

At its regular meeting on May 24, 2021, the Township Board of Trustees having reviewed and considered the April 23, 2021 Appeal by Jeffrey Hanna of the disclosure denial by the Township Police Department FOIA Coordinator on April 13, 2021, that exempted 911 audio recordings, audio/video, surveillance videos and search warrants from disclosure under the FOIA exemptions in MCL 15.243(1)(b).

IT IS HEREBY RESOLVED that the Board of Trustees upholds the disclosure denial with respect to the request for _____.

IT IS FURTHER RESOLVED that the Board of Trustees partially reverses the disclosure denial with respect to the request to _____ which shall be redacted to exclude all medical information and description of injuries.

IT IS FURTHER RESOLVED that this Resolution shall serve as the written notice of this decision which shall be considered as issued immediately upon adoption, a copy of which shall be mailed by the Township Clerk to Mr. Lemieux.

AYES:
NAYES:
ABSENT:

CERTIFICATION

I hereby certify that this Resolution was adopted by the Charter Township of Waterford Board of Trustees at a regular meeting on May 24, 2021.

Charter Township of Waterford

Date

Kimberly Markee, Township Clerk

**CHARTER TOWNSHIP OF WATERFORD
OAKLAND COUNTY, MICHIGAN**

RESOLUTION UPHOLDING FOIA DISCLOSURE DENIAL

At its regular meeting on May 24, 2021, the Township Board of Trustees having reviewed and considered the April 23, 2021 Appeal by Matthew Lemieux of the disclosure denial by the Township Police Department FOIA Coordinator on April 13, 2021, that exempted 911 audio recordings, audio/video, surveillance videos and search warrants from disclosure under the FOIA exemption in MCL 15.243(1)(b).

IT IS HEREBY RESOLVED that the Board of Trustees upholds the disclosure denial under MCL 15.243(1)(b)(i) because disclosure would constitute interference with a law enforcement proceeding.

IT IS FURTHER RESOLVED that this Resolution shall serve as the written notice of this decision which shall be considered as issued immediately upon adoption, a copy of which shall be mailed by the Township Clerk to Mr. Lemieux.

AYES:

NAYES:

ABSENT:

CERTIFICATION

I hereby certify that this Resolution was adopted by the Charter Township of Waterford Board of Trustees at a regular meeting on May 24, 2021.

Charter Township of Waterford

Date

Kimberly Markee, Township Clerk

**CHARTER TOWNSHIP OF WATERFORD
OAKLAND COUNTY, MICHIGAN**

RESOLUTION REVERSING FOIA DISCLOSURE DENIAL

At its regular meeting on May 24, 2021, the Township Board of Trustees having reviewed and considered the April 23, 2021 Appeal by Matthew Lemieux of the disclosure denial by the Township Police Department FOIA Coordinator on April 13, 2021, that exempted 911 audio recordings, audio/video, surveillance videos and search warrants from disclosure under the FOIA exemptions in MCL 15.243(1) (b).

IT IS HEREBY RESOLVED that the Board of Trustees reverses the disclosure denial and that exempted 911 audio recordings, audio/video, surveillance videos and search warrants shall be provided to Mr. Lemieux upon his payment of the applicable fees under the Township's FOIA Procedures and Guidelines.

IT IS FURTHER RESOLVED that this Resolution shall serve as the written notice of this decision which shall be considered as issued immediately upon adoption, a copy of which shall be mailed by the Township Clerk to Mr. Lemieux.

AYES:

NAYES:

ABSENT:

CERTIFICATION

I hereby certify that this Resolution was adopted by the Charter Township of Waterford Board of Trustees at a regular meeting on May 24, 2021.

Charter Township of Waterford

Date

Kimberly Markee, Township Clerk

RECEIVED

Waterford Twp Board of Trustees
5200 Civic Center Drive
Waterford, Mich 48329

APR 29 2021

Date: 04-23-21**WATERFORD TOWNSHIP
SUPERVISOR'S OFFICE**

RE: APPEAL FOIA REQUEST FOR NON-EXEMPT PUBLIC RECORDS AND LEGAL NOTICE OF INTENT

Dear Waterford Twp Board of Trustees, et al,

PLEASE BE ADVISED. That this is a APPEAL Request under the Michigan Freedom of Information Act, pursuant to the Michigan FOIA Statute, MCL 15.231 et seq to the Honorable Waterford Twp Board of Trustee Members for the immediate release/disclosure of existing non-exempt Public Records that the Waterford PD falsely "arbitrarily and capriciously" asserts(that has been released to the media) "This report is still open and under investigation" signed/dated APRIL 13,2021 by WTPD Typist Clerk 1, CHERI E.A. EVANS that had a legal duty to disclose(see attached) to the Public/Person that is entitled to it by Right, based upon the following:

(1) That the Waterford Police Dept FOIA Coordinator and/or any other Waterford Police Dept Person/Employee/Respondent to deny or release said requested Michigan Public Records, and is defined as a "Public Body", per MCL 15.231

(2) That I/Requester is a "Person" subject to request/obtain/demand a copy of a requested Michigan Public Record from said Public Body, per MCL 15.231.

(3) That I/Requester request a copy of any/all unedited 911 audio recordings from unknown caller(s) to/between the Waterford Twp Police Dept Dispatcher for the date of MARCH 22,2021 at 10-10:30 PM reporting a possible hit-and-run of pedestrian by unknown vehicle in Waterford Mich in area of Dixie Hwy and Telegraph Rd.

(4) That I/Requester request a copy of any/all unedited audio/video dashcam and/or bodycam from the Unknown Waterford Twp Police Officer(s) and Waterford Twp PD Patrol Car(s) that responded on MARCH 22,2021 at approximately 10-10:30 PM to investigate the reporting a possible hit-and-run of pedestrian by unknown vehicle in Waterford Mich in area of Dixie Hwy and Telegraph Rd.

(5) That I/Requester request a copy of any/all unedited private security surveillance videos from the businesses that voluntarily provide security that was collected/obtained by Unknown Waterford

Two Police Officer(s) that responded on MARCH 22,2021 at approximately 10-10:30 PM to investigate the reporting a possible hit-and-run of pedestrian by unknown vehicle in Waterford Mich in area of Dixie Hwy and Telegraph Rd.

(6) That I/Requester request a copy of any/all search warrants obtained by Unknown Waterford Twp Police Officer(s) from Unknown Judge/Magistrate to seize/open this Requester's cell phone and vehicle on MARCH 22-23,2021 to investigate the reporting a possible hit-and-run of pedestrian by unknown vehicle in Waterford Mich in area of Dixie Hwy and Telegraph Rd.

(7) This I/Requester hereby give legal notice to Waterford Township and Waterford Twp PD that I will file a immediate Civil Action FOIA Complaint to seek court-ordered disclosure, and a Federal Class Action Lawsuit for unlawfully seizing my phone in violation of US Supreme Court decision that numerous Waterford Twp Employees/Police will be questioned about a Jury Trial. This is not a game.

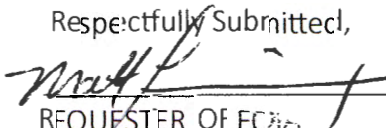
(8) I/Requester will provide blank CDs, DVDs, Flashdrives etc that may be necessary to promptly provide a copy and transfer/convert to blank CDs, DVDs, and Flashdrives for I/Requester to play, via, DVD/CD Player for TV Screen and DVD/CD Player.

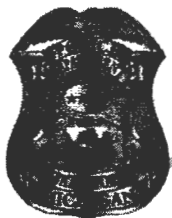
(9) That I/Requester claims/states that said demanded Public Records would NOT be exempt, and would unambiguously be released by court-ordered disclosure based upon being arbitrarily and capriciously denied by the Waterford Police Dept. FOIA Coordinator(or Information Officer).

WHEREFORE, I/Requester requests that this Waterford Twp Board of Trustees via Waterford Twp PD FOIA Coordinator honors/grants my Michigan Freedom of Information Act Request(FOIA Request) by promptly collecting and providing me with said Requested Non-Exempt Public Records/Information promptly within FIVE(5) Business Days, or I will deem my Request under the Michigan FOIA arbitrarily and/or capriciously denied and will moveforth by filing a meritorious Complaint For Civil Action for Court-Ordered disclosure, and monetary award pursuant to MCL 15.240 et seq. Since I/Requester has exhausted administrative remedies as all circumstances should dictate and Justice would so demand.

Date: 04-23-21

XC: File

Respectfully Submitted,

REQUESTER OF FOIA
MATTHEW LEMIEUX
C/O BLAKE GROAT
4895 HATCHERY RD.
WATERFORD, MICH 48327



WATERFORD TOWNSHIP

Waterford Police Department
5150 Civic Center Drive
Waterford, MI 48329
www.waterfordmi.gov/police
248-674-0351

April 13, 2021

Matthew Lemieux
c/o Blake Groat
4895 Hatchery Rd
Waterford, MI 48327

Dear Mr. Lemieux

This letter is in response to your Freedom of Information Act Request received on the 12 day of April, 2021

RE: 21-8071

This report is still open and under investigation. On that basis your request has been denied.

For any of your requests that have been denied, or any aspects of this response you consider to be a denial, you have the right to submit a written appeal to the Township Board of Trustees that specifically states the word "appeal" and identifies the reason or reasons for reversal of denial. Appeals should be delivered to the Township Clerk's office at 5200 Civic Center Drive Waterford, Michigan 48329. In addition, you may also seek judicial review of a denial pursuant to MCL15.240, and may have the right to receive attorney's fees and damages as provided in MCL 15.240, if after the judicial review, the circuit court determines that the Township has not complied with MCL 15.235 and orders disclosures of all or a portion of a public record.

Waterford Township's FOIA procedures and guidelines are available free of charge from the Township Clerk's office on the second floor of Township Hall during regular business hours at 5200 Civic Center Drive Waterford, Michigan 48329 or online at:

<http://www.waterfordmilgov/149/Freedom-of-Information-Act-Requests>

Sincerely,

A handwritten signature in black ink, appearing to read "Cheri E.A. Evans".

Cheri E.A. Evans
Typist Clerk-I

cc: Sgt. Will Dolehanty/WTPD Coordinator

"to protect and to serve"

STATE OF MICHIGAN

FOIA Coordinator
Waterford Police Dept
5150 Civic Center Drive
Waterford, Mich 48329

RECEIVED
APR 12 2021
Waterford Township Police Department

Date: 04-07-21

RE: MICHIGAN FREEDOM OF INFORMATION ACT(FOIA) REQUEST FOR NON-EXEMPT PUBLIC RECORDS

Dear Waterford Police Dept FOIA Coordinator, et al,

PLEASE BE ADVISED that this is a formal written Michigan Freedom of Information Action Request(demand) under the Michigan FOIA Act/Statute, MCL 15.231 et seq for the immediate release/disclosure of existing non-exempt Public Records that the Waterford Police Dept retains/possesses and has legal duty to disclose, based upon the following:

(1) That the Waterford Police Dept FOIA Coordinator and/or any other Waterford Police Dept Person/Employee/Respondent to deny or release said requested Michigan Public Records, and is defined as a "Public Body", per MCL 15.231

(2) That I/Requester is a "Person" subject to request/obtain/demand a copy of a requested Michigan Public Record from said Public Body, per MCL 15.231.

(3) That I/Requester request a copy of any/all unedited 911 audio recordings from unknown caller(s) to/between the Waterford Police Dept Dispatcher for the date of MARCH 22,2021 at 10-10:30 PM reporting a possible hit-and-run of pedestrian by unknown vehicle in Waterford Mich in area of Dixie Hwy and Telegraph Rd.

(4) That I/Requester request a copy of any/all unedited audio/video dashcam and/or bodycam from the Unknown Waterford Police Officer(s) and Waterford PD Patrol Car(s) that responded on MARCH 22,2021 at approximately 10-10:30 PM to investigate the reporting a possible hit-and-run of pedestrian by unknown vehicle in Waterford Mich in area of Dixie Hwy and Telegraph Rd.

(5) That I/Requester request a copy of any/all unedited private security surveillance videos from the businesses that voluntarily provide security that was collected/obtained by Unknown Waterford Police Officer(s) that responded on MARCH 22,2021 at approximately 10-10:30 PM to investigate the

reporting a possible hit-and-run of pedestrian by unknown vehicle in Waterford Mich in area of Dixie Hwy and Telegraph Rd.

(6) That I/Requester request a copy of any/all search warrants obtained by Unknown Waterford Police Officer(s) from Unknown Judge/Magistrate to seize/open this Requester's cell phone and vehicle on MARCH 22-23,2021 to investigate the reporting a possible hit-and-run of pedestrian by unknown vehicle in Waterford Mich in area of Dixie Hwy and Telegraph Rd.

(7) I/Requestee will provide blank CDs, DVDs, Flashdrives etc that may be necessary to promptly provide a copy and transfer/convert to blank CDs, DVDs, and Flashdrives for I/Requestee to play, via, DVD/CD Player for TV Screen and CD Player. Further, This I/Requestee requests that he receive a detail/itemized list of any/all Public Records provided to I/Requestee).

(8) That I/Requester claims/states that said demanded Public Records would NOT be exempt, and would unambiguously be released by court-ordered disclosure based upon being arbitrarily and capriciously denied by the Waterford Police Dept. FOIA Coordinator(or Information Officer).

WHEREFORE, I/Requestee requests that this Waterford Police Dept FOIA Coordinator(or Information Officer) honors/grants my Michigan Freedom of Information Act Request(FOIA Request) by promptly collecting and providing me with said Requested Information and Public Records/Information promptly within FIVE(5) Business Days, or I will deem my Request under the Michigan FOIA arbitrarily and/or capriciously denied and will moveforth by filing a meritorious Complaint For Civil Action for Court-Ordered disclosure, and monetary award pursuant to MCL 15.240 et seq. as all circumstances should dictate and Justice would so demand.

Date: 04-07-21

XC: File

Respectfully Submitted,



REQUESTER OF FOIA
MATTHEW LEMIEUX
C/O BLAKE GROAT
4895 HATCHERY RD.
WATERFORD, MICH 48327

STATE OF MICHIGAN

FOIA Coordinator
Waterford Police Dept
5150 Civic Center Drive
Waterford, Mich 48329

Date: 04-07-21

RE: MICHIGAN FREEDOM OF INFORMATION ACT(FOIA) REQUEST FOR NON-EXEMPT PUBLIC RECORDS

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Date: 04-07-21

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MATTHEW LEMIEUX
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