Approved, SCAO

Original - Court
1st copy - Defendant

2nd copy - Plaintiff
3rd copy - Return

STATE OF MICHIGAN Court of Claims JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS	CASE NO. 23 - 000027 - MZ Elizabeth L. Gleicher

Court address
Hall of Justice, 925 W. Ottawa St., P.O. Box 30022, Lansing, MI 48909-7522

Court telephone no.
(517) 373-0807

Plaintiff's name(s), address(es), and telephone no(s).
Erin Marie Miller
[redacted]

Plaintiff's attorney, bar no., address, and telephone no.
Erin Marie Miller (Represented pro se)
[redacted]

v

Defendant's name(s), address(es), and telephone no(s).
Michigan Department of Health and Human Services
333 S. Grand Ave
P.O. Box 30195
Lansing, MI 48909

(517) 241-3740

Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (form MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case

☐ There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

☐ There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. I have separately filed a completed confidential case inventory (form MC 21) listing those cases.

☐ It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

☐ This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.

☐ MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).

☑ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.

☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in ☐ this court, ☐ _____ Court, where it was given case number _____ and assigned to Judge _____.

The action ☐ remains ☐ is no longer pending.

Summons section completed by court clerk.

SUMMONS

Court of Claims
State of Michigan

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date	Expiration date*	Court clerk
February 27, 2023	May 26, 2023	Jerome W. Zimmer Jr.

*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

SUMMONS
Case No. 23 - 000027-MZ

PROOF OF SERVICE

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE

☐ **OFFICER CERTIFICATE**
I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)

OR

☐ **AFFIDAVIT OF PROCESS SERVER**
Being first duly sworn, I state that I am a legally competent adult, and I am not a party or an officer of a corporate party (MCR 2.103[A]), and that: (notarization required)

☐ I served personally a copy of the summons and complaint,
☐ I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint,

together with _____
List all documents served with the summons and complaint

_____ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

☐ I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

I declare under the penalties of perjury that this proof of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee	
$		$	
Incorrect address fee	Miles traveled	Fee	TOTAL FEE
$		$	$

_____
Signature

_____
Name (type or print)

_____
Title

Subscribed and sworn to before me on _____ (Date), _____ County, Michigan.

My commission expires: _____ (Date) Signature: _____ (Deputy court clerk/Notary public)

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with _____ (Attachments)

_____ on _____ (Day, date, time)

_____ on behalf of _____.
Signature

STATE OF MICHIGAN
COURT OF CLAIMS

ERIN MARIE MILLER,

Plaintiff,

Case No.: 23- 000027 **-MZ**

v.

Hon. Elizabeth L. Gleicher

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

Complaint

Defendant.

Erin Marie Miller
In Propria Persona
[redacted]

COMPLAINT

There is no other pending or resolved civil action arising out of the same transaction or occurrence alleged in the complaint.

NOW COMES Plaintiff, Erin Marie Miller, who is representing herself *pro se*, and for her Complaint alleges and states as follows:

INTRODUCTION

1. This is an action under MCL 15.231 et seq, otherwise known as the Michigan Freedom of Information Act ("FOIA"). The Plaintiff, Erin Marie Miller, is an award-winning freelance journalist and resident of Michigan seeking this Court's *in camera* inspection of records she

requested under the FOIA from the Defendant, the Michigan Department of Health and Human Services ("MDHHS" or "the Department"), as well as the prompt release of any incorrectly withheld information related to her FOIA request in unredacted form, as well as fees, penalties, and other relief as indicated herein, in accordance with state law and statute.

2. The Plaintiff, Erin Marie Miller, filed the FOIA request at issue in this case in order to obtain information about the role a global consulting firm called McKinsey and Company ("McKinsey") may have played in the state of Michigan's response to the COVID-19 pandemic.

3. This case deals with a matter of enormous public interest – particularly the need for full transparency about the State of Michigan's response to the COVID-19 pandemic in 2020. Without such transparency, fully understanding the government's activities at that time and their impact on the people of Michigan both during and in the wake of the pandemic will be impossible.

4. The State of Michigan's response to COVID-19 has been the subject of public debate and has been covered in the media – in particular, the counting of COVID-19 deaths among residents of long-term care facilities[1] and the impact of the state's pandemic policies on local businesses.[2] Understanding the parties that were involved in shaping government policies,

---

[1] See, e.g. Erb, Martínez-Beltrán, *Report: More than 8,000 COVID Deaths in Michigan Were in Long-Term Care.* Bridge Michigan (Jan. 14, 2022), available at: https://www.bridgemi.com/michigan-health-watch/report-more-8000-covid-deaths-michigan-were-long-term-care. Last accessed Feb. 22, 2023; McClallen, *Report: Nessel Refutes Allegation State Undercounted Nursing Home COVID Deaths*. The Center Square (March 15, 2022), available at: https://www.thecentersquare.com/michigan/nessel-report-refutes-allegation-state-undercounted-nursing-home-covid-deaths/article_114a2688-a472-11ec-ae09-3bb14a4ad9dd.html. Last accessed Feb, 22, 2023.

[2] Walker, *Pandemic Lockdown Closed 32% of Michigan Businesses, Highest of All States in U.S.* The Center Square (Dec. 16, 2020), available at:

and the information that was used to determine those policies, during the state's historic COVID-19 pandemic is of the highest importance to the public interest.

5. McKinsey and Company is a global consulting firm whose work has been linked in the past to events that had a significant impact on the public, including the recent opioid crisis. McKinsey's role in that event was highlighted by the company's $573 million settlement in 2021 with a coalition of attorneys general from 47 states, including Michigan, as well as five U.S. territories and the District of Columbia, which resolved investigations into McKinsey's work for opioid companies during the opioid epidemic.[3]

6. During the COVID-19 pandemic, some government agencies across the U.S. and world chose to work with McKinsey as part of their response to COVID-19, including in Michigan. In some cases, certain contracts related to that work were publicly undisclosed – a matter that prompted media attention and calls for inquiries in France[4] and Canada.[5]

7. Although it is certainly possible that nothing was amiss about the Defendant's work with McKinsey during the COVID-19 pandemic in Michigan, independent verification of the

---

https://www.thecentersquare.com/michigan/pandemic-lockdown-closed-32-of-michigan-businesses-highest-of-all-states-in-u-s/article_eb464896-3f22-11eb-962a-47d76a5bef1e.html. Last accessed Feb. 22, 2023.

[3] Michigan Attorney General. *AG Nessel, Bipartisan Coalition Reach $573M Settlement with McKinsey & Co. for 'Turbocharging' Opioid Epidemic with Purdue Pharma.* Michigan.gov/AG (Feb. 4, 2021), available at: https://www.michigan.gov/ag/news/press-releases/2021/02/04/ag-nessel-bipartisan-coalition-reach-573m-settlement-with-mckinsey-and-co. Last accessed Feb. 22, 2023.

[4] Alderman, *France Hired McKinsey to Help in the Pandemic. Then Came the Questions.* The New York Times (Feb. 22, 2021), available at: https://www.nytimes.com/2021/02/22/business/france-mckinsey-consultants-covid-vaccine.html. Last accessed Feb. 22, 2023.

[5] Serebrin, *CAQ Leader Defends Paying Millions to U.S. Consulting Firm During Pandemic.* Canadian Broadcasting Corp. (Sept. 30, 2022), available at: https://www.cbc.ca/news/canada/montreal/caq-legault-mckinsey-pandemic-consulting-1.6602374. Last accessed Feb. 22, 2023.

nature of McKinsey's role in shaping the State of Michigan's pandemic response is critical both for accurate journalism and for the interest of the public.

8. Transparency about the government's public policy decisions in response to the COVID-19 pandemic in Michigan, including the parties behind those decisions and the reasoning used to impose restrictions, track COVID-19 cases and deaths among vulnerable populations, and spend public monies in connection to the pandemic, is critical for Michigan's citizens and leaders to learn from the past, prepare for future pandemics, and avoid missteps during future public health crises. Transparency is also necessary for ensuring accountability in the operations of our government – both today and in the future.

PARTIES

9. Plaintiff, Erin Marie Miller, is a natural person and resident and citizen of the State of Michigan, County of Wayne.

10. Defendant, the Michigan Department of Health and Human Resources, is a subdivision of the state of Michigan's Executive Branch organized under Executive Reorganization Order 2015-01. Upon information and belief, Defendant is headquartered in Lansing, Ingham County, Michigan.

JURISDICTION AND VENUE

11. Venue is proper pursuant to MCL 15.240(1)(b).

12. Pursuant to MCL 15.240(5), this action should be "assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way."

13. Pursuant to MCL 600.6419(1)(a), the Court of Claims has jurisdiction over this claim.

FACTUAL BACKGROUND

14. On August 23, 2022, the Plaintiff, Erin Marie Miller, submitted the following Freedom of Information Act request to MDHHS online via MuckRock, an online platform that assists citizens, researchers, and journalists in filing FOIA requests and makes the resulting records available to the public in a searchable database on its website. Plaintiff's FOIA request, which was submitted through the FOIA Records Center in the GovQA web portal (the online platform utilized by the Defendant to fulfill FOIA requests), asked for the following information from the Defendant under the Michigan Freedom of Information Act (see **Exhibit A, Plaintiff's FOIA Request**):

> To Whom It May Concern:
>
> Pursuant to the Michigan Freedom of Information Act, I hereby request the following records:
>
> 1. All reports about COVID-19 prepared by the global consulting firm McKinsey & Company that were provided to the Michigan Department of Health and Human Services (MDHHS) between the dates of 3/1/2020 and 5/1/2020.
>
> 2. All emails originating from an email address ending in " @mckinsey.com " sent to any of the following individuals between the dates of 3/1/2020 and 5/1/2020:
> - Gov. Gretchen Whitmer: WhitmerG1@michigan.gov (or any other known email account belonging to Ms. Whitmer);
> - Mark Totten: TottenM1@michigan.gov (or any other known email account belonging to Mr. Totten);
> - Elizabeth Hertel: HertelE@michigan.gov (or any other known email account belonging to Ms. Hertel);
> - Robert Gordon: GordonR3@michigan.gov (or any other known email account belonging to Mr. Gordon);
> - Dr. Jenny Atas: jatasmd@icloud.com (or any other known email account belonging to Dr. Atas);
> - Dana Nessel: dananessel@gmail.com, miag@michigan.gov (or any other known email account belonging to Ms. Nessel);
> - Tricia Foster: FosterT13@michigan.gov (or any other known email account belonging to Ms. Foster);
> - Joanna Huls: HulsJ1@michigan.gov (or any other known email account belonging to Ms. Huls).
>
> Please make sure to include any attachments to those emails.

If it is not possible for your agency to conduct a search for emails originating from a specific domain, such as @mckinsey.com, please let me know and I can provide you with a specific list of McKinsey email addresses to search for instead.

In a recently completed FOIA request returned on 06/28/2022 by MDHHS (public records reference # H014602-021922), MDHHS provided me with a set of emails related to the construction of the TCF Regional Care Center, a field hospital that was constructed in the early months of the COVID-19 pandemic in Detroit, purportedly to support an anticipated overflow of COVID-19 and other patients from area hospitals. The field hospital was closed roughly three weeks after opening due to a lack of necessity. That request and its resulting records can be viewed here: https://www.muckrock.com/foi/michigan-117/tcf-regional-care-center-emails-20-124958

Among the emails provided to me under that request were a number of messages sent to/between MDHHS and staff/contractors from McKinsey & Company. Those emails contained information about, and references to, COVID-19, including discussions about models and projections related to demand for ICU and medical surge beds.

McKinsey & Co. is a global management consulting firm whose work regarding various government responses to COVID-19, including vaccination efforts, have come under scrutiny recently in the U.S. (https://www.propublica.org/article/how-mckinsey-is-making-100-million-and-counting-advising-on-the-governments-bumbling-coronavirus-response) and in France (https://www.nytimes.com/2021/02/22/business/france-mckinsey-consultants-covid-vaccine.html). The firm's government contracts were also the subject of a recent public records lawsuit in Tennessee (https://finance.yahoo.com/news/tennessee-sued-not-releasing-covid-221610057.html). McKinsey & Co. also recently came under scrutiny in the national press over potential conflicts of interest related to the firm's relationships with pharmaceutical companies and regulators (https://www.nytimes.com/2022/04/13/business/mckinsey-purdue-fda-records.html).

Based on that background, fully understanding how MDHHS and State officials interacted with McKinsey & Co. when developing Michigan's COVID-19 response, including the information and advice that was provided to MDHHS and State officials by McKinsey & Co. regarding COVID-19, is of the highest importance to the public. The requested information should be made available to the public with as few redactions as possible, and at the lowest fee possible, as soon as possible.

When providing the records related to this request, please make sure to specifically certify that no other responsive documents related to this request exist.

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I am willing to pay up to $25 for the requested information. If the fee for this request exceeds that amount, please notify me for permission prior to initiating work on the request.

I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Please send all documents related to this request to this email address only.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 5 business days, as the statute requires.

Sincerely,

Erin Marie Miller

15. On August 24, 2022, the Defendant, the Michigan Department of Health and Human Services, acknowledged and confirmed receipt of Plaintiff's FOIA request via the FOIA Records Center in the GovQA web portal and assigned her request the following tracking number: H016452-082322.

16. On August 31, 2022, the Defendant sent a message to Plaintiff via the FOIA Records Center in the GovQA web portal informing her that the Department was extending its response time permitted under MCL 15.235 §5(2)(d) until September 15, 2022 (see **Exhibit B: Defendant's Response to Plaintiff's FOIA Request**).

17. On September 1, 2022, the Defendant responded to Plaintiff's FOIA request by partially granting and partially denying her request as follows (see **Exhibit B**):

Dear Mrs. Miller,

This notice is issued in response to your request, legally received by the Michigan Department of Health and Human Services (Department) on August 24, 2022, requesting information under the Freedom of Information Act (FOIA), MCL 15.231 et seq.

Your request is partially granted and partially denied. Please login to the FOIA Records Center to access the records.

As to the granted portion, the Department has identified and included the responsive information falling within the scope of your request. To the best of the Department's knowledge, information, and belief, these are all the records in the possession of the Department falling within the scope of your request. There is no fee for the request as these records were paid for by a previous requestor.

As to the denied portion, information of a personal nature, information subject to attorney-client privilege are exempt per MCL 15.243 §13(1)(g). Records of a public body's security measures, including security plans, security codes and combinations, passwords, passes, keys, and security procedures are exempt per MCL 15.243 §13(1)(u). Records of an advisory nature to the extent that they are preliminary to a final determination of policy or action are exempt per MCL 15.243 §13(1)(m); in this particular instance the public interest in encouraging frank communications among employees of the Department or other public bodies clearly outweighs the public interest in disclosure, as staff must make informed recommendations unfettered by third party interference in their deliberative process. In developing these recommendations, staff must be able to freely consider, and deliberate as to, the issues prior to final Department policy or action. The public would be ill-served if staff were discouraged or hindered in expressing their opinions and thoughts during the preliminary stages of the deliberative process. The public is entitled to a final determination based on the ultimate decision-maker's reliance on full, frank, and well-considered discussions. In sum, while the factual parts of the enclosed records have been disclosed, the advisory writings have been redacted to foster candid and frank staff communications, which is an integral part of the Department's deliberations directly related to its decision-making process.
As to the denial, the Department is obligated to inform you that under MCL 15.240 §10 the following remedies are available:

1. Appeal this decision in writing to the Legal Affairs Administration for the Department of Health and Human Services, PO Box 30195, 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 Department must respond to your appeal within ten 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 the appropriate 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, disbursements, and possible damages.

The Department's FOIA policies and procedures are available at Policies and Procedures.

Sincerely,
Bureau of Legal Affairs

18. In its response to Plaintiff's request, the Defendant also provided Plaintiff with a downloadable digital ZIP folder via the FOIA Records Center in the GovQA web portal,

which contained 21 batches of partially granted requested records. Each batch was separated into its own folder, which each contained sub-folders with varying amounts of the partially granted records responsive to Plaintiff's FOIA request. Redactions had been applied by the Defendant to many of the records, citing exemptions MCL 15.243 §13(1)(g) (the attorney-client privilege exemption), MCL 15.243 §13(1)(u) (the security procedures exemption), and MCL §15.243 13(1)(m) (the frank communications exemption).

COUNT I: VIOLATION OF THE FREEDOM OF INFORMATION ACT

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

19. Plaintiff repeats, re-alleges, and reincorporates the allegations in the foregoing paragraphs as though fully set forth herein.
20. The Defendant, the Michigan Department of Health and Human Services, denied Plaintiff's FOIA request in part on September 1, 2022, claiming that some of the requested information was exempted from disclosure under MCL 15.243(1)(m), the frank communications exemption (see **Exhibit B**).
21. The Defendant's application of the frank communications exemption is contrary to law and to legal precedents already established by this Court, the State of Michigan Court of Appeals, and the Supreme Court of Michigan, as explained herein.
22. MCL 15.231(2) states:

> It is the public policy of this state that all persons, except those persons incarcerated in state or local correctional facilities, are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with this act. The people shall be informed so that they may fully participate in the democratic process.

23. The FOIA is a pro-disclosure statute which "must be broadly interpreted to allow public access to the records held by public bodies" and the FOIA's "statutory exemptions must be narrowly construed to serve the policy of open access to public records." *Mich Open Carry, Inc v Dep't of State Police,* 330 Mich App at 625 (2019).

24. MCL 15.243(1)(m), or the "frank communications exemption," states:

> Communications and notes within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action. This exemption does not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure. This exemption does not constitute an exemption under state law for purposes of section 8(h) of the open meetings act, 1976 PA 267, MCL 15.268. As used in this subdivision, "determination of policy or action" includes a determination relating to collective bargaining, unless the public record is otherwise required to be made available under 1947 PA 336, MCL 423.201 to 423.217.

25. The burden of proving that an exemption applies to information requested under the FOIA rests with the public body applying the exemption. MCL 15.235(5)(a)-(c); *MLive Media Group v City of Grand Rapids,* 321 Mich App 263, 271 (2017); *Mich Open Carry, Inc v Dep't of State Police,* 330 Mich App 614, 625, 950 NW2d 484 (2019).

26. A party asserting the frank communications exemption must first establish that information requested under the FOIA is a "frank communication" by meeting the three-part statutory definition of a "frank communication" established by the Supreme Court of Michigan, which requires that "it (1) is a communication or note of an advisory nature made within a public body or between public bodies, (2) covers other than purely factual material, and (3) is preliminary to a final agency determination of policy or action." If any of the three aforementioned elements is unmet, the document is not a frank communication. *Herald Co, Inc v. Eastern Mich Univ Bd of Regents,* 475 Mich at 475 (2006).

27. After establishing the requested information meets all three of the aforementioned elements of a "frank communication," the party asserting the frank communications exemption must next satisfy a weighted balancing test to determine whether the public interest in withholding the requested information clearly outweighs the public interest in disclosure in that particular instance. *Herald Co, Inc v. Eastern Mich Univ Bd of Regents,* 475 Mich at 473-474 (2006).

28. "The public record is not exempt under the frank communications exemption *unless* the public body demonstrates that the public interest in encouraging frank communications between officials and employees of public bodies *clearly outweighs* the public interest in disclosure." *Herald Co, Inc v. Eastern Mich Univ Bd of Regents,* 475 Mich at 473-474 (2006).

29. The party applying the exemption may not "speak in platitudes and generalities" but must demonstrate how "the unique circumstances of the 'particular instance' affect the public interest in disclosure versus the public interest in encouraging frank communication." *Herald Co, Inc v. Eastern Mich Univ Bd of Regents,* 475 Mich at 474 (2006).

30. Although the Defendant's partial denial of Plaintiff's FOIA request used the words "in this particular instance," the Defendant's response went on to speak in platitudes and generalities about the wide-ranging importance of encouraging frank communications within public bodies (see **Exhibit B**). The Defendant's response failed to demonstrate how "the unique circumstances of the 'particular instance' affect the public interest in disclosure versus the public interest in encouraging frank communication." *Herald Co, Inc v. Eastern Mich Univ Bd of Regents,* 475 Mich at 474 (2006).

31. Further, the Defendant's response failed to demonstrate how disclosure of the requested information would have a chilling effect on internal communications. *Herald Co, Inc v. Eastern Mich Univ Bd of Regents,* 475 Mich at 474 (2006).

32. Therefore, in this particular instance, the Defendant's response to Plaintiff's FOIA request failed to satisfy the criteria for the proper application of the frank communications exemption established by the Supreme Court of Michigan in *Herald Co, Inc v. Eastern Mich Univ Bd of Regents,* 475 Mich at 474 (2006) and by this Court and the Michigan Court of Appeals more recently in *Michigan Rising Action and Tori Sachs v. Secretary of State and Department of State,* No. 359355 (Mich. Ct. App., Jul. 21, 2022).

33. The government response to the COVID-19 pandemic in Michigan has consistently been a subject of utmost importance to the public. For example, the U.S. Department of Justice specifically requested information about Michigan's nursing home COVID-19 data in 2020.[6] More recently, a review of the state's COVID-19 data conducted by the Michigan Office of Auditor General, which was released in January 2022, connected 8,061 deaths to long-term care facilities in the state between March 2020 and July 2021, compared to the state's official count of 5,675 for the same period.[7]

34. Because documents provided by the Defendant in response to Plaintiff's FOIA request included an email from a McKinsey consultant seeking advice from MDHHS about tracking

---

[6] U.S. Dept. of Justice. *Department of Justice Requesting Data from Governors of States that Issued COVID-19 Orders that May Have Resulted in Deaths of Elderly Nursing Home Residents.* U.S. Dept. of Justice (Aug. 26, 2020), available at: https://www.justice.gov/opa/pr/department-justice-requesting-data-governors-states-issued-covid-19-orders-may-have-resulted. Last accessed Feb. 22, 2023.

[7] Michigan Auditor General, *Letter to Rep. Steven Johnson,* Mich. Auditor General (Jan. 12, 2022), available at: https://audgen.michigan.gov/wp-content/uploads/2022/01/Rep.-Johnson-LTC-COVID-19-Auditor-General-Letter-01-12-2022.pdf. Last accessed Feb. 22, 2023.

COVID-19 positive cases among furloughed employees and transferred patients in Michigan nursing homes (see **Exhibit C, Email from McKinsey Consultant Seeking Guidance from MDHHS on Counting COVID-19 Cases Among Furloughed Employees and Transferred Patients in Nursing Homes**), the public interest in this matter is high – not only for the people of Michigan, but also for the United States.

COUNT II: VIOLATION OF THE FREEDOM OF INFORMATION ACT

(Defendant Incorrectly Applied the "Frank Communications" Exemption to the Communications of an Entity That is Not a Public Body)

35. Plaintiff repeats, re-alleges, and reincorporates the allegations in the foregoing paragraphs as though fully set forth herein.

36. The Defendant, the Michigan Department of Health and Human Services, denied Plaintiff's FOIA request in part on September 1, 2022, claiming that some of the requested information was exempted from disclosure under MCL 15.243(1)(m), the frank communications exemption (see **Exhibit B**).

37. The Defendant's application of the frank communications exemption is contrary to law and to legal precedents already established by this Court and the State of Michigan Court of Appeals, as explained herein.

38. MCL 15.243(1)(m), or the "frank communications exemption," states:

> A public body may exempt from disclosure as a public record under this act any of the following: Communications and notes within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to a final agency determination of policy or action. This exemption does not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure. This exemption does not constitute an exemption under state law for purposes of section 8(h) of the open meetings act, 1976 PA

267, MCL 15.268. As used in this subdivision, "determination of policy or action" includes a determination relating to collective bargaining, unless the public record is otherwise required to be made available under 1947 PA 336, MCL 423.201 to 423.217.

39. The frank communications exemption applies to "communications and notes within a public body or between public bodies." MCL 15.243(1)(m).

40. The frank communications exemption does not apply to communications between public bodies and non-public bodies or non-government entities, regardless of whether those communications are of an advisory nature. *Michigan Rising Action and Tori Sachs v. Secretary of State and Department of State,* No. 359355 (Mich. Ct. App., Jul. 21, 2022).

41. McKinsey and Company, Inc. is a business whose address is listed as 1200 19th Street NW, Suite 1100, Washington, D.C., 20036, according to a 2020 contract with the Defendant (see **Exhibit D, MDHHS Response to Plaintiff's FOIA Request Seeking 2020 Contracts Between McKinsey and MDHHS**), which was obtained by Plaintiff via a separate FOIA request (tracking number H016578-090722). It follows that McKinsey and Company is a business and is therefore not a Michigan public body or government entity.

42. Therefore, the frank communications exemption does not apply to communications between the Defendant, which is a Michigan public body, and the employees and/or consultants of McKinsey and Company, which is not a public body. *Michigan Rising Action and Tori Sachs v. Secretary of State and Department of State,* No. 359355 (Mich. Ct. App., Jul. 21, 2022).

43. Further, an email obtained by the Plaintiff via a separate FOIA request (tracking number H018251-013023) submitted to the Defendant on January 31, 2023 (see **Exhibit E, MDHHS Email Discussing Absence of Contract with McKinsey**[8]) shows employees of the

[8] Attached is a true and correct copy of the document. For the Court's convenience, the relevant portions of the document have been highlighted.

Defendant, MDHHS, discussing concerns about publicly disclosing MDHHS's relationship with McKinsey in the absence of a signed contract, calling into question whether McKinsey was a contracted consultant of the Defendant during at least some of the time covered by Plaintiff's FOIA request.

44. A separate FOIA request (tracking number H016578-090722) was submitted to the Defendant by the Plaintiff on September 8, 2022, seeking all contracts, subcontracts, and agreements between McKinsey and MDHHS in 2020. In its response to that request, the Defendant provided Plaintiff with one contract which became effective on June 1, 2020, and listed an initial expiration date of July 31, 2020 (see **Exhibit D**). The absence of an active contract between the Defendant and McKinsey during some of the time MDHHS worked with McKinsey during the pandemic would further support the incorrect application of the frank communications exemption and add to the weight of the public interest in this case.

45. The Defendant improperly applied the frank communications exemption to communications originating from McKinsey, a non-public body, in *at least* one instance (see **Exhibit F: Email Showing Improper Application of Frank Communications Exemption with Non-Public Body**), but possibly more, in its response to Plaintiff's request.

COUNT III: VIOLATION OF THE FREEDOM OF INFORMATION ACT

(Defendant Incorrectly Applied the Attorney-Client Privilege Exemption)

46. Plaintiff repeats, re-alleges, and reincorporates the allegations in the foregoing paragraphs as though fully set forth herein.

47. The Defendant, the Michigan Department of Health and Human Services, denied Plaintiff's FOIA request in part on September 1, 2022, claiming that some of the requested information

was exempted from disclosure under MCL 15.243 13(1)(g), the attorney-client privilege exemption (see **Exhibit B**).

48. The Defendant's application of the attorney-client privilege exemption is contrary to law and to legal precedents already established by this Court and the State of Michigan Court of Appeals, as explained herein.

49. MCL 15.243 13(1)(g), or the "attorney-client privilege exemption," states:

> A public body may exempt from disclosure as a public record under this act any of the following: Information or records subject to the attorney-client privilege.

50. The scope of the attorney-client privilege exemption is narrow under the FOIA in Michigan. In *Herald Co, Inc v Ann Arbor Pub Sch*, 224 Mich App 266, 279; 568 NW2d 411 (1997), the State of Michigan Court of Appeals examined the attorney-client privilege exemption, stating:

> The attorney-client privilege attaches to communications made by a client to an attorney acting as a legal adviser and made for the purpose of obtaining legal advice. *Taylor v Blue Cross Blue Shield of Michigan,* 205 Mich. App. 644, 654; 517 N.W.2d 864 (1994). The purpose of the privilege is to enable a client to confide in an attorney, secure in the knowledge that the communication will not be disclosed. *Fruehauf Trailer Corp v Hagelthorn,* 208 Mich. App. 447, 449; 528 N.W.2d 778 (1995). The scope of the privilege is narrow: it attaches only to confidential communications by the client to its advisor that are made for the purpose of obtaining legal advice. *Id.,* p 450.

51. The attorney-client privilege does not apply to communications where a public body was not acting as the client of an attorney *and* communicating with its properly retained legal counsel for the express purpose of obtaining legal advice. *Herald Co, Inc v Ann Arbor Pub Sch*, 224 Mich App 266, 279; 568 NW2d 411 (1997).

52. The attorney-client privilege also does not apply to communications between a public body and the retained counsel of a non-state entity. *Michigan Rising Action and Tori Sachs v. Secretary of State and Department of State,* No. 359355 (Mich. Ct. App., Jul. 21, 2022).

53. The Defendant incorrectly applied the attorney-client privilege exemption to communications where the Defendant was not expressly obtaining legal advice in *at least* one instance (see **Exhibit G: Email Showing Defendant's Improper Application of Attorney-Client Privilege**), but possibly more, in its response to Plaintiff's FOIA request.

COUNT IV: VIOLATION OF THE FREEDOM OF INFORMATION ACT

(Defendant Deleted Information from Records Without Identifying FOIA Exemptions)

54. Plaintiff repeats, re-alleges, and reincorporates the allegations in the foregoing paragraphs as though fully set forth herein.

55. The Defendant's deletion of some information from the responsive documents MDHHS provided to Plaintiff in response to her FOIA request is contrary to law.

56. Public bodies are required to identify the exemption(s) that apply to information that was deleted or separated from a public record in response to a FOIA request under MCL 15.235(5)(a)-(c), which states:

> A written notice denying a request for a public record in whole or in part is a public body's final determination to deny the request or portion of that request. The written notice must contain: (a) An explanation of the basis under this act or other statute for the determination that the public record, or portion of that public record, is exempt from disclosure, if that is the reason for denying all or a portion of the request. (b) A certificate that the public record does not exist under the name given by the requester or by another name reasonably known to the public body, if that is the reason for denying the request or a portion of the request. (c) A description of a public record or information on a public record that is separated or deleted under section 14, if a separation or deletion is made.

57. The burden of proving that an exemption applies to information requested under the FOIA rests with the public body applying the exemption. MCL 15.235(5)(a)-(c); *MLive Media Group v City of Grand Rapids,* 321 Mich App 263, 271 (2017); *Mich Open Carry, Inc v Dep't of State Police,* 330 Mich App 614, 625, 950 NW2d 484 (2019).

58. The Defendant failed to identify the specific exemptions applied to the responsive documents MDHHS provided to Plaintiff in *at least* one instance, but perhaps more, in its response to Plaintiff's FOIA request (see **Exhibit H: Email Showing the Defendant's Failure to Identify FOIA Exemptions**). MCL 15.235(5)(a)-(c).

STATUTORY DAMAGES

59. Plaintiff repeats, re-alleges, and reincorporates the allegations in the foregoing paragraphs as though fully set forth herein.
60. In light of the above, the Defendant's improper withholding of the requested information is arbitrary and capricious in its refusal and delay in disclosing a public record under MCL 15.240(7), thereby subjecting the Defendant to a civil fine of $1,000.00 payable to the general treasury and a separate $1,000.00 payable to the Plaintiff.
61. The Defendant's inappropriate application of the aforementioned exemptions constitutes a willful and intentional failure to comply under MCL 15.240b, thereby subjecting it to a civil fine of $2,500.00 to $7,500.00 payable to the state treasury.

REQUESTED RELIEF

WHEREFORE Plaintiff, Erin Marie Miller, in light of the aforementioned, respectfully requests that this Court:

a) Conduct an *in camera* inspection of all information in possession of the Defendant, the Michigan Department of Health and Human Services, pertaining to the information requested in Plaintiff's Freedom of Information Act request and the Defendant's response to Plaintiff's request, including but not limited to the redacted and exempted information

that was partially granted to Plaintiff by the Defendant in response to her FOIA request, as well as any other information that was withheld and/or denied by the Defendant in response to Plaintiff's FOIA request, for the purpose of determining whether any information was incorrectly withheld from Plaintiff by Defendant;

i. Because the Defendant elected of its own free will to provide Plaintiff with information that was dated beyond the dates specified in the language of Plaintiff's FOIA request, Plaintiff respectfully requests that this Court include in the requested *in camera* inspection all information relevant to Plaintiff's FOIA request that extends to the latest date of the records provided by the Defendant in its response to Plaintiff's FOIA request. This will prevent the otherwise inevitable outcome of Plaintiff having to file an additional FOIA request for the same records that were already provided to her by the Defendant and wasting this Court's time by filing an additional lawsuit against the Defendant regarding the same records already in question in this case (however, Plaintiff is prepared to do so if necessary). To the best of Plaintiff's knowledge, the latest record provided by the Defendant in response to her FOIA request is dated October 31, 2020, but there may be records of a later date that Plaintiff is not aware of.

b) If any information related to Plaintiff's FOIA request is found to have been incorrectly withheld by the Defendant during the requested *in camera* inspection by this Court, Plaintiff respectfully requests that this Court order the Defendant to promptly provide that information to the Plaintiff in unredacted form via the Michigan Department of Health and Human Services FOIA Records Center in the GovQA web portal relevant to this FOIA request; and

c) Apply the full penalties available under MCL 15.234(9), MCL 15.240(7), and MCL 15.240b; and

d) Award such other and further relief as this Court determines to be just and proper to remedy the Defendant's improper withholding of the information requested by the Plaintiff under the Freedom of Information Act and causing the need to bring this suit.

Dated: February 24, 2023

Erin Marie Miller

Subscribed and sworn to by Erin Marie Miller before me on the 24 day of February, 2023.

Signature: Kiana Laurence

KIANA JONAE LAURENCE
Notary Public, State of Michigan
County of Wayne
My Commission Expires Jun 24, 2029
Acting in the County of Wayne

Notary Public, State of Michigan

County of Wayne

My Commission Expires: 6/24/29

Acting in the County of Wayne

EXHIBIT LIST AND

LOCATIONS OF ORIGINAL RECORDS

Exhibit A: Plaintiff's FOIA Request

MDHHS FOIA Request Tracking Number: H016452-082322

Exhibit B: Defendant's Response to Plaintiff's FOIA Request

MDHHS FOIA Request Tracking Number: H016452-082322

Exhibit C: Email from McKinsey Consultant Seeking Guidance from MDHHS on Counting COVID-19 Cases Among Furloughed Employees and Transferred Patients in Nursing Homes

MDHHS FOIA Request Tracking Number: H016452-082322

H016452\Mackinac McKinsey 11967\Batch 1\Batch_1_-_Ready_for_Release\1\Batch 1 - Ready for Release

Exhibit D: MDHHS Response to FOIA Request Seeking 2020 Contracts Between McKinsey and MDHHS

MDHHS FOIA Request Tracking Number: H016578-090722

Exhibit E: MDHHS Email Discussing Absence of Contract with McKinsey

MDHHS FOIA Request Tracking Number: H018251-013023

Exhibit F: Email Showing Improper Application of Frank Communications Exemption with Non-Public Body

MDHHS FOIA Request Tracking Number: H016452-082322

H016452\Mackinac McKinsey 11967\Batch 5\Batch_5_-_Ready_for_Release\Batch 5 - Ready for Review

Exhibit G: Email Showing Defendant's Improper Application of Attorney-Client Privilege

MDHHS FOIA Request Tracking Number: H016452-082322

H016452\Mackinac McKinsey 11967\Batch 14\Batch_14_-_Gov's_Office\Batch 14 - Gov's Office

Exhibit H: Email Showing the Defendant's Failure to Identify FOIA Exemptions

MDHHS FOIA Request Tracking Number: H016452-082322

H016452\Mackinac McKinsey 11967\Batch 21\Batch_21_-_Ready_for_Release\RFR Not Gov's

Exhibit A

On 8/24/2022 8:04:04 AM, MDHHS FOIA Records Center wrote:

Subject: Confirmation of FOIA Request:: H016452-082322
Body:

MDHHS Michigan Department of Health and Human Services

Dear Mrs. Miller,

Thank you for your interest in public records of the Michigan Department of Health and Human Services (hereinafter "Department").

Records Requested: To Whom It May Concern:

Pursuant to the Michigan Freedom of Information Act, I hereby request the following records:

1. All reports about COVID-19 prepared by the global consulting firm McKinsey & Company that were provided to the Michigan Department of Health and Human Services (MDHHS) between the dates of 3/1/2020 and 5/1/2020.

2. All emails originating from an email address ending in " @mckinsey.com " sent to any of the following individuals between the dates of 3/1/2020 and 5/1/2020:
- Gov. Gretchen Whitmer: WhitmerG1@michigan.gov (or any other known email account belonging to Ms. Whitmer);
- Mark Totten: TottenM1@michigan.gov (or any other known email account belonging to Mr. Totten);
- Elizabeth Hertel: HertelE@michigan.gov (or any other known email account belonging to Ms. Hertel);
- Robert Gordon: GordonR3@michigan.gov (or any other known email account belonging to Mr. Gordon);
- Dr. Jenny Atas: jatasmd@icloud.com (or any other known email account belonging to Dr. Atas);
- Dana Nessel: dananessel@gmail.com, miag@michigan.gov (or any other known email account belonging to Ms. Nessel);
- Tricia Foster: FosterT13@michigan.gov (or any other known email account belonging to Ms. Foster);
- Joanna Huls: HulsJ1@michigan.gov (or any other known email account belonging to Ms. Huls).

Please make sure to include any attachments to those emails.

If it is not possible for your agency to conduct a search for emails originating from a specific domain, such as @mckinsey.com, please let me know and I can provide you with a specific list of McKinsey email addresses to search for instead.

In a recently completed FOIA request returned on 06/28/2022 by MDHHS (public records reference # H014602-021922), MDHHS provided me with a set of emails related to the construction of the TCF Regional Care Center, a field hospital that was constructed in the early months of the COVID-19 pandemic in Detroit,

purportedly to support an anticipated overflow of COVID-19 and other patients from area hospitals. The field hospital was closed roughly three weeks after opening due to a lack of necessity. That request and its resulting records can be viewed here: https://www.muckrock.com/foi/michigan-117/tcf-regional-care-center-emails-20-124958

Among the emails provided to me under that request were a number of messages sent to/between MDHHS and staff/contractors from McKinsey & Company. Those emails contained information about, and references to, COVID-19, including discussions about models and projections related to demand for ICU and medical surge beds.

McKinsey & Co. is a global management consulting firm whose work regarding various government responses to COVID-19, including vaccination efforts, have come under scrutiny recently in the U.S. (https://www.propublica.org/article/how-mckinsey-is-making-100-million-and-counting-advising-on-the-governments-bumbling-coronavirus-response) and in France (https://www.nytimes.com/2021/02/22/business/france-mckinsey-consultants-covid-vaccine.html). The firm's government contracts were also the subject of a recent public records lawsuit in Tennessee (https://finance.yahoo.com/news/tennessee-sued-not-releasing-covid-221610057.html). McKinsey & Co. also recently came under scrutiny in the national press over potential conflicts of interest related to the firm's relationships with pharmaceutical companies and regulators (https://www.nytimes.com/2022/04/13/business/mckinsey-purdue-fda-records.html).

Based on that background, fully understanding how MDHHS and State officials interacted with McKinsey & Co. when developing Michigan's COVID-19 response, including the information and advice that was provided to MDHHS and State officials by McKinsey & Co. regarding COVID-19, is of the highest importance to the public. The requested information should be made available to the public with as few redactions as possible, and at the lowest fee possible, as soon as possible.

When providing the records related to this request, please make sure to specifically certify that no other responsive documents related to this request exist.

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I am willing to pay up to $25 for the requested information. If the fee for this request exceeds that amount, please notify me for permission prior to initiating work on the request.

I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Please send all documents related to this request to this email address only.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 5 business days, as the statute requires.

Sincerely,

Erin Marie Miller

Upload documents directly:
https://accounts.muckrock.com/accounts/login/?next=https%3A%2F%2Fwww.muckrock.com%2Faccounts%2Flogin%2F%3Fnext%3D%252Faccounts%252Fagency_login%252Fmichigan-department-of-health-and-human-services-8832%252Fmckinsey-company-covid-19-models-reports-and-emails-2020-132888%252F%253Femail%253DMDHHS-foia%252540michigan.gov&url_auth_token=AAAXI1_-qx0iOawVey26VrOT5dE%3A1oQgSW%3AV9n9rHcNS_iSUOFodBdak9PdwvDklSD5A6pkDCZgnfA

Your request has been assigned the following tracking number: H016452-082322. Your request has a legally received date of August 24, 2022. You will receive a response by the Department by August 31, 2022. Unfortunately, we are unable to expedite requests and the time permitted for response by the Department may be extended beyond August 31, 2022 by ten (10) business days.

In accordance with the Michigan Freedom of Information Act (FOIA), MCL 15.231 *et seq*, the Department provides copies of existing non-exempt records. Records which are exempt from disclosure under state or federal law will not be provided, or records may be redacted to separate exempt information. The FOIA does not require the Department to create new records or answer queries.

You can monitor the progress of your request at the MDHHS Public Records Center and you will receive an email when your request has been completed.

Regards,

Bureau of Legal Affairs,

Michigan Department of Health and Human Services

On 8/23/2022 10:52:35 PM, Erin Miller wrote:

Request Created on Public Portal

Exhibit B

H016452-082322 - FOIA Request

Message History (4)

On 9/1/2022 11:44:10 AM, MDHHS FOIA Records Center wrote:

Subject: MDHHS FOIA Request :: H016452-082322
Body:
RE: Public Records Request, Reference # H016452-082322

Dear Mrs. Miller,

This notice is issued in response to your request, legally received by the Michigan Department of Health and Human Services (Department) on August 24, 2022, requesting information under the Freedom of Information Act (FOIA), MCL 15.231 *et seq*.

Your request is partially granted and partially denied. Please login to the FOIA Records Center to access the records.

As to the granted portion, the Department has identified and included the responsive information falling within the scope of your request. To the best of the Department's knowledge, information, and belief, these are all the records in the possession of the Department falling within the scope of your request. There is no fee for the request as these records were paid for by a previous requestor.

As to the denied portion, information of a personal nature, information subject to attorney-client privilege are exempt per MCL 15.243 §13(1)(g). Records of a public body's security measures, including security plans, security codes and combinations, passwords, passes, keys, and security procedures are exempt per MCL 15.243 §13(1)(u). Records of an advisory nature to the extent that they are preliminary to a final determination of policy or action are exempt per MCL 15.243 §13(1)(m); in this particular instance the public interest in encouraging frank communications among employees of the Department or other public bodies clearly outweighs the public interest in disclosure, as staff must make informed recommendations unfettered by third party interference in their deliberative process. In developing these recommendations, staff must be able to freely consider, and deliberate as to, the issues prior to final Department policy or action. The public would be ill-served if staff were discouraged or hindered in expressing their opinions and thoughts during the preliminary stages of the deliberative process. The public is entitled to a final determination based on the ultimate decision-maker's reliance on full, frank, and well-considered discussions. In sum, while the factual parts of the enclosed records have been disclosed, the advisory writings have been redacted to foster candid and frank staff communications, which is an integral part of the Department's deliberations directly related to its decision-making process.

As to the denial, the Department is obligated to inform you that under MCL 15.240 §10 the following remedies are available:

1. Appeal this decision in writing to the Legal Affairs Administration for the Department of Health and Human Services, PO Box 30195, 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 Department must respond to your appeal within ten 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 the appropriate 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, disbursements, and possible damages.

The Department's FOIA policies and procedures are available at Policies and Procedures.

Sincerely,

Bureau of Legal Affairs

Exhibit C

From: Hasaan Munim <Hasaan_Munim@mckinsey.com>
Sent: Thursday, June 4, 2020 9:49 AM
To: Emerson, Erin (DHHS); Commey, Katherine (DHHS-Contractor)
Cc: Erin McGovern; Ismail Aijazuddin
Subject: Question on C-19 data for furloughed employees

Categories: Policy Questions

Hi Erin, Katie –

Hope you are doing well! I had a question for both of you related to the nursing home data accuracy initiative.

On the interviewer huddle call this morning, survey interviewers noted confusion about how to count C-19 positive **furloughed employees** and **patients transferred between facilities**. We asked interviewers to email us and record details on the case so we can guide them offline, but we would like to distribute guidance to the broader group.

My intuition says that if a C-19 positive employee is temporarily furloughed and will return, they should count towards the COVID case count. A C-19 positive terminated employee should not count towards the COVID case count. If they were reported C-19 positive while employed at the facility and then terminated, they should be counted.

What guidance would you recommend?

Thanks,
Hasaan

Hasaan Munim | McKinsey & Company
Mobile: +1 612.442.0501
Hasaan_Munim@mckinsey.com

Exhibit D

STATE OF MICHIGAN PROCUREMENT

Department of Health and Human Services
235 South Grand Avenue, Lansing, MI 48913
P.O. Box 30037, Lansing, MI 48909

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. 491-210000000186
between
THE STATE OF MICHIGAN
and

CONTRACTOR	
	McKinsey & Company, Inc.
	1200 19th Street NW, Suite 1100
	Washington DC 20036
	Tony D'Emidio
	202-662-3100
	Mckinsey_contracts@mckinsey.com
	VS0065227

STATE			
	Program Manager	Jean Ingersoll, JD	MDHHS
		517-284-4022	
		IngersollJ2@michigan.gov	
	Contract Administrator	Mike Roesner	MDHHS
		517-284-0183	
		RoesnerM@michigan.gov	

CONTRACT SUMMARY			
DESCRIPTION: COVID-19 Consulting Services			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
09/21/2020	12/31/2020	0	
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
☐ P-card ☐ Payment Request (PRC) ☐ Other			☐ Yes ☐ No
MINIMUM DELIVERY REQUIREMENTS			
N/A			
MISCELLANEOUS INFORMATION			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			$1,693,000.00

FOR THE CONTRACTOR:

McKinsey & Company Inc.

Company Name

E-SIGNED by Tony D'Emidio
on 2021-01-05 14:15:41 EST

Authorized Agent Signature

Tony D'Emidio

Authorized Agent (Print or Type)

2021-01-05 14:15:41 UTC

Date

FOR THE STATE:

E-SIGNED by Christine Sanches
on 2021-01-05 15:04:31 EST

Signature

Christine Sanches

Director, Bureau of Grants & Purchasing

Name & Title

State of Michigan, Department of Health & Human Services

Agency

2021-01-05 15:04:31 UTC

Date

Revised 5/03/2016

Exhibit E

From:	Sutfin, Lynn (DHHS)
Sent:	Sunday, August 2, 2020 10:13 AM
To:	Wheaton, Bob (DHHS); Darling, Darice (DHHS); Bouknight, Rey (DHHS)
Subject:	RE: Bierer, Donald (DHHS) shared the folder "Quinlan FOIA" with you.

Compiled list of notes on Quinlin FOIA.

Quinlan FOIA

Folder 21

- In attachments, are the names of our volunteers subject to FOIA? Is there some sort of exemption for them?
- Email #2 – Bold ideas. Andie Taverna ties positive nudge idea to voter research.
- #59 – Mention of Applecart
- Email #61 – Why is name of attachment blacked out?
- Email #62 – Robert to Governor. "Aware of procurement issue and have thoughts . . ."

Folder 22

- # 3 – Email between GMMB and Robert via his personal account.
- #19 – Andie about non-FDA test kits proposed by close Governor contact. (pretty sure we did not use.)
- #22 – Applecart connection
- #23 – More on Robert's personal email.
- #45 – Dana Sherry email on issue we are having getting PPE.
- #46 – Robert mail to Dimitri Melhorn, Investing in US. From Robert, "campaign-style microtargeting around social distancing on social media platforms. So need a mix of messaging guidance and tools. We could supply names and cells of different kinds. We are in touch with one company that seems very promising but would like to do what due diligence is possible in immensely compressed period.

Folder 23

- #15 – Applecart/GMMB.
- #20 – Can't open Excel document. Independent Living Work Plan as it is a Sharepoint document.
- #34 – "We should dig in on Applecart further. Zeke's brother is an investor." From Jim Margolis from GMMB.
- #41 – Applecart proposal.
- #43 – Google partnership. Did we do this? (I've said previously we did not partner with Google or Apple for contact tracing.)

Folder 24

- Attachment - #1 info on budget and social distancing. Marked deliberate, pre-decissional. Is this exempt?
- Attachment - #3 Budget for what?
- Attachment - #8 Pete McGregor WMPC letter/email.
- Attachment - #15 Did we use Google for Applecart?
- Attachment - #16 WMPC again.
- #9 – Melissa Samuel upset about SBO budget response for nursing homes.
- #13 – Using MPHI/GMMB/state contracts
- #17 – discusses # of COVID positives at state hospitals.
- #21 – Elder Justice email from March 28. Lots of nursing home questions.
- #39 – Nursing home issues.
- #46 – HCAM Melissa Samuel criticizing funding distribution plan, etc.
- #48 – Mentions Comms Czar (who was this?)
- #66 – Funding for nursing facilities. Short of $35M requested. Only $25M

- #77 – Farah's response to Pete McGregor letter. Snarky.

Folder 25

- #36 – Robert March 29 email on how nursing home outbreaks are horrific.

Folder 26

- #59 – Ed Duggan on email chain on reagents.

Folder 27

- #55 – Robert email on isolation of homeless in areas where the locality is not stepping up.

Folder 28

- April 1 email from attorney at Michigan Protection and Advocacy Services to Robert Gordon suggesting we are underutilizing MI Choice program, which provides for nursing home residents to be at home rather than being re-placed in facilities following COVID. He says there is a long waiting list, that this is unacceptable, and that MI Choice would keep people safe from COVID by allowing them to leave nursing facilities.
- March 31 email from Jonathan Warsh to Gen. Rogers at National Guard asking why they've told us they can't staff field hospitals when military is doing that in other states. Gen. Rogers responds he is not afraid of being told "no" again and will check again since Michigan is now a priority.

Folder 29

- April 1 letter to Whitmer raising concerns about hospitals rationing care and not providing services to people with disabilities from Detroit Disability Power and Warriors on Wheels. Asks the state to step in. Mentions that Henry Ford Health System sent a letter saying they will give first priority in care to people who have the best chance of getting better.

Folder 31

- Attachment 89: April 2 email: Kate Massey email saying LTC group couldn't reach consensus on what to do about nursing home residents with COVID. LTC facilities say they don't have adequate PPEs, and health systems are struggling to free up capacity because nursing facilities are declining patients.

Folder 32

- Nos. 41-54: Numerous emails including Robert and Gov's Office trying to figure out how to be able to utilize military personnel. April 2 email. Rodgers talks about other states having hundreds or thousands of DoD personnel caring for COVID patients and Michigan has zero.

Folder 33

- No. 22 and attachments 19-20 discuss protocol for COVID patients and those exposed to COVID going to nursing facilities.
- No. 17: April 3 email from Dr. J says not sure the risks of requiring masks is worth the potential benefits. Attached is ASHTO statement saying the downsides include lack of masks for health professionals, people touching their faces when adjusting masks, false sense of security created by masks.

Folder 34

- No. 15: Dr. Fales criticizes Spectrum for their policy on accepting transfer patients from other facilities. Calls it "rather weak (pathetic)" and says that the official he talked there

said she would be off the next day and would see if they would reconsider on Monday (he expresses displeasure at this lack of urgency).

Folder 35

- Message 17: Eisenberg on nursing facility concerns
- Several … Matthew Aks, pro bono personal consultation with data analysis (friend of Andie's). Works for Oliver Wyman, management consultant in D.C.
- Message 63: Talk about relationship with McKinsey; leaving them out of press response as a contract hasn't been signed yet. A few messages after ask if it's OK to mention McKinsey.
- Messages 89-91 … $50M GF Health care capacity pool … allocation

Folder 36

- Message 49: References needing to get info on Applecart out publicly
- Message 64: Additional references to whether it's ok to mention McKinsey
- There is a list of employee positives marked confidential in the attachments in an exempt folder?? In 37 too. Does exempt mean they aren't included?
- List of notes, contacts, actions connected to alternate care sites.

Folder 37

- Message 20: Medical rationing
- A lot of discussion around PPE availability, BH patients and facilities dealing with COVID patients and a couple mentions of nursing homes in same conversation. A brief mention of deciding to move forward with "hub" concept in NF.
- Message 64: Contractual limits with using McKinsey's name

Folder 38

- Can't open attachment Educators Guide … MS Publisher doc
- Message 14 … talks about confidential memo (didn't see it in attachments)
- Message 23 – 24, 47 … Laura Appel's concerns w/NF discussions
- Several conversations about hospital patient load balancing/transfers, etc.

Folder 39:

- Just a heads up that there are documents discussion PPE allocation methodology and ventilator prioritization in the attachments. May not be of concern but FYI
- Message 15 from Totten marked confidential … should this be shared?
- Message 20/76 … discussion on medical rationing
- Message 82 … PPE not provided for private providers including CCIs
- Message 90 … issues with USDA re: food assistance

Legal/FOIA Potential Issues

- Folder 32
  - Nos. 65, 70-73: April 3 emails about symptoms EO press release includes emails from Mark Totten in Gov. Legal office marked as "confidential" and not to be released under FOIA. This is part of his signature line.
  - Nos. 85-87: Emails on fines for EO violation includes emails from Mark Totten and Zach Gholdun in Gov's Legal Office marked as "confidential" and not to be released under FOIA.
- Folder 33
  - No. 30: Another Totten marked as confidential and not to be disclosed under FOIA.
  - Nos. 62-69: More Totten emails marked as confidential and not to be disclosed under FOIA.

Exhibit F

From: Leah Kaplow
Subject: RE: [Nursing facility reporting] Data memo preparation
To: Hudson, Nicole (DHHS)
Cc: Emerson, Erin (DHHS)
Sent: June 11, 2020 12:27 PM (UTC-05:00)

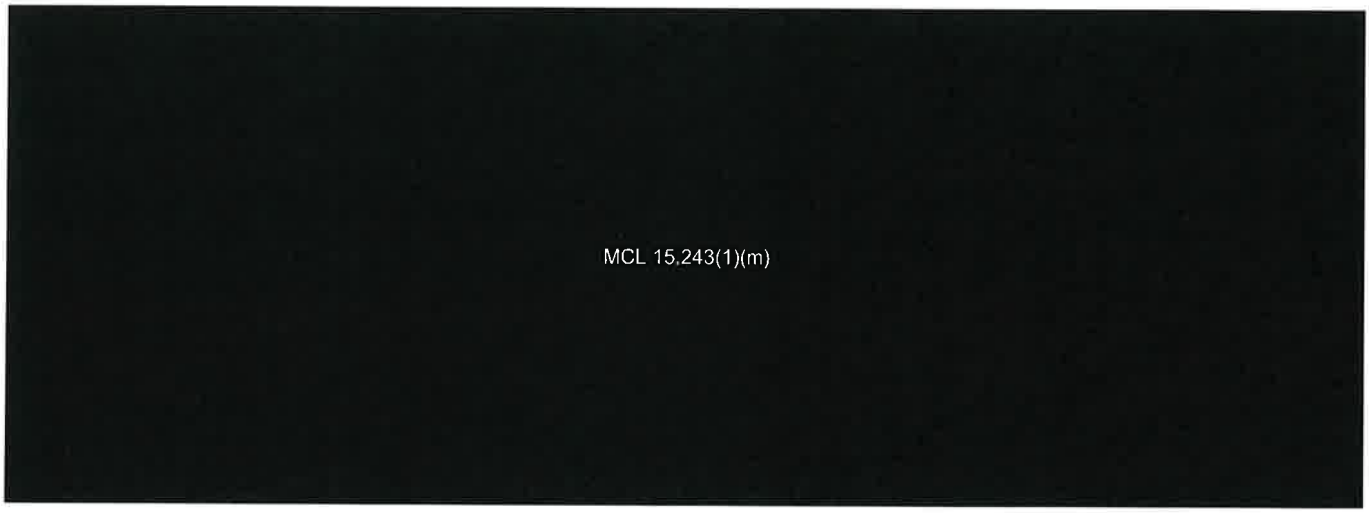
Thank you!

From: Hudson, Nicole (DHHS) <HudsonN2@michigan.gov>
Sent: Thursday, June 11, 2020 1:25 PM
To: Leah Kaplow <Leah_Kaplow@mckinsey.com>
Cc: Emerson, Erin (DHHS) <EmersonE@michigan.gov>
Subject: [EXT]RE: [Nursing facility reporting] Data memo preparation

HI Leah,

I've slightly reworked the staffing section to better align with where I believe we're going:

Staffing



Thanks!
Nicole

Nicole Hudson, MPP, PMP
State Assistant Administrator
Michigan Department of Health and Human Services
333 South Grand 4th Floor
517-284-4026 (office)
517-614-6491 (cell)

From: Leah Kaplow <Leah_Kaplow@mckinsey.com>
Sent: Thursday, June 11, 2020 12:54 PM
To: Emerson, Erin (DHHS) <EmersonE@michigan.gov>; Gordon, Robert (DHHS) <GordonR3@michigan.gov>
Cc: Erin McGovern <Erin_McGovern@mckinsey.com>; Sutfin, Lynn (DHHS) <SutfinL1@michigan.gov>; Hudson, Nicole

Exhibit G

From: Totten, Mark
Subject: RE: some thoughts from the day's data
To: Khaldun, Joneigh (DHHS)
Sent: April 12, 2020 6:00 PM (UTC-05:00)

Got it – thanks.

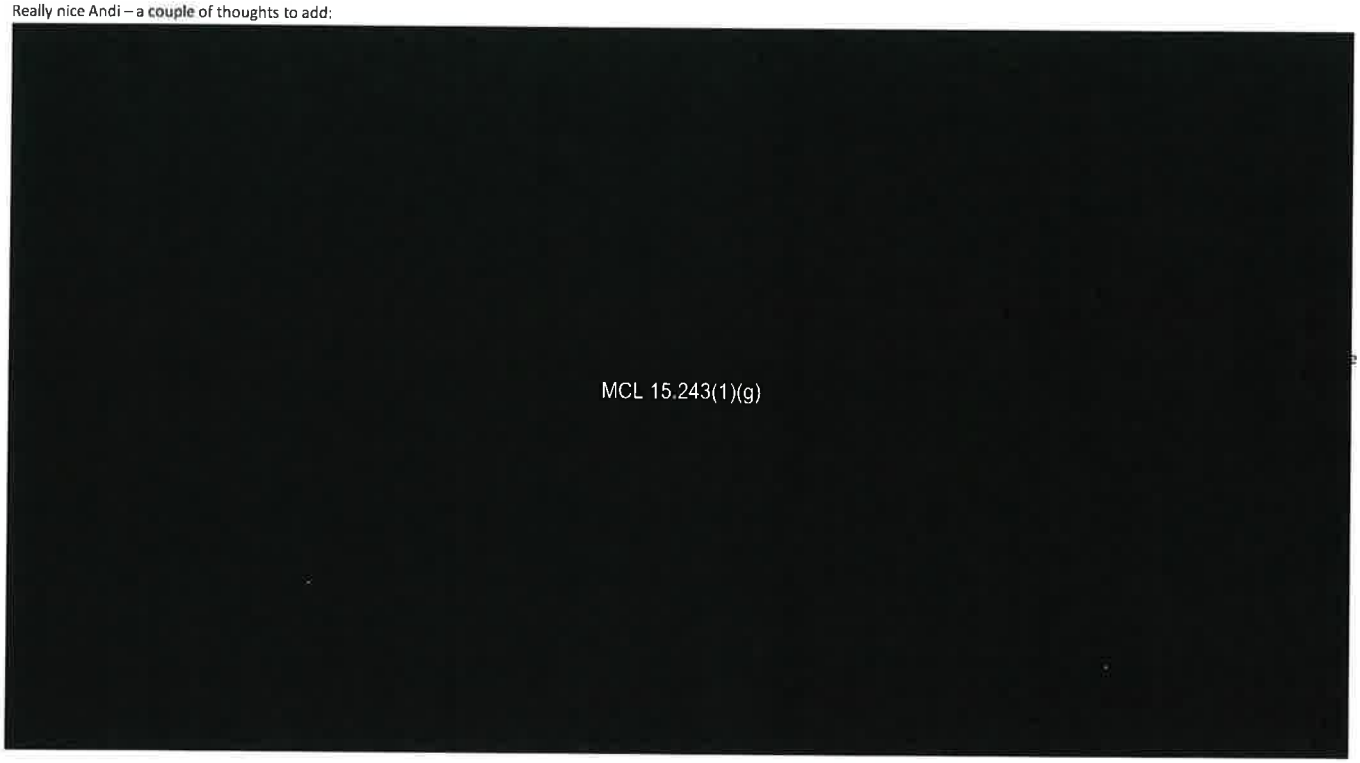
Mark Totten
Chief Legal Counsel
Office of the Governor, State of Michigan
George W. Romney Building
111 S. Capitol Avenue
Lansing, Michigan 48909
tottenm1@michigan.gov
(517) 241-0061

From: Khaldun, Joneigh (DHHS) <KhaldunJ@michigan.gov>
Sent: Sunday, April 12, 2020 6:54 PM
To: Totten, Mark <TottenM1@michigan.gov>
Subject: FW: some thoughts from the day's data

Hi Mark,
Thanks for chatting tonight. I am attaching some talking points that may be helpful for the Governor tomorrow. If she does not want to get into these details, I can speak to them instead. Just let me know.
Thanks,
Joneigh

From: LyonCallo, Sarah (DHHS) <lyoncallos@michigan.gov>
Sent: Sunday, April 12, 2020 3:29 PM
To: Taverna, Andrea (DHHS-Contractor) <TavernaA1@michigan.gov>; Gordon, Robert (DHHS) <GordonR3@michigan.gov>; Totten, Mark <TottenM1@michigan.gov>; Khaldun, Joneigh (DHHS) <KhaldunJ@michigan.gov>; Hertel, Elizabeth (DHHS) <HertelE@michigan.gov>
Cc: McFadden, Jevon (DHHS-Contractor) <McFaddenJ1@michigan.gov>; Collins, Jim (DHHS) <CollinsJ12@michigan.gov>; Razili Lewis <razili_lewis@mckinsey.com>; Leah Kaplow <leah_kaplow@mckinsey.com>; Scott, Linda (DHHS) <ScottL12@michigan.gov>; Vanderstelt, Meghan <sifuente@msu.edu>; Fales, William (DHHS-Contractor) <FalesW@michigan.gov>
Subject: RE: some thoughts from the day's data

Really nice Andi – a couple of thoughts to add:



From: Taverna, Andrea (DHHS-Contractor) <TavernaA1@michigan.gov>
Sent: Sunday, April 12, 2020 3:12 PM
To: Gordon, Robert (DHHS) <GordonR3@michigan.gov>; Totten, Mark <TottenM1@michigan.gov>; LyonCallo, Sarah (DHHS) <lyoncallos@michigan.gov>; Khaldun, Joneigh (DHHS) <KhaldunJ@michigan.gov>; Hertel, Elizabeth (DHHS) <HertelE@michigan.gov>
Cc: McFadden, Jevon (DHHS-Contractor) <McFaddenJ1@michigan.gov>; Collins, Jim (DHHS) <CollinsJ12@michigan.gov>; Razili Lewis <razili_lewis@mckinsey.com>; Leah Kaplow <leah_kaplow@mckinsey.com>; Scott, Linda (DHHS) <ScottL12@michigan.gov>; Vanderstelt, Meghan <sifuente@msu.edu>; Fales, William (DHHS-Contractor) <FalesW@michigan.gov>
Subject: RE: some thoughts from the day's data

I'll dive in on testing question while I'm online, but Sarah & Joneigh should correct as needed.

[redacted]
MCL 15.243(1)(g)

From: Gordon, Robert (DHHS) <GordonR3@michigan.gov>
Sent: Sunday, April 12, 2020 9:09 AM
To: Totten, Mark <TottenM1@michigan.gov>; LyonCallo, Sarah (DHHS) <lyoncallos@michigan.gov>; Khaldun, Joneigh (DHHS) <KhaldunJ@michigan.gov>; Hertel, Elizabeth (DHHS) <HertelE@michigan.gov>
Cc: McFadden, Jevon (DHHS-Contractor) <McFaddenJ1@michigan.gov>; Collins, Jim (DHHS) <CollinsJ12@michigan.gov>; Razili Lewis <razili_lewis@mckinsey.com>; Leah Kaplow <leah_kaplow@mckinsey.com>; Scott, Linda (DHHS) <ScottL12@michigan.gov>; Vanderstelt, Meghan <sifuente@msu.edu>; Taverna, Andrea (DHHS-Contractor) <TavernaA1@michigan.gov>; Fales, William (DHHS-Contractor) <FalesW@michigan.gov>
Subject: RE: some thoughts from the day's data

[redacted]
MCL 15.243(1)(g)

From: Totten, Mark <TottenM1@michigan.gov>
Sent: Sunday, April 12, 2020 8:24 AM
To: LyonCallo, Sarah (DHHS) <lyoncallos@michigan.gov>; Gordon, Robert (DHHS) <GordonR3@michigan.gov>; Khaldun, Joneigh (DHHS) <KhaldunJ@michigan.gov>; Hertel, Elizabeth (DHHS) <HertelE@michigan.gov>
Cc: McFadden, Jevon (DHHS-Contractor) <McFaddenJ1@michigan.gov>; Collins, Jim (DHHS) <CollinsJ12@michigan.gov>; Razili Lewis <razili_lewis@mckinsey.com>; Leah Kaplow <leah_kaplow@mckinsey.com>; Scott, Linda (DHHS) <ScottL12@michigan.gov>; Vanderstelt, Meghan <sifuente@msu.edu>; Taverna, Andrea (DHHS-Contractor) <TavernaA1@michigan.gov>; Fales, William (DHHS-Contractor) <FalesW@michigan.gov>
Subject: RE: some thoughts from the day's data

[redacted]
MCL 15.243(1)(g)

Mark Totten

Chief Legal Counsel
Office of the Governor, State of Michigan
George W. Romney Building
111 S. Capitol Avenue
Lansing, Michigan 48909
tottenm1@michigan.gov
(517) 241-0061

From: LyonCallo, Sarah (DHHS) <lyoncallos@michigan.gov>
Sent: Sunday, April 12, 2020 1:59 AM
To: Gordon, Robert (DHHS) <GordonR3@michigan.gov>; Khaldun, Joneigh (DHHS) <KhaldunJ@michigan.gov>; Totten, Mark <TottenM1@michigan.gov>; Hertel, Elizabeth (DHHS) <HertelE@michigan.gov>
Cc: McFadden, Jevon (DHHS-Contractor) <McFaddenJ1@michigan.gov>; Collins, Jim (DHHS) <CollinsJ12@michigan.gov>; Razili Lewis <razili_lewis@mckinsey.com>; Leah Kaplow <leah_kaplow@mckinsey.com>; Scott, Linda (DHHS) <ScottL12@michigan.gov>; Vanderstelt, Meghan <sifuente@msu.edu>; Taverna, Andrea (DHHS-Contractor) <TavernaA1@michigan.gov>; Fales, William (DHHS-Contractor) <FalesW@michigan.gov>
Subject: RE: some thoughts from the day's data

Tried to up the game a bit today.

Looking forward to hearing people's thoughts and working with Raz and Leah team to improve look and format. Jevon, particularly interested in your perspective about some of the potential plateauing here, relative to decreases and increases in other countries. Is there a CDC or WHO slide or info graphic that gets at that well?

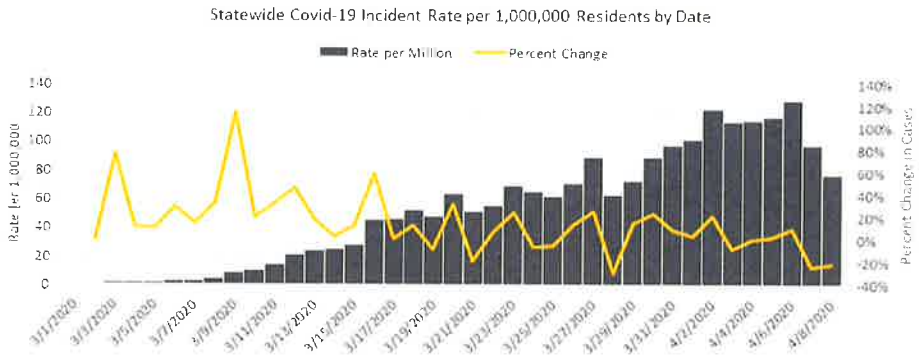
From: LyonCallo, Sarah (DHHS)
Sent: Wednesday, April 08, 2020 10:41 PM
To: Gordon, Robert (DHHS) <GordonR3@michigan.gov>; Khaldun, Joneigh (DHHS) <KhaldunJ@michigan.gov>
Cc: McFadden, Jevon (DHHS-Contractor) <McFaddenJ1@michigan.gov>; Collins, Jim (DCH) <CollinsJ12@michigan.gov>; Razili Lewis <Razili_Lewis@mckinsey.com>; Leah Kaplow <leah_kaplow@mckinsey.com>; Scott, Linda (DHHS) <ScottL12@michigan.gov>; Vanderstelt, Meghan <sifuente@msu.edu>; Taverna, Andrea (DHHS-Contractor) <TavernaA1@michigan.gov>
Subject: RE: some thoughts from the day's data

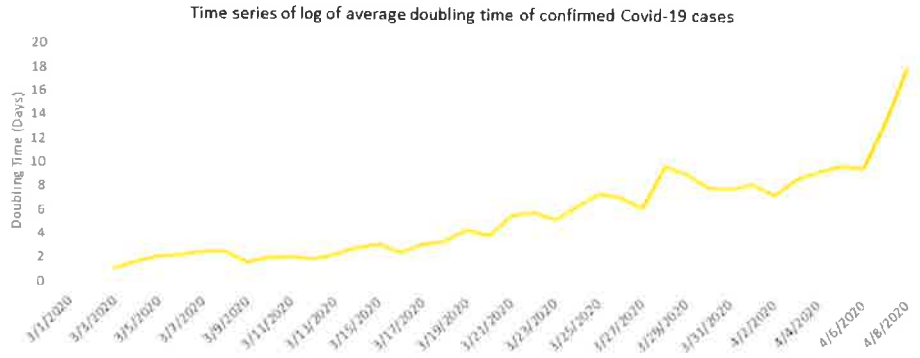
More thoughts on today's data, and some updates on asks

- Data on epi curves and testing and recovery numbers up on www.michigan.gov/coronavirus
  - Some other states have started discussing recovery – some adjusting for hospitalization rates (we will consider)
- We are starting to roll out the new Probable case definition, such as
  - Epi linked cases (symptomatic household contact without lab test)'
  - Decedents whose death certificate includes COVID-19 (per CDC algorithm)
  - We are not publicizing yet and do not have consistent data collection yet across state – but wanted you to be aware of future change.
- Attached is revised case stats (by onset date) including new graphics (will go through a bit below)
- Work continues on use of syndromic data and on nursing home investigation numbers.
- Data on inpatient visits due to covid are on website today.
- We are continuing to work with MHIN on obtaining hospitalization rates .

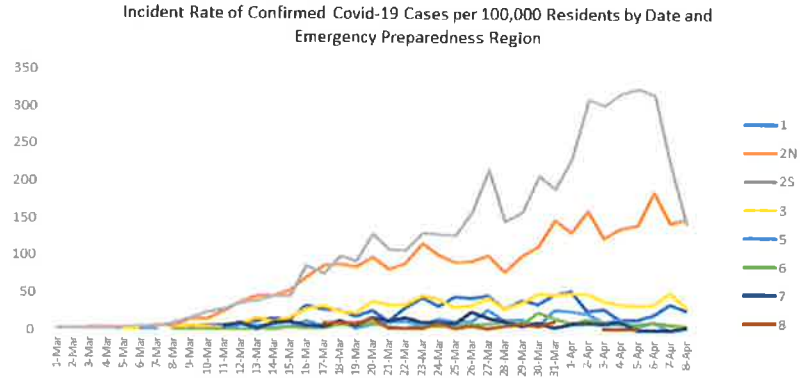
Review of Epi curves
The curve here is based on the date that cases reported onset of symptoms. This is obtained in the case interview (which is also when race is collected and when close contacts and occupation are identified). This total differs from the "new case" number we report each day because that count is based on the day that MDHHS became aware of a case diagnosis (lab result) vs the date the person became aware of their own symptoms.

It is still too early to get excited about these results but this is the second day in a row of decline in incidence rate per million people in the state. This increased the doubling time to fourteen days.

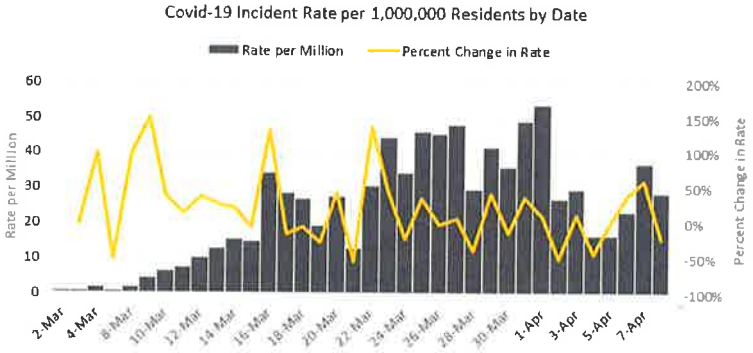




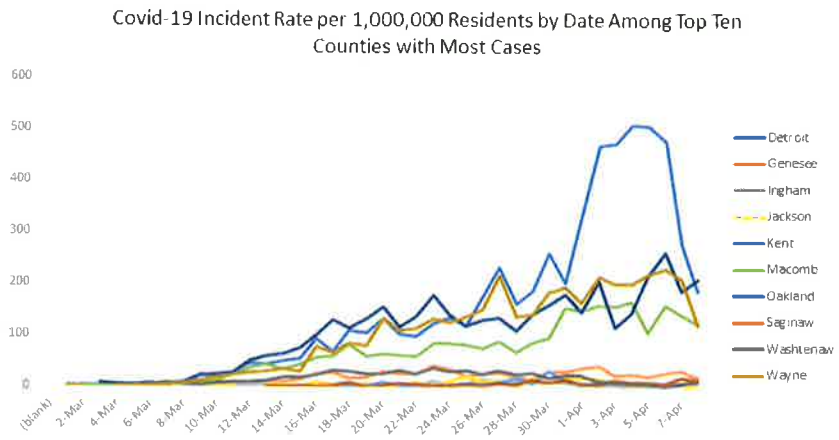
The incident rate is still highest in Region 2S (includes Detroit), then 2N, with region 3 and 5 (SW MI) next highest. The drop in rate for 2s is interesting but I would like to check the data for any coding/data pull or analysis oddities before celebrating here



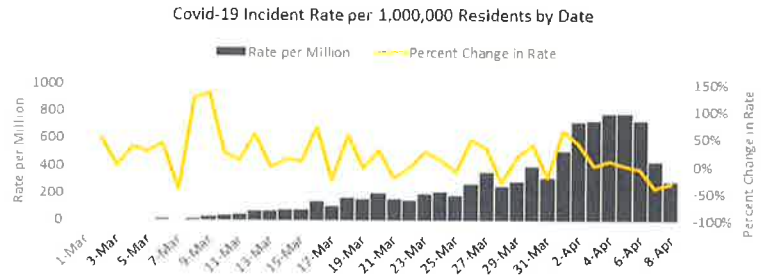
Region One – yesterday I had mentioned Region one as increasing a couple of days in a row – It has dropped again



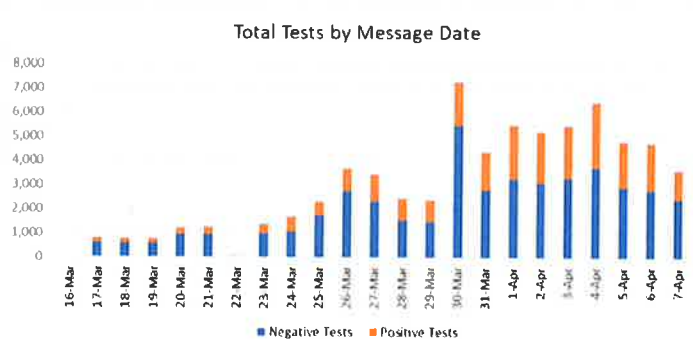
Incident rate among top ten counties in terms of count. The City of Detroit has the highest rate and that rate appears to be dropping (again, I want to check all aspects of data processing before celebrating). One thing to bear in mind is that Detroit was behind in its case investigations (what gets us the onset date). Staff have been catching up that backlog, with particular attention to recent days, so that could be influencing this curve as well.



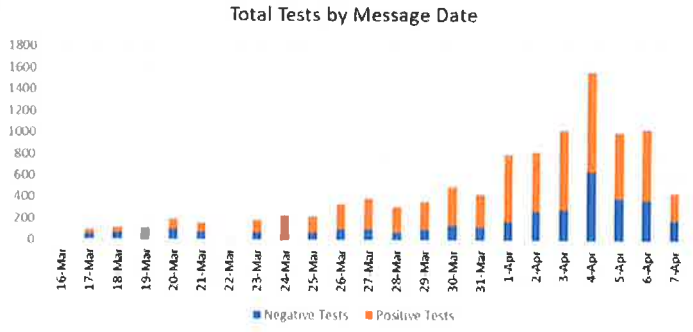
City of Detroit's incidence rate in a different view.



Statewide Testing numbers



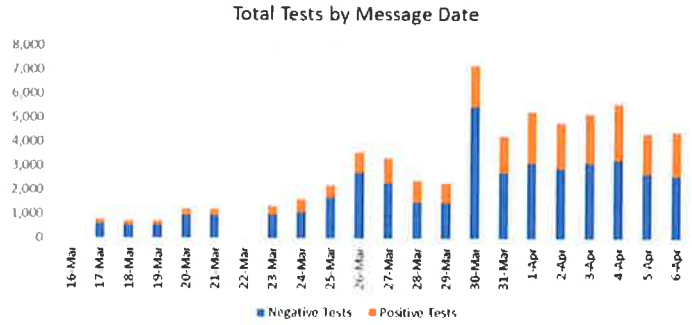
City of Detroit (residents) – this figure will be going up on line tomorrow.



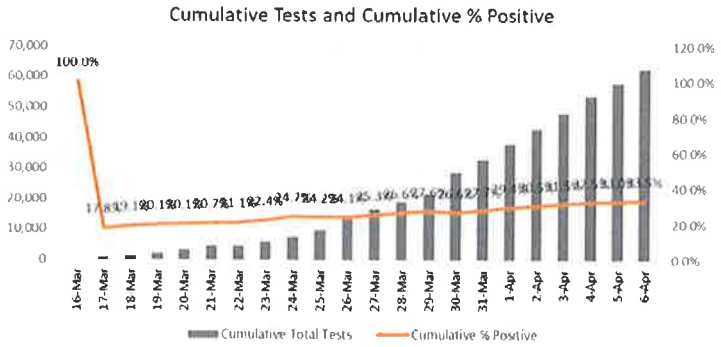
From: LyonCallo, Sarah (DHHS)
Sent: Tuesday, April 07, 2020 11:43 PM
To: Gordon, Robert (DHHS) <GordonR3@michigan.gov>; Khaldun, Joneigh (DHHS) <KhaldunJ@michigan.gov>
Cc: McFadden, Jevon (DHHS-Contractor) <McFaddenJ1@michigan.gov>; Collins, Jim (DCH) <CollinsJ12@michigan.gov>; Razili Lewis <Razili_Lewis@mckinsey.com>; Leah Kaplow <leah_kaplow@mckinsey.com>; Scott, Linda (DHHS) <ScottL12@michigan.gov>; Vanderstelt, Meghan <sifuente@msu.edu>; Taverna, Andrea (DHHS-Contractor) <TavernaA1@michigan.gov>
Subject: some thoughts from the day's data

Wanted to consolidated some thoughts:

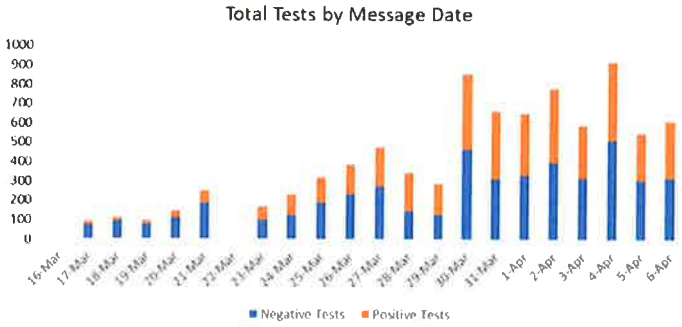
Test messages each day (orange is positive) are between 4000 and 5000 tests a day – looking forward to seeing some of the additional lab capacity (NexGen, Orchard) starting to appear. We may have a difficulty as some labs will not be able to send negative test results electronically and that will impact our percent positivity.



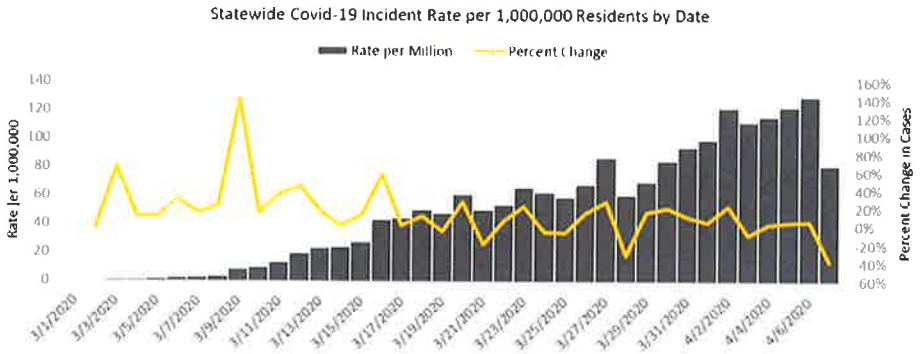
Percent positive is holding steady for the state as a whole.



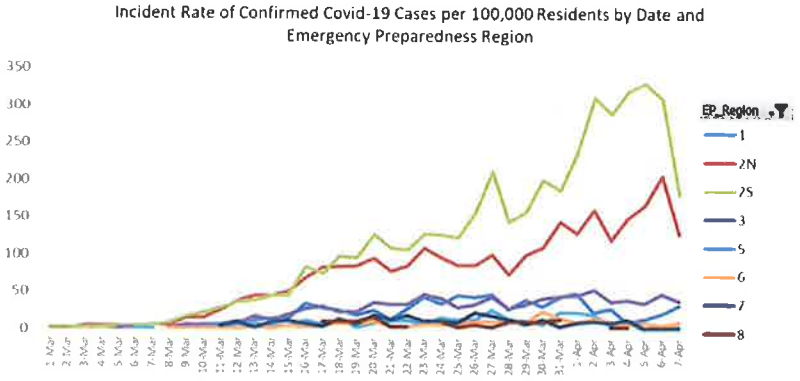
Seems to be plateauing in Wayne and Oakland. Here are positive and negative tests in Wayne by test date. Positivity is flat the last 7 days despite variation in testing counts.



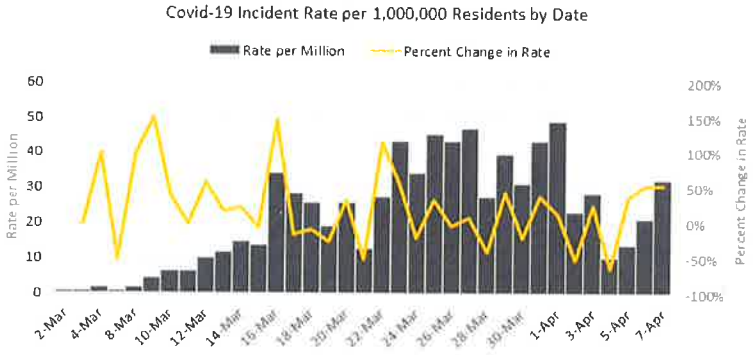
If my dates are correct, we are at day 26 since schools closed, day 14 since passing the nonessential services closed, day 13 since stay in place. Too soon to get excited about the drop here, but definitely something to watch.



Regional comparison – region 2N and 2S make up SE MI. You can see the difference in rates quite clearly from the rest of the state.



We should also keep our eye on Region One (capitol region) – note the rate increasing the last few days.

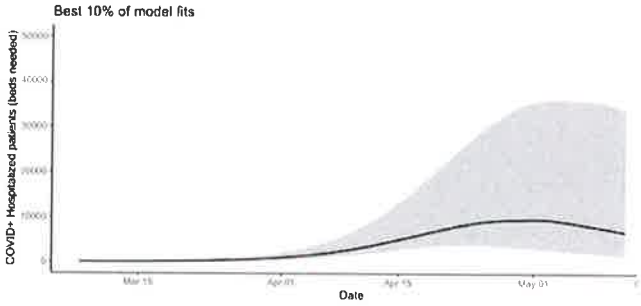


Attached are the epi curves and case rates per 100,000

Some thoughts on model reviews:

University of Michigan School of Public Health

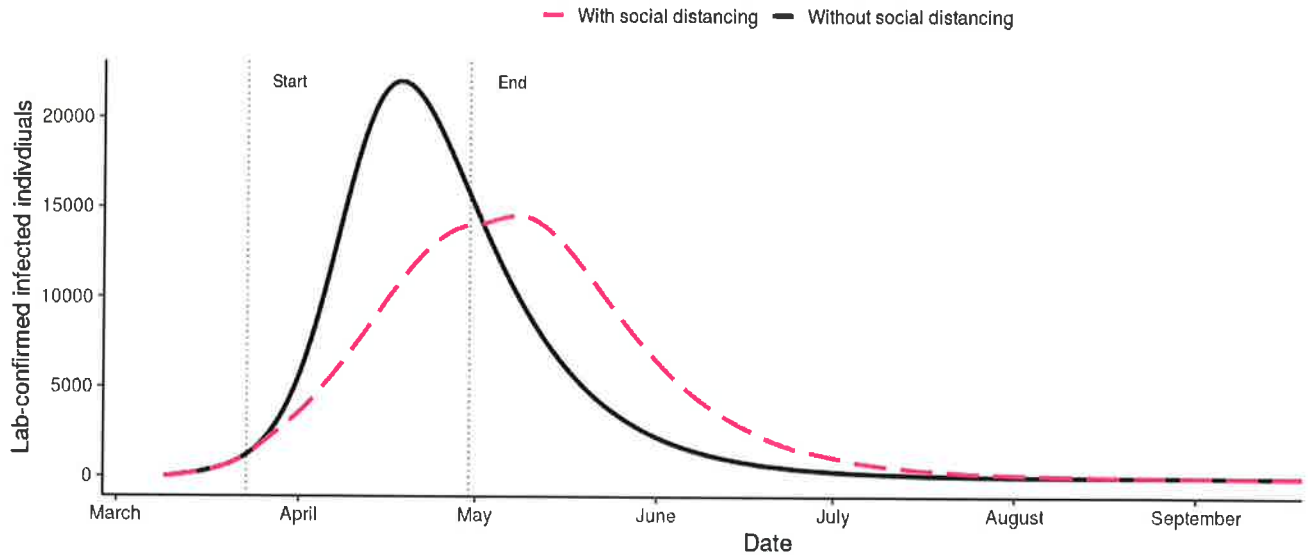
- Looking at the peaks in the top ten percent of best fit in the model, peak will fall between April



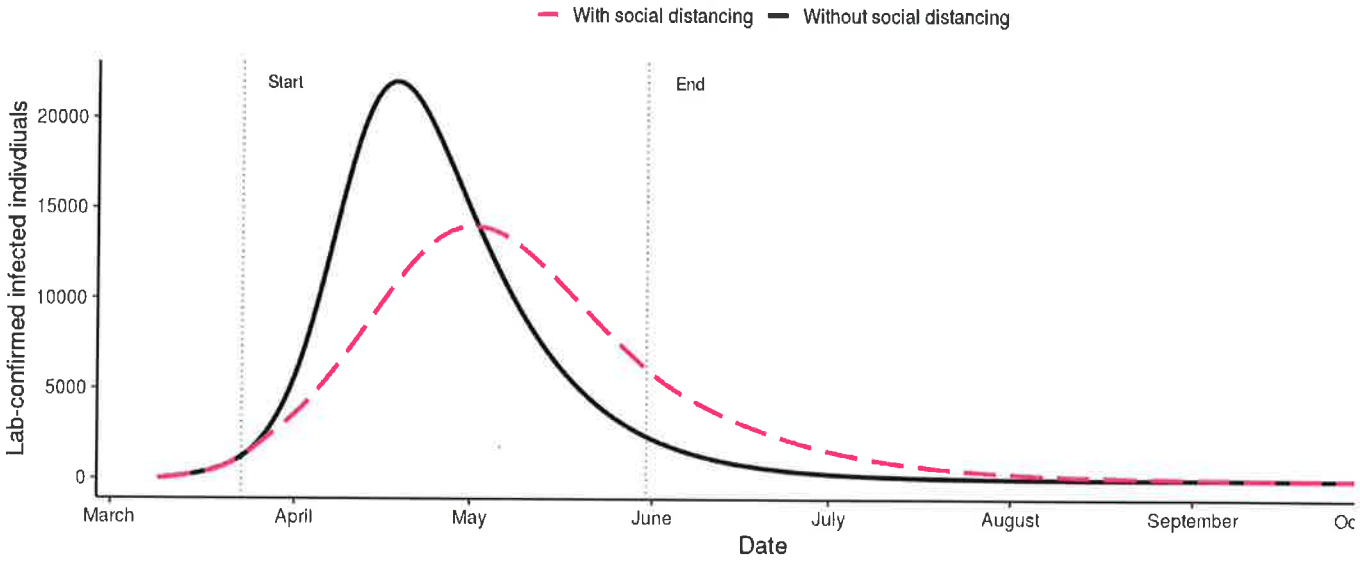
-

Social Distancing

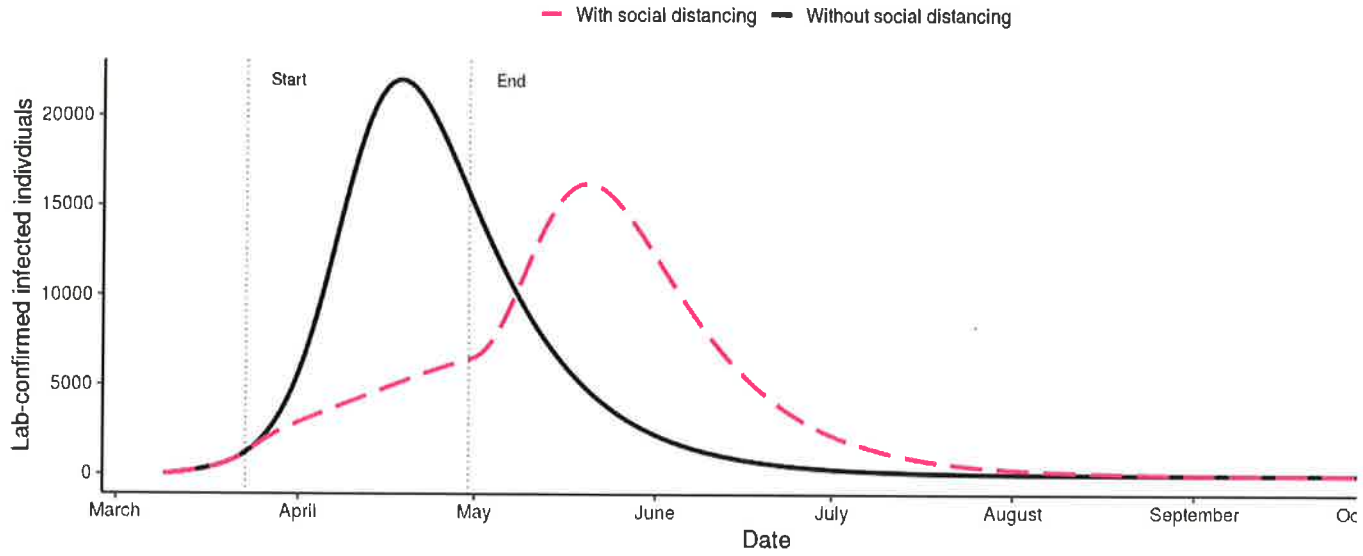
If 50% reduction in usual contacts is maintained until end of April – we have a broad peak in cases with increase after April 30.



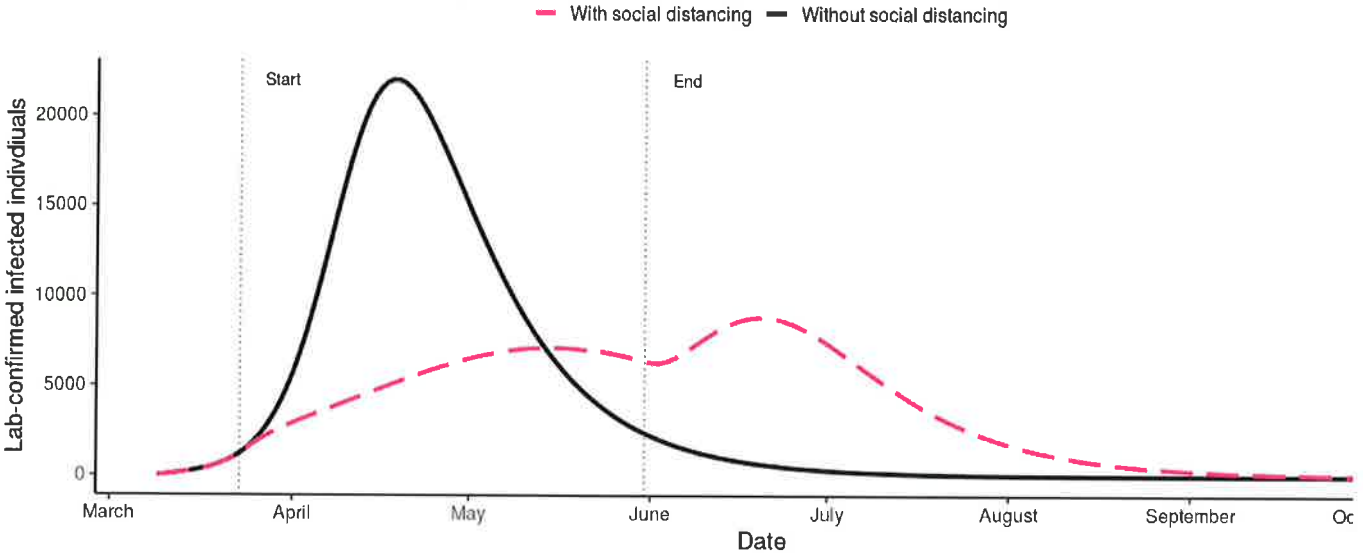
If the 50% reduction is maintained through end of May, we lengthen the tail on curve and avoid an increase.



If 30% reduction in usual contacts if achieved and maintained till end of April: this makes the peak sharper in mid May.



A reduction to 30% of social contacts through the end of may continues the number of cases (gaining herd immunity) but reduces the peak pressure on the hospitals:



- Advice is to make slow moves in lifting social distancing and have a plan for monitoring before making the next move
- Need really good testing levels to be able to monitor
- Be clear what a peak in cases means to hospitalization use as severe case average stay is 2 weeks
- Until we have herd immunity or vaccine, will be balancing social distancing measures with number of people in hospital or dying.

COVIDACTNOW: this model is indicating that if we do not strengthen the stay at home order enforcement, our hospitals will be overloaded on May 1st.

Scenario	Estimated Cumulative Infected	Estimated Date Hospitals Overloaded	Estimated Deaths
Limited action	>70%	Fri Apr 17 2020	107,000

Scenario	Estimated Cumulative Infected	Estimated Date Hospitals Overloaded	Estimated Deaths
3 Months of Stay at home (lax)*	>70%	Fri May 01 2020	63,000
3 Months of Stay at home (strict)*	31%	never	28,000

***A second spike in disease may occur after social distancing is stopped.** Interventions are important because they buy time to create surge capacity in hospitals and develop therapeutic drugs that may have potential to lower hospitalization and fatality rates from COVID.

** Our models show that it would take at least 2 months of Wuhan-style Lockdown to achieve full containment. However, it is unclear at this time how you could manage newly introduced infections.

Washington Model – treats whole state as one group

- States that our peak in resource use (vs cases) is tomorrow – by this model, tomorrow we will have 8674 beds occupied, 1652 icu beds, and have 1404 people on ventilators. I do not have access to the exec dashboard – not sure how close we are to this.

That is all for today. We will be able to have more information on mortality next week as death certificates coded for covid are available.

Sarah Lyon-Callo, MS, PhD
State Epidemiologist and Director
Bureau of Epidemiology and Population Health
Michigan Department of Health and Human Services
South Grand Building
333 S. Grand Ave.
Lansing, MI 48909
O: (517) 284-4910
C: (517) 614-6876
www.michigan.gov/mdhhs

Redaction Date: 11/12/2021 4:37:50 PM

Redaction Log

Total Number of Redactions in Document: 4

Redaction Reasons by Page

Page	Reason	Description	Occurrences
1	MCL 15.243(1)(g)	(9) Information or records subject to the attorney-client privilege.	1
2	MCL 15.243(1)(g)	(9) Information or records subject to the attorney-client privilege.	3

Redaction Date: 11/12/2021 4:37:50 PM

Redaction Log

Redaction Reasons by Exemption

Reason	Description	Pages (Count)
MCL 15.243(1)(g)	(9) Information or records subject to the attorney-client privilege.	2(3) 1(1)

Exhibit H

From: Sutfin, Lynn (DHHS)
Sent: Wed, 10 Jun 2020 19:36:58 +0000
To: Bouknight, Rey (DHHS);Darling, Darice (DHHS)
Subject: FW: [Nursing facility reporting] Data memo preparation
Attachments: 20200609 Nursing home memo v2.docx

This is the draft document.

From: Leah Kaplow <Leah_Kaplow@mckinsey.com>
Sent: Wednesday, June 10, 2020 10:39 AM
To: Gordon, Robert (DHHS) <GordonR3@michigan.gov>; Sutfin, Lynn (DHHS) <SutfinL1@michigan.gov>; Emerson, Erin (DHHS) <EmersonE@michigan.gov>; Ismail Aijazuddin <Ismail_Aijazuddin@mckinsey.com>; Commey, Katherine (DHHS-Contractor) <CommeyK@michigan.gov>; Massey, Kate (DHHS) <MasseyK4@michigan.gov>; Erin McGovern <Erin_McGovern@mckinsey.com>
Cc: Newton, Nell (DHHS-Contractor) <NewtonN1@michigan.gov>; Megan Leitch <Megan_Leitch@mckinsey.com>; Schwarzkopf, Emily (DHHS) <SchwarzkopfE1@michigan.gov>
Subject: RE: [Nursing facility reporting] Data memo preparation

Thanks Robert and Lynn

First, Lynn, let me know how you want to take this forward – I definitely agree with you but could use your help in getting the framing / content right. Let me know if you want to write a draft intro section or provide me some thoughts/bullets.

Second, did anyone else have comments on the report itself (latest copy reattached here – has not changed since I sent yesterday afternoon)? Does anyone else need to see this? (Dr. J? Meghan G? MSU?)

Third, I also wanted to share some takeaways from yesterday's calls and analysis that reflect an important question for the report – please let me know what you think

- Response rate to the phone survey is 90%; 48 facilities/hubs have not responded, based on latest list of EMResource facilities
- **CMS comparison to EMR**
  - EMR cumulative resident death figures are ~10% below CMS values (vs. ~30% lower last week)
  - EMR cases are ~70% higher than CMS (gap has increased since last week)
- **EMR comparison to Phone Survey (for facilities that have responded to calls)**
  - Overall cases and deaths are close (deaths are ~5% higher in the phone survey than in EMResource)
  - However, there are differences at facility level; sources of difference between EMR and survey resident case figures

        - ~25 facilities reported higher numbers in the survey than in EMR (some with 50+ additional cases); possible that all have not updated EMR since phone call
        - ~60 facilities reported higher numbers in EMR (some with 50+ additional cases); a driver could be additional testing since calls began last week, or reluctance to report by phone
    - **Question**: Based on this, which numbers (EMResource or Survey) do you think would be best to use in the memo?
        - **EMResource**: numbers are available for all facilities, including those that did not respond to phone outreach
        - **Survey**: numbers are available for the ~90% of facilities that have responded; date of response varies by facility (calls began a week ago)

Best
Leah

From: Gordon, Robert (DHHS) <GordonR3@michigan.gov>
Sent: Wednesday, June 10, 2020 8:29 AM
To: Sutfin, Lynn (DHHS) <SutfinL1@michigan.gov>; Leah Kaplow <Leah_Kaplow@mckinsey.com>; Emerson, Erin (DHHS) <EmersonE@michigan.gov>; Ismail Aijazuddin <Ismail_Aijazuddin@mckinsey.com>; Commey, Katherine (DHHS-Contractor) <CommeyK@michigan.gov>; Massey, Kate (DHHS) <MasseyK4@michigan.gov>; Erin McGovern <Erin_McGovern@mckinsey.com>
Cc: Newton, Nell (DHHS-Contractor) <NewtonN1@michigan.gov>; Megan Leitch <Megan_Leitch@mckinsey.com>; Schwarzkopf, Emily (DHHS) <SchwarzkopfE1@michigan.gov>
Subject: [EXT]RE: [Nursing facility reporting] Data memo preparation

Lynn, I think it would be great for you (and also Emily, cc'd) to work with the team on a structure and framing language that you think will be most effective for the media and the legislators who are following this issue closely. In a sentence, I think we are aiming to provide an update on our response to NF challenges, encompassing the data which everyone has been requesting as well as some new steps we are taking to strengthen safety.

From: Sutfin, Lynn (DHHS) <SutfinL1@michigan.gov>
Sent: Tuesday, June 9, 2020 8:15 PM
To: Leah Kaplow <leah_kaplow@mckinsey.com>; Emerson, Erin (DHHS) <EmersonE@michigan.gov>; Ismail Aijazuddin <Ismail_Aijazuddin@mckinsey.com>; Commey, Katherine (DHHS-Contractor) <CommeyK@michigan.gov>; Massey, Kate (DHHS) <MasseyK4@michigan.gov>; Erin McGovern <Erin_McGovern@mckinsey.com>
Cc: Gordon, Robert (DHHS) <GordonR3@michigan.gov>; Newton, Nell (DHHS-Contractor) <NewtonN1@michigan.gov>; Megan Leitch <Megan_Leitch@mckinsey.com>
Subject: RE: [Nursing facility reporting] Data memo preparation

This has a lot of great content. I think it might need some additional structure. Is this a report? A memo? A plan?

It seems to need a background statement on what the issue is to start with and then the rest of it is what we are doing to address it. Might make sense to have the data at the beginning as it's because of the cases, deaths, etc. that we are making these plans.

Just my two cents.

From: Leah Kaplow <Leah_Kaplow@mckinsey.com>
Sent: Tuesday, June 9, 2020 3:11 PM
To: Sutfin, Lynn (DHHS) <SutfinL1@michigan.gov>; Emerson, Erin (DHHS) <EmersonE@michigan.gov>; Ismail Aijazuddin <Ismail_Aijazuddin@mckinsey.com>; Commey, Katherine (DHHS-Contractor) <CommeyK@michigan.gov>; Massey, Kate (DHHS) <MasseyK4@michigan.gov>; Erin McGovern <Erin_McGovern@mckinsey.com>
Cc: Gordon, Robert (DHHS) <GordonR3@michigan.gov>; Newton, Nell (DHHS-Contractor) <NewtonN1@michigan.gov>; Megan Leitch <Megan_Leitch@mckinsey.com>
Subject: RE: [Nursing facility reporting] Data memo preparation

Many thanks to Lynn, Erin E, and Kate. I have incorporated all of your edits into the attached – for anyone who has yet to review, please use this version! (As always, please use track changes / comments to provide feedback in the document itself)

Best,
Leah

From: Sutfin, Lynn (DHHS) <SutfinL1@michigan.gov>
Sent: Tuesday, June 9, 2020 2:45 PM
To: Leah Kaplow <Leah_Kaplow@mckinsey.com>; Emerson, Erin (DHHS) <EmersonE@michigan.gov>; Ismail Aijazuddin <Ismail_Aijazuddin@mckinsey.com>; Commey, Katherine (DHHS-Contractor) <CommeyK@michigan.gov>; Massey, Kate (DHHS) <MasseyK4@michigan.gov>; Erin McGovern <Erin_McGovern@mckinsey.com>
Cc: Gordon, Robert (DHHS) <GordonR3@michigan.gov>; Newton, Nell (DHHS-Contractor) <NewtonN1@michigan.gov>; Megan Leitch <Megan_Leitch@mckinsey.com>
Subject: [EXT]RE: [Nursing facility reporting] Data memo preparation

I had some minor edits

From: Leah Kaplow <Leah_Kaplow@mckinsey.com>
Sent: Tuesday, June 9, 2020 2:32 PM
To: Emerson, Erin (DHHS) <EmersonE@michigan.gov>; Ismail Aijazuddin <Ismail_Aijazuddin@mckinsey.com>; Commey, Katherine (DHHS-Contractor) <CommeyK@michigan.gov>; Massey, Kate (DHHS) <MasseyK4@michigan.gov>; Erin McGovern <Erin_McGovern@mckinsey.com>
Cc: Gordon, Robert (DHHS) <GordonR3@michigan.gov>; Sutfin, Lynn (DHHS) <SutfinL1@michigan.gov>; Newton, Nell (DHHS-Contractor) <NewtonN1@michigan.gov>; Megan Leitch <Megan_Leitch@mckinsey.com>
Subject: RE: [Nursing facility reporting] Data memo preparation

Hi everyone,

Are folks able to provide feedback today? I'm happy to incorporate comments and send out another version tonight. Would appreciate comments by 6pm but am willing to incorporate anything sent by 930pm (as long as I'm not getting everything then!)

Best
Leah

From: Emerson, Erin (DHHS) <EmersonE@michigan.gov>
Sent: Tuesday, June 9, 2020 7:59 AM
To: Leah Kaplow <Leah_Kaplow@mckinsey.com>; Ismail Aijazuddin <Ismail_Aijazuddin@mckinsey.com>; Commey, Katherine (DHHS-Contractor) <CommeyK@michigan.gov>; Massey, Kate (DHHS) <MasseyK4@michigan.gov>; Erin McGovern <Erin_McGovern@mckinsey.com>
Cc: Gordon, Robert (DHHS) <GordonR3@michigan.gov>; Sutfin, Lynn (DHHS) <SutfinL1@michigan.gov>; Newton, Nell (DHHS-Contractor) <NewtonN1@michigan.gov>
Subject: [EXT]RE: [Nursing facility reporting] Data memo preparation

Thanks, Leah! I haven't had a chance to review yet, but wanted to address your question below. I have made the below requests and expect to have something to build into the document today. Will try to get to you as quickly as I can. Thanks.

From: Leah Kaplow <Leah_Kaplow@mckinsey.com>
Sent: Monday, June 8, 2020 11:28 PM
To: Ismail Aijazuddin <Ismail_Aijazuddin@mckinsey.com>; Emerson, Erin (DHHS) <EmersonE@michigan.gov>; Commey, Katherine (DHHS-Contractor) <CommeyK@michigan.gov>; Massey, Kate (DHHS) <MasseyK4@michigan.gov>; Erin McGovern <Erin_McGovern@mckinsey.com>
Cc: Gordon, Robert (DHHS) <GordonR3@michigan.gov>; Sutfin, Lynn (DHHS) <SutfinL1@michigan.gov>; Newton, Nell (DHHS-Contractor) <NewtonN1@michigan.gov>
Subject: RE: [Nursing facility reporting] Data memo preparation

CAUTION: This is an External email. Please send suspicious emails to abuse@michigan.gov

Hi everyone

Thanks to all for their contributions thus far. We have consolidated your notes into the attached document. Next steps:

- **Everyone** – please review and send back comments OR *track changes in the document itself* and send back.

- **Erin Emerson** – please especially review the comments in the first section (there are a number of specific questions). Notably – have you already sent prompts to Katie (hubs), Meghan G (Swing beds), and Larry/Kim from LARA (infection control)? Happy to do so but guessing it's better coming from you. Please let us know if you need any help – I'm happy to continue consolidating but good if we can do outreach and turn around quickly!
- **Ismail** – to add in numbers in the data validation section as soon as we are done with calls tomorrow!

Thanks so much,
Leah

Note: the attached does not represent McKinsey policy guidance or recommendations in any form. Rather, it is the consolidation of information from MDHHS, MSU, and other Michigan stakeholders.

From: Ismail Aijazuddin <Ismail_Aijazuddin@mckinsey.com>
Sent: Monday, June 8, 2020 12:16 PM
To: Emerson, Erin (DHHS) <EmersonE@michigan.gov>; Commey, Katherine (DHHS-Contractor) <CommeyK@michigan.gov>; Massey, Kate (DHHS) <MasseyK4@michigan.gov>; Erin McGovern <Erin_McGovern@mckinsey.com>
Cc: Leah Kaplow <Leah_Kaplow@mckinsey.com>; Gordon, Robert (DHHS) <GordonR3@michigan.gov>; Sutfin, Lynn (DHHS) <SutfinL1@michigan.gov>; Newton, Nell (DHHS-Contractor) <NewtonN1@michigan.gov>
Subject: RE: [Nursing facility reporting] Data memo preparation

Hi all,

Sharing the outline we reviewed, with comments from the call and areas in need of input added in bold.

Our team will send a rough draft of the reporting section tonight and incorporate content from Erin and others in the document as it comes in.

Please share other thoughts or questions, thanks!

Ismail

Ismail Aijazuddin | McKinsey & Company
150 W Jefferson Suite 1600 | Detroit, MI 48226
Mobile: +1 (313) 398-0557
ismail_aijazuddin@mckinsey.com

From: Emerson, Erin (DHHS) <EmersonE@michigan.gov>
Sent: Monday, June 8, 2020 10:49 AM
To: Ismail Aijazuddin <Ismail_Aijazuddin@mckinsey.com>; Commey, Katherine (DHHS-Contractor) <CommeyK@michigan.gov>; Massey, Kate (DHHS) <MasseyK4@michigan.gov>; Erin McGovern <Erin_McGovern@mckinsey.com>
Cc: Leah Kaplow <Leah_Kaplow@mckinsey.com>; Gordon, Robert (DHHS) <GordonR3@michigan.gov>; Sutfin, Lynn (DHHS) <SutfinL1@michigan.gov>; Newton, Nell (DHHS-Contractor)

<NewtonN1@michigan.gov>
Subject: [EXT]RE: [Nursing facility reporting] Data memo preparation

Hi all,

Per my conversation with Robert yesterday, Nell was kind enough to pull together a high level outline of some of the policy steps we are taking to assure NF safety. Hoping we can make some time to discuss this during the 11:30 meeting.

Thanks!
Erin

-----Original Appointment-----
From: Ismail Aijazuddin <Ismail_Aijazuddin@mckinsey.com>
Sent: Friday, June 5, 2020 9:38 PM
To: Ismail Aijazuddin; Emerson, Erin (DHHS); Commey, Katherine (DHHS-Contractor); Massey, Kate (DHHS); Erin McGovern
Cc: Leah Kaplow; Gordon, Robert (DHHS)
Subject: [Nursing facility reporting] Data memo preparation
When: Monday, June 8, 2020 11:30 AM-12:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: https://mckinsey.zoom.us/j/91958234461?pwd=Z2xSMkxtcFFLbHlSVUlsN1VQek1CZz09

How To Join Zoom Meeting

Join with PC, MAC, iOS or Android device:	https://mckinsey.zoom.us/j/91958234461?pwd=Z2xSMkxtcFFLbHlSVUlsN1VQek1CZz09 Password: 773844
Join with phone only or access additional dial-in numbers:	Select your local Zoom dial-in number Meeting ID **919-5823-4461** then **#**
Join with phone audio using one-tap dial-ins:	United States | +16468769923,,91958234461# United States | +17866351003,,91958234461# United States | +12678310333,,91958234461# United States | +13017158592,,91958234461#

United States | +13126266799,,91958234461#
United States | +14703812552,,91958234461#
United States | +16465189805,,91958234461#
United States | +19712471195,,91958234461#
United States | +12133388477,,91958234461#
United States | +12532158782,,91958234461#
United States | +13462487799,,91958234461#
United States | +14086380968,,91958234461#
United States | +16692192599,,91958234461#

oin in room with SIP: 91958234461@ zoomcrc.com
Password: 773844

oin in room with H.323 IP Address: 91958234461@ 162.255.37.11 (US West)
91958234461@ 162.255.36.11 (US East)
91958234461@ 221.122.88.195 (China)
91958234461@ 115.114.131.7 (India Mumbai)
91958234461@ 115.114.115.7 (India Hyderabad)
91958234461@ 213.19.144.110 (EMEA)
91958234461@ 103.122.166.55 (Australia)
91958234461@ 209.9.211.110 (Hong Kong SAR)
91958234461@ 64.211.144.160 (Brazil)
91958234461@ 69.174.57.160 (Canada)
91958234461@ 207.226.132.110 (Japan)

Password: 773844

Zoom Tips:
Zoom can be used for either video conferencing meetings or audio only meetings.

Selecting the optimal audio conferencing option for joining Zoom meetings:
Zoom enables users to select one of three options for joining audio on your Zoom meeting: Computer Audio, Phone Call, and Call Me.

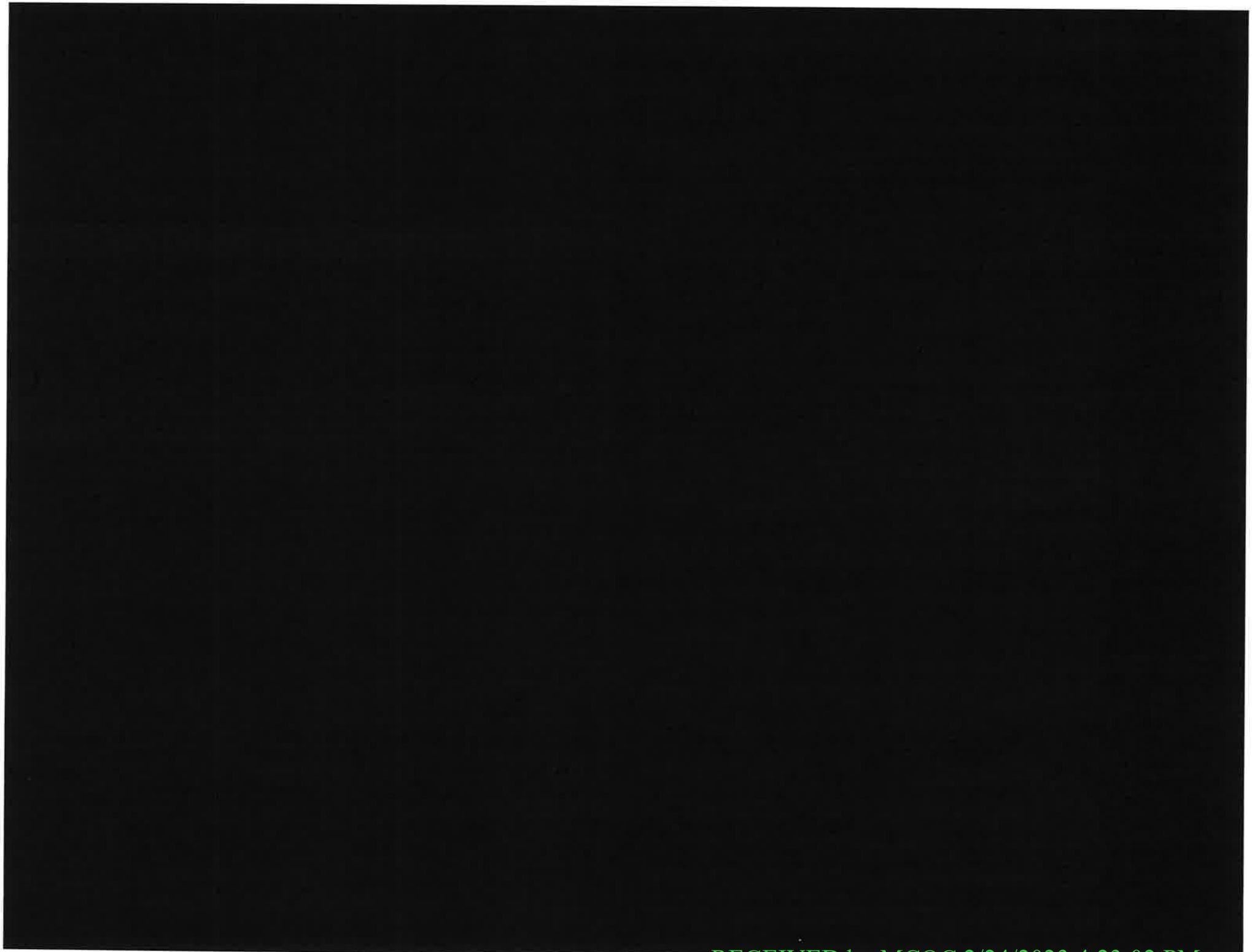
Call Me:
The "Call me" option is not available for all countries.

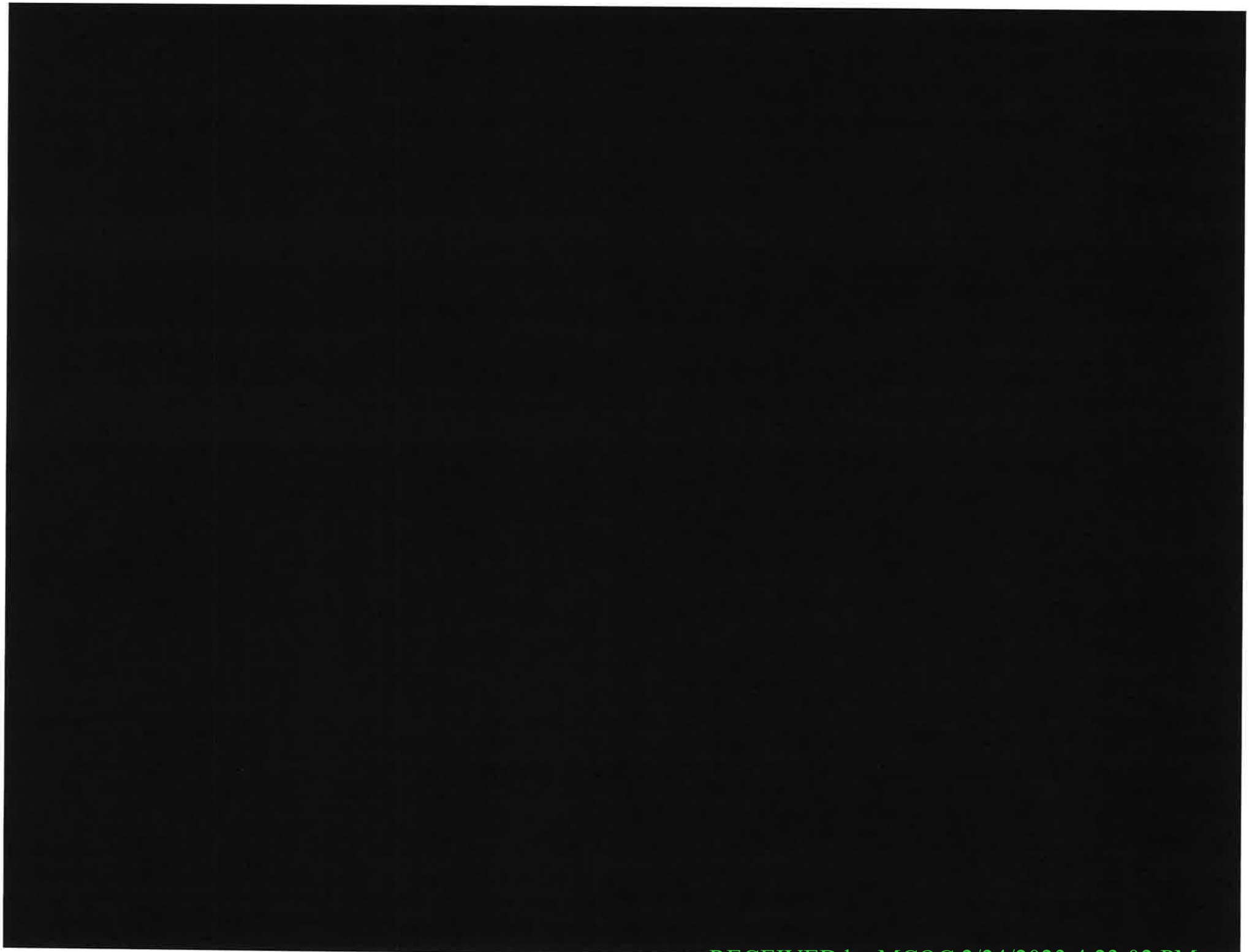
Get the best desktop audio:
When joining a Zoom meeting from a Desktop computer, use the "Computer Audio" option.

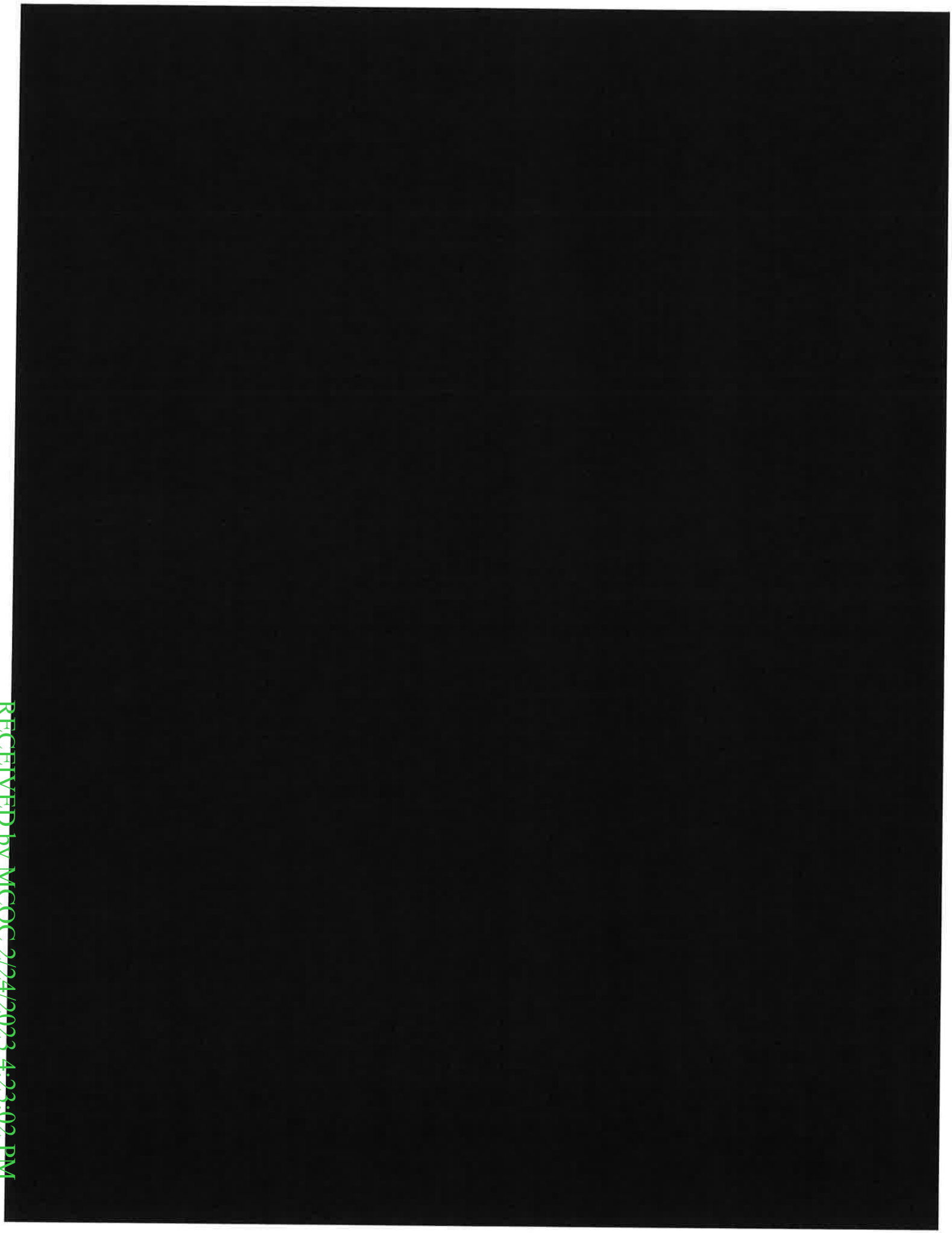
Mitigate a poor computer audio connection:
If the computer audio connection during your Zoom meeting is poor, you can switch your audio to "Phone Call" or "Call Me".

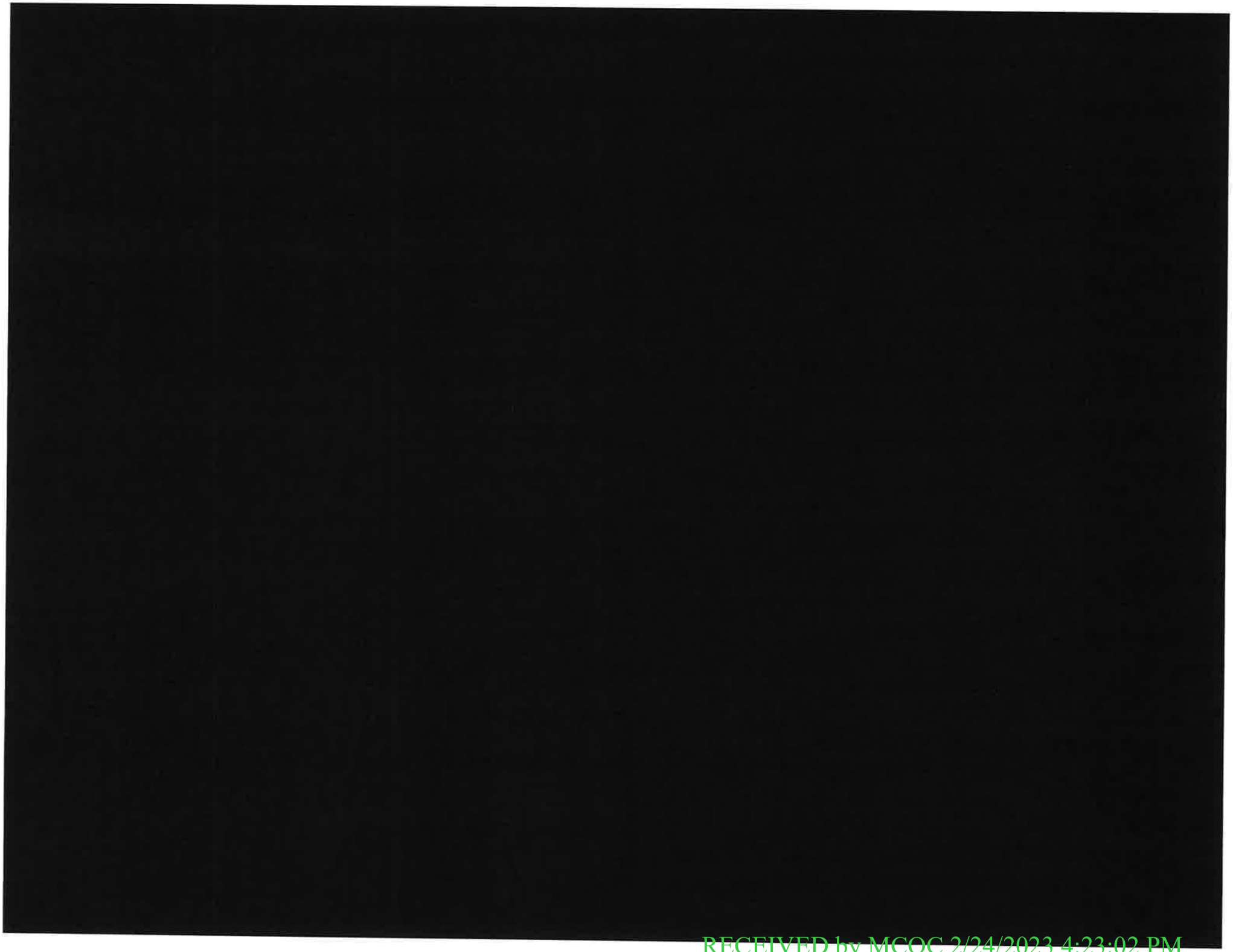
Get better audio performance in low bandwidth areas or host a phone audio only meeting:
In locations with limited bandwidth and network coverage, join Zoom meetings with phone audio only using dial-in numbers provided in the Zoom meeting invite.

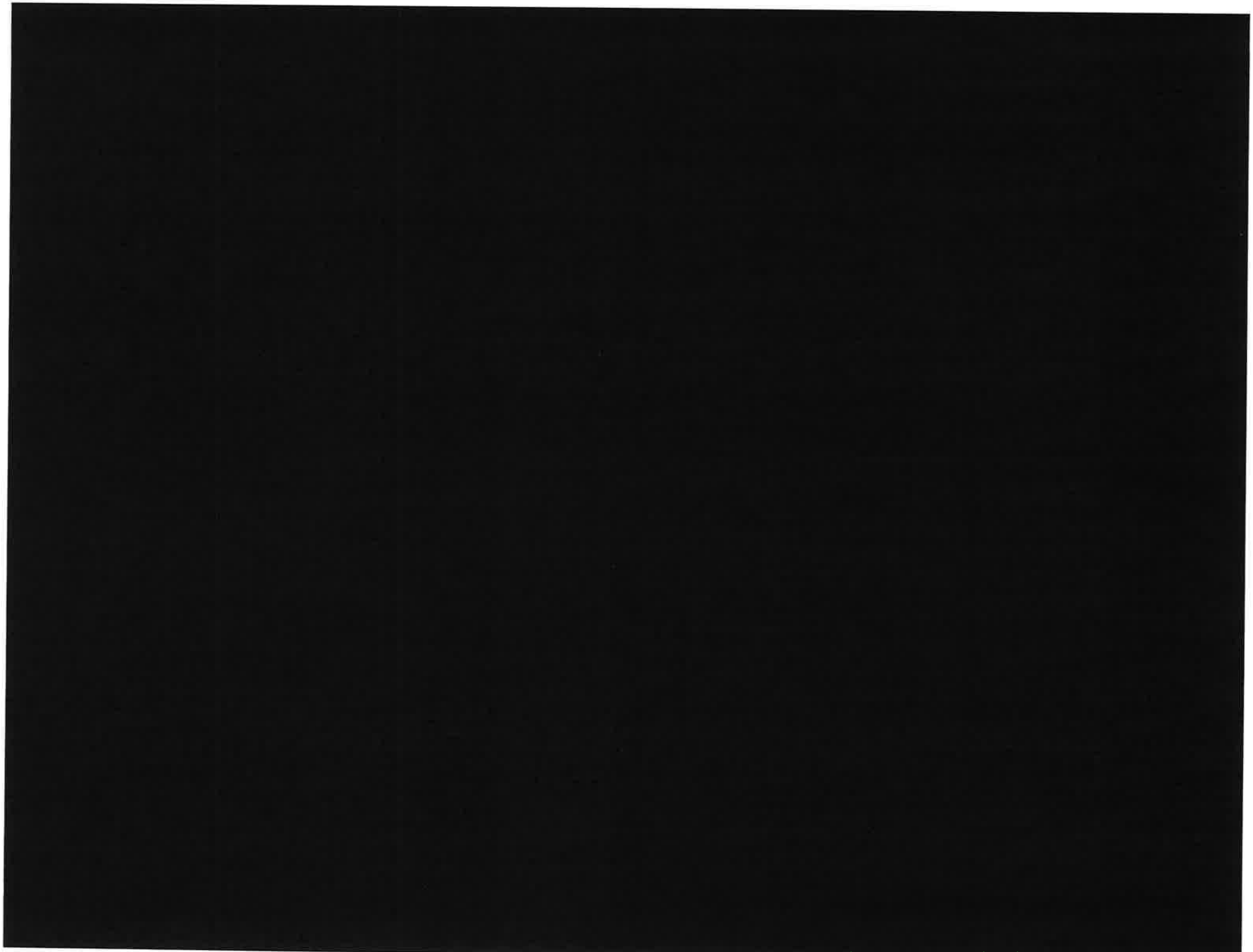
Connect to Zoom from non-McKinsey room video conferencing systems:
To connect from VC systems capable of dialing into internet VC services, dial the SIP address (E.g. 7317259679@zoomcrc.com) or H.323 IP address (E.g. 162.255.37.11) referenced above, using an in-room video system and password if required. Note: SIP/IP calling may be blocked by external firewalls. Please visit Zoom's support page for more information.

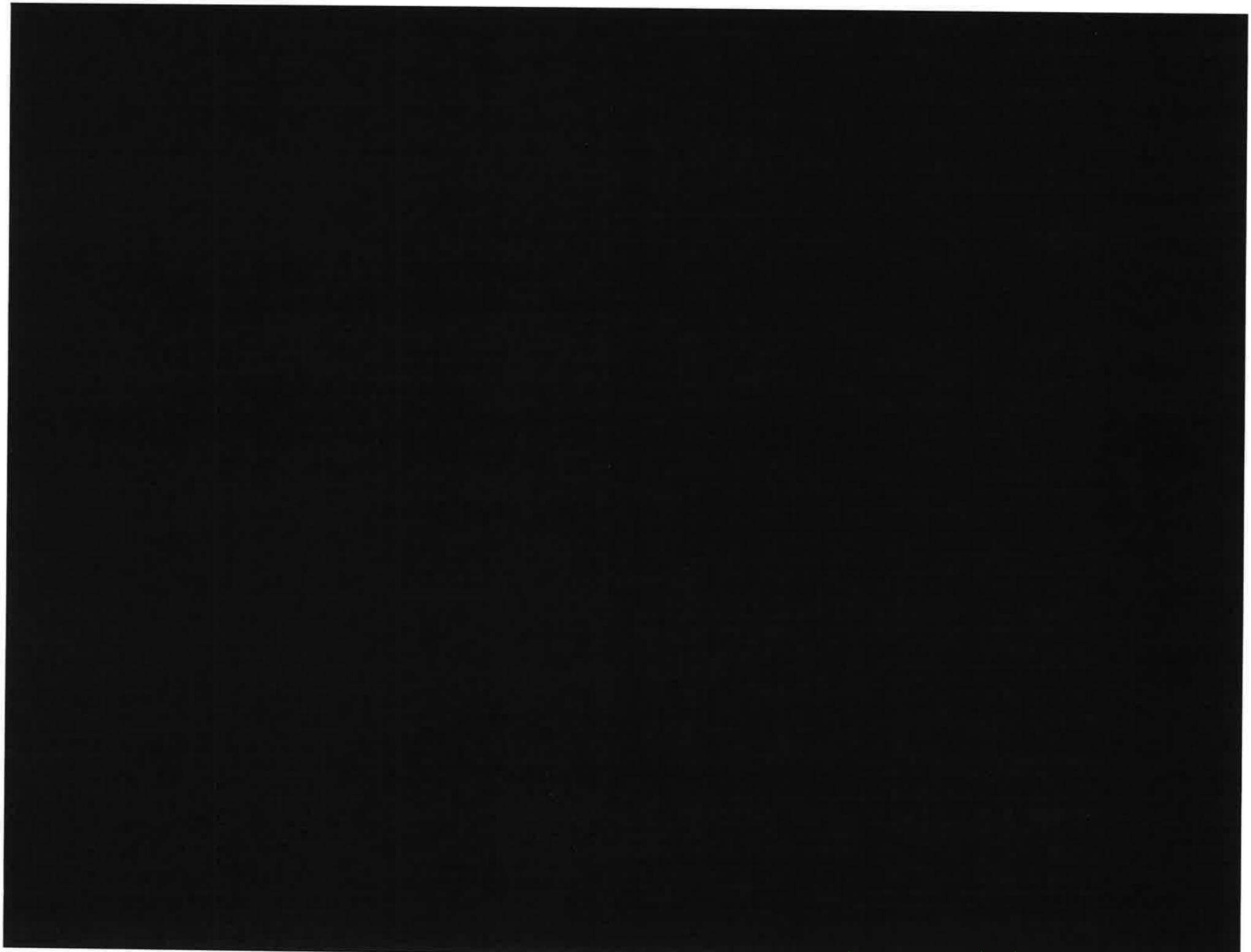












Redaction Date: 10/12/2021 4:21:58 PM

Redaction Log

Total Number of Redactions in Document: 6

Redaction Reasons by Page

Page	Reason	Description	Occurrences
9			1
10			1
11			1
12			1
13			1
14			1

Redaction Date: 10/12/2021 4:21:58 PM

Redaction Log

Redaction Reasons by Exemption

Reason	Description	Pages (Count)
		9(1) 10(1) 11(1) 12(1) 13(1) 14(1)

STATE OF MICHIGAN
COURT OF CLAIMS

Bundle Cover Sheet

Lower Court:	L Ct No.:	COC No.:
		TEMP-Y9PKZXR6

Case Title:
ERIN M MILLER v. MICH. DEPT. OF HEALTH AND HUMAN SERVICES

Priority:	Filing Option:
NONE	File Only

Filer Information

Filer
Erin Miller
[redacted]

Attorney
Erin Miller, PRO PER()
[redacted]

Filing Summary

Filing Type	Filing Name	Fee
Summons and Complaint	Miller_v_MDHHS_Summons-Complaint	$150.00
	eFiling System Fee:	$25.00
	NON-REFUNDABLE Automated Payment Service Fee:	$5.25
	Total:	**$180.25**

Alternate Payment Reason: None

The document(s) listed above were electronically filed with the Michigan Court of Claims.

TEMP-Y9PKZXR6-31857050