

STATE OF MICHIGAN
IN THE 30TH CIRCUIT COURT FOR THE COUNTY OF INGHAM

MAY 03 2007

BEN HANSEN

ORDER GRANTING
DEFENDANT'S MOTION TO
DISMISS

Plaintiff,

DOCKET NO. 06-1033-CZ

v

HON. NETTLES-NICKERSON

STATE OF MICHIGAN, DEPARTMENT OF
COMMUNITY HEALTH

Defendants.

PRESENT: HONORABLE BEVERLEY NETTLES-NICKERSON
Circuit Court Judge

This Court, having reviewed Defendant's Motion to Dismiss per MCR 2.116(C)(7), MCR 2.116(C)(8), and MCR. 2.116(C)(10); brief in support thereof; Plaintiff's Response and Brief in Opposition thereto; all supporting correspondence documentation; having heard oral argument March 21, 2007, and being fully apprised of the issues, states the following:

FINDINGS OF FACT

Essentially, this case involves three requests submitted by Ben Hansen ("Plaintiff") to the Michigan Department of Community Health ("Defendant") pursuant to the Freedom of Information Act ("FOIA"), MCL 15.231 *et seq.*

Plaintiff's **first** FOIA Request to Defendant, submitted November 14, 2005, was granted on December 7, 2005. Plaintiff's **second** FOIA request, submitted December 14, 2005, was granted in part and denied in part by Defendant on January 11, 2006, accompanied by Defendant's explanation of the statutory reason for the partial denial. Plaintiff's **third** FOIA request, submitted February 2, 2006, was granted in part and denied in part on February 23, 2006, and Defendant again included the basis for the denial.

Defendant supports their Motion to Dismiss by arguing that Plaintiff's claims are barred by the statute of limitations, Section 10(1)(b), MCL 15.240(1)(b), and that Plaintiff has failed to state any claims upon which relief can be granted. Additionally, Defendant maintains that Plaintiff has failed to state genuine issues of material fact.

Plaintiff asserts that his claim is not time-barred because the 3 FOIA requests are related, and as such, Plaintiff's complaint filed on August 11, 2006, is within 180 days from Defendant's "final" determination of Plaintiff's third "related" FOIA request. Thus, Plaintiff contends that his complaint was filed timely and is not barred by the statute of limitations.

In addition, Plaintiff maintains that the FOIA requests and complaint are in accordance with MCR 2.111(A)(1), and it is Defendant's burden to prove that the partial denials of Plaintiff's FOIA requests for certain records are statutorily exempt. Finally, Plaintiff states that Defendant's replies to Plaintiff's FOIA requests have been incomplete, and that Plaintiff was entitled to receive the information that was not provided by Defendant.

CONCLUSIONS OF LAW

MCR 2.116(C)(7) tests whether a claim is barred because of immunity granted by law and requires consideration of all documentary evidence filed or submitted by the parties. In determining whether a party is entitled to judgment as a matter of law under MCR 2.116(C)(7), a

court “must accept as true a plaintiff’s well-pleaded factual allegations, affidavits, or other documentary evidence and construe them in plaintiff’s favor.” *Wilson v Alpena County Rd Comm’n*, 263 Mich App 141, 145 (2004).

A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint and permits dismissal of a claim if the opposing party has failed to state a claim on which relief can be granted. Only the pleadings are examined; documentary evidence is not considered. If the claim is clearly unenforceable as a matter of law and no factual development could lead to recovery, a motion under MCR 2.116(C)(8) should be granted *Rorke v Savoy Energy, LP*, 260 Mich App 251, 253 (2003).

A motion under MCR 2.116(C)(10) requires this Court to test the factual sufficiency of the complaint. The trial court must consider the affidavits, pleadings, depositions, admissions and other evidence submitted by the parties in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Nastal v Henderson & Associates Investigations, Inc*, 471 Mich 712, 721 (2005).

OPINION

This Court finds that Plaintiff has failed to state a claim upon which relief can be granted, and there are no genuine issues of material fact per MCR 2.116(C)(10).

In this Court’s opinion, Defendant’s written notices partially denying Plaintiff’s FOIA requests, dated January 11 and February 23, 2006, are in compliance with the statutory notice requirements pursuant to section 5(4)(a), MCL 15.235(4)(a). This Court holds that Defendant timely provided Plaintiff a written explanation for the basis of the denials, including why the

requested public record is exempt from disclosure and whether or not the public record exists.
(See Affidavit of Mary Greco, Defendant's Coordinator of FOIA Requests).

Therefore, based on the reasons stated in this Opinion, Defendant's Motion to Dismiss is granted. This Court will not address any further issues.

Further; per MCR 2.114(E) and (F) and MCL 600.2591, this Court may not award Defendant punitive damages for Plaintiff's filing a complaint clearly barred by the statute of limitations; however, Defendant is entitled to an award of costs, expenses, and attorney fees for having to respond.

ORDER

NOW, THEREFORE Defendant's Motion to Dismiss pursuant to MCR 2.116(C)(7) , MCR 2.116(C)(8) and MCR 2.116(C)(10) is **GRANTED**.

IT IS FURTHER ORDERED that Defendant is awarded costs, expenses, and attorney fees pursuant to MCR 2.114(E) and (F) and MCL 600.2591 in the sum of \$3,500.00.

IT IS SO ORDERED.

In compliance with MCR 2.602(A)(3), this Court finds that this decision resolves the last pending claim and closes the case.

Dated: 4/30/ 2007


Hon. Beverley Nettles-Nickerson
Circuit Court Judge

PROOF OF SERVICE

I hereby certify that I served a copy of the above Order upon the attorneys/parties of record by placing said Order in an envelope addressed to each and placing same for mailing with the United States Mail at Lansing, Michigan, on May 1, 2007.

Trinidad Morales
Trinidad Morales
Judicial Assistant

cc: Alan Kellman
Thomas Quasarano