

STATE OF MICHIGAN
COURT OF CLAIMS

ERIN MARIE MILLER,

Plaintiffs,

v

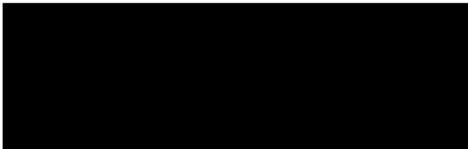
MICHIGAN DEPARTMENT OF HEALTH
AND HUMAN SERVICES, a state public body,

Defendant.

No. 23-000027-MZ

HON. ELIZABETH L.
GLEICHER

Erin Marie Miller
In Propria Persona



Kyla L. Barranco (P81082)
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**DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT AND
AFFIRMATIVE DEFENSES**

Defendant, the Michigan Department of Health and Human Services, through counsel, states as follows for its Answer and Affirmative Defenses to Plaintiff's complaint:

INTRODUCTION

1. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning Plaintiff, and leaves Plaintiff to her proofs. Defendant further states that the remaining allegations represent legal conclusions

which, by law, require no answer. But to the extent that an answer may be required, Defendant denies the remainder of the allegation as untrue.

2. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegation, and leaves Plaintiff to her proofs.

3. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and leaves Plaintiff to her proofs.

4. Defendant states that the allegations, for purposes of this lawsuit, represent legal conclusions which, by law, require no answer. To the extent an answer may be required, Defendant denies the allegations as untrue.

5. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and leaves Plaintiff to her proofs.

6. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and leaves Plaintiff to her proofs.

7. Defendant states that the allegations, for purposes of this lawsuit, represent legal conclusions which, by law, require no answer. To the extent an answer may be required, Defendant denies the allegations as untrue. Defendant further states that nothing was amiss about any work with McKinsey during the COVID-19 pandemic in Michigan.

8. Defendant states that the allegations, for purposes of this lawsuit, represent legal conclusions which, by law, require no answer. To the extent an answer may be required, Defendant denies the allegations as untrue.

PARTIES

9. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and leaves Plaintiff to her proofs.

10. Admitted.

JURISDICTION AND VENUE

11. Defendant states that the allegation represents a legal conclusion which, by law, requires no answer. To the extent that an answer may be required, Defendant admits that MCL 15.240(1)(b) provides for venue in the Court of Claims.

12. Defendant states that the allegation represents a legal conclusion which, by law, requires no answer. To the extent that an answer may be required, Defendant admits that Plaintiff has accurately quoted MCL 15.240(5).

13. Defendant states that the allegation represents a legal conclusion which, by law, requires no answer. To the extent that an answer may be required, Defendant admits that the Court of Claims has jurisdiction over claims against state public bodies under the FOIA.

FACTUAL BACKGROUND

14. Defendant admits that Plaintiff submitted her FOIA request via the FOIA Records Center in the GovQA web portal to Defendant, who received it the following business day. Defendant further admits that Exhibit A to the complaint is a copy of Plaintiff's request and states that the request speaks for itself. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations, and leaves Plaintiff to her proofs.

15. Admitted.

16. Admitted.

17. Defendant admits that on September 1, 2022, it partially granted and partially denied Plaintiff's FOIA request, and further admits that Exhibit B to the complaint is a copy of Defendant's final determination and states that the final determination speaks for itself.

18. Admitted.

**COUNT I: [ALLEGED] VIOLATION OF THE FREEDOM OF
INFORMATION ACT**

**(Defendant [Allegedly] Incorrectly Applied the "Frank Communications"
Exemption by Failing to Satisfy the Supreme Court of Michigan's Public
Interest Balancing Test)**

19. Defendant incorporates by reference its responses to the previous paragraphs.

20. Defendant admits that it partially denied Plaintiff's FOIA request under the frank communications exemption, MCL 15.243(1)(m). Defendant, however, denies that the frank communications exemption was the only exemption asserted as it also exempted records under the attorney-client privilege exemption, MCL 15.243(1)(g), and the security procedures exemption, MCL 15.243(1)(u).

21. Defendant states that the allegation represents a legal conclusion which, by law, requires no answer. But to the extent that an answer may be required, Defendant denies the allegation as untrue.

22. Defendant states that the statute speaks for itself and, therefore, no answer is required. To the extent an answer may be required, Defendant admits that Plaintiff has accurately quoted MCL 15.231(2).

23. Defendant states that the allegation represents a legal conclusion which, by law, requires no answer. To the extent an answer may be required, Defendant denies the allegation as untrue.

24. Defendant states that the statute speaks for itself and, therefore, no answer is required. To the extent an answer may be required, Defendant admits that Plaintiff has accurately quoted MCL 15.243(1)(m).

25. Defendant states that the allegation represents a legal conclusion which, by law, requires no answer. To the extent an answer may be required, Defendant denies the allegation as untrue.

26. Defendant states that the allegation represents a legal conclusion which, by law, requires no answer. To the extent an answer may be required, Defendant denies the allegation as untrue.

27. Defendant states that the allegation represents a legal conclusion which, by law, requires no answer. To the extent an answer may be required, Defendant denies the allegation as untrue.

28. Defendant states that the allegation represents a legal conclusion which, by law, requires no answer. To the extent an answer may be required, Defendant denies the allegation as untrue.

29. Defendant states that the allegation represents a legal conclusion which, by law, requires no answer. To the extent an answer may be required, Defendant denies the allegation as untrue.

30. Defendant admits that Plaintiff accurately quoted a part of Defendant's final determination to partially deny her request. Defendant states that the remaining allegations represent legal conclusions which, by law, require no answer. To the extent an answer may be required, Defendant denies the allegations as untrue.

31. Defendant states that the allegation represents a legal conclusion which, by law, requires no answer. To the extent an answer may be required, Defendant denies the allegation as untrue.

32. Defendant states that the allegation represents a legal conclusion which, by law, requires no answer. To the extent an answer may be required, Defendant denies the allegation as untrue.

33. Defendant states that whether the allegation that the government's response to the COVID-19 pandemic in Michigan has consistently been a subject of utmost importance to the public is, for purposes of this lawsuit, a legal conclusion which, by law, requires no answer. To the extent an answer may be required, Defendant denies the allegation as untrue. Defendant states that the remaining allegations speak for themselves and that, therefore, no answer is necessary. But should an answer be required, Defendant denies the allegations to the extent they

are not consistent with the Department of Justice Press Release and Michigan Auditor General Letter provided by Plaintiff.

34. Defendant states that the allegation represents a legal conclusion which, by law, requires no answer. To the extent an answer may be required, Defendant denies the allegation as untrue.

**COUNT II: [ALLEGED] VIOLATION OF THE FREEDOM OF
INFORMATION ACT**

**(Defendant [Allegedly] Applied the “Frank Communications” Exemption to
the Communications of an Entity That is Not a Public Body)**

35. Defendant incorporates by reference its responses to the previous paragraphs.

36. Defendant admits that it partially denied Plaintiff’s FOIA request under the frank communications exemption, MCL 15.243(1)(m). Defendant, however, denies that the frank communications exemption was the only exemption asserted as it also exempted records under the attorney-client privilege exemption, MCL 15.243(1)(g), and the security procedures exemption, MCL 15.243(1)(u).

37. Defendant states that the allegation represents a legal conclusion which, by law, requires no answer. To the extent an answer may be required, Defendant denies the allegation as untrue.

38. Defendant states that the statute speaks for itself and, therefore, no answer is required. To the extent an answer may be required, Defendant admits that Plaintiff has accurately quoted MCL 15.243(1)(m).

39. Defendant states that the statute speaks for itself and, therefore, no answer is required. To the extent an answer may be required, Defendant admits that Plaintiff has accurately quoted MCL 15.243(1)(m).

40. Defendant states that the allegation represents a legal conclusion which, by law, requires no answer. To the extent an answer may be required, Defendant denies the allegation as untrue.

41. Defendant admits that McKinsey and Company, Inc. is a business, Exhibit D to the complaint lists its address as 1200 19th Street NW, Suite 1100, Washington, D.C., 20036, and Plaintiff obtained this information via a separate FOIA request. Defendant states that the remaining allegation represents a legal conclusion which, by law, requires no answer. To the extent an answer may be required, Defendant denies the allegation as untrue.

42. Defendant states that the allegations represent legal conclusions which, by law, require no answer. To the extent an answer may be required, Defendant denies the allegations as untrue.

43. Defendant admits that Plaintiff submitted a FOIA request to Defendant on January 31, 2023, and that Exhibit E to the complaint is a copy of a responsive document provided to Plaintiff and the document speaks for itself. Defendant denies the remaining allegations as untrue.

44. Defendant admits that Plaintiff submitted a separate FOIA request on September 8, 2022, and that the request sought, in part, all contracts, subcontracts, and agreements between McKinsey and MDHHS in 2020. However, Defendant

denies that is all Plaintiff sought for the reason that it is untrue. Defendant admits that, in response to the request, it provided Plaintiff with one contract, which Plaintiff attached an excerpt of as Exhibit D. Defendant denies the allegation that the contract became effective June 1, 2020, and expired July 31, 2020, for the reason that it is untrue. Defendant states that the remaining allegation represents a legal conclusion which, by law, requires no answer. To the extent an answer may be required, Defendant denies the allegation as untrue.

45. Defendant states that the allegation represents a legal conclusion which, by law, requires no answer. To the extent an answer may be required, Defendant denies the allegation as untrue.

**COUNT III: [ALLEGED] VIOLATION OF THE FREEDOM OF
INFORMATION ACT**

**(Defendant [Allegedly] Incorrectly Applied the Attorney-Client Privilege
Exemption)**

46. Defendant incorporates by reference its responses to the previous paragraphs.

47. Defendant admits that it partially denied Plaintiff's FOIA request under the attorney-client privilege exemption, MCL 15.243(1)(g). Defendant, however, denies that this exemption was the only exemption asserted as it also exempted records under the frank communications exemption, MCL 15.243(1)(m), and the security procedures exemption, MCL 15.243(1)(u).

48. Defendant states that the allegation represents a legal conclusion which, by law, requires no answer. To the extent an answer may be required, Defendant denies the allegation as untrue.

49. Defendant states that the statute speaks for itself and, therefore, no answer is required. To the extent an answer may be required, Defendant admits that Plaintiff has accurately quoted MCL 15.243(1)(g).

50. Defendant states that the allegations represent legal conclusions which, by law, require no answer. To the extent an answer may be required, Defendant denies the allegations as untrue.

51. Defendant states that the allegation represents a legal conclusion which, by law, requires no answer. To the extent an answer may be required, Defendant denies the allegation as untrue.

52. Defendant states that the allegation represents a legal conclusion which, by law, requires no answer. To the extent an answer may be required, Defendant denies the allegation as untrue.

53. Defendant states that the allegation represents a legal conclusion which, by law, requires no answer. To the extent an answer may be required, Defendant denies the allegation as untrue.

**COUNT IV: [ALLEGED] VIOLATION OF THE FREEDOM OF
INFORMATION ACT**

**(Defendant [Allegedly] Deleted Information from Records Without
Identifying FOIA Exemption)**

54. Defendant incorporates by reference its responses to the previous paragraphs.

55. Defendant states that the allegation represents a legal conclusion which, by law, requires no answer. To the extent an answer may be required, Defendant denies the allegation as untrue.

56. Defendant states that the allegations represent legal conclusions which, by law, require no answer. To the extent an answer may be required, Defendant denies the allegation as untrue.

57. Defendant states that the allegation represents a legal conclusion which, by law, requires no answer. To the extent an answer may be required, Defendant denies the allegation as untrue.

58. Defendant states that the allegation represents a legal conclusion which, by law, requires no answer. To the extent an answer may be required, Defendant denies the allegation as untrue.

[ALLEGED] STATUTORY DAMAGES

59. Defendant incorporates by reference its responses to the previous paragraphs.

60. Defendant states that the allegations represent legal conclusions which, by law, require no answer. To the extent an answer may be required,

Defendant denies the allegations as untrue. By way of further answer, Defendant states that its partial denial of Plaintiff's FOIA request was consistent with the FOIA and that Plaintiff is not entitled to any relief.

61. Defendant states that the allegation represents a legal conclusion which, by law, requires no answer. To the extent an answer may be required, Defendant denies the allegation as untrue. By way of further answer, Defendant states that its partial denial of Plaintiff's FOIA request was consistent with the FOIA and that Plaintiff is not entitled to any relief.

REQUESTED RELIEF

Defendant states that the allegations composing Plaintiff's prayer for relief represent legal conclusions, which, by law, require no answer. To the extent that an answer may be required, Defendant denies that Plaintiff is entitled to any relief. In support of this denial, Defendant states that it complied with the FOIA in responding to Plaintiff's FOIA request. Defendant further incorporates by reference the above numbered paragraphs of its Answer as well as its Affirmative Defenses.

AFFIRMATIVE DEFENSES

1. Plaintiff has failed to state a claim on which relief can be granted.
2. Plaintiff has failed to present any genuine issues as to material facts, which should result in a judgment in favor of Defendant as a matter of law.
3. Some or all of Plaintiff's claims may be barred by the statute of limitations.

4. The Department complied with the FOIA in responding to each of Plaintiff's FOIA requests, and its processing of Plaintiff's FOIA request was not arbitrary or capricious.

5. Certain parts of the records responsive to Plaintiff's FOIA request at issue in this lawsuit are exempt from disclosure under MCL 15.243(1)(g) for the reason that they are "subject to the attorney client privilege."

6. Certain parts of the records responsive to Plaintiff's FOIA request at issue in this lawsuit are exempt from disclosure under MCL 15.243(1)(m) for the reason that they are subject to the frank communications exemption.

7. Certain portions of the records responsive to Plaintiff's FOIA request at issue in this lawsuit are exempt from disclosure under MCL 15.243(1)(u) because they are "[r]ecords of a public body's security measures."

8. Plaintiff is not entitled to any relief under the FOIA, including attorney fees, costs, fines, or damages.

9. Defendant reserves the right to add additional affirmative defenses as they become known through discovery.

RELIEF REQUESTED

WHEREFORE, Defendant Michigan Department of Health and Human Services asks that this Court:

- A. Deny Plaintiff the relief she seeks in the complaint;
- B. Determine that Plaintiff is not entitled to attorneys' fees or costs or sanctions;

- C. Dismiss Plaintiff's complaint with prejudice;
- D. Award costs to Defendant, including reasonable attorney fees; and
- E. Grant Defendant such other relief as provided by law.

Respectfully submitted,

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