

STATE OF MICHIGAN
COURT OF APPEALS

HARVEY HANEY,

Plaintiff-Appellant,

v

MICHIGAN TOWNSHIPS ASSOCIATION,

Defendant-Appellee.

UNPUBLISHED

December 26, 2019

No. 348163

Ingham Circuit Court

LC No. 18-000254-CZ

Before: LETICA, P.J., and GADOLA and CAMERON, JJ.

PER CURIAM.

In this action brought under the Freedom of Information Act (“FOIA”), MCL 15.231 *et seq.*, plaintiff, Harvey Haney, appeals the trial court’s order denying Haney’s motion for summary disposition and granting defendant Michigan Townships Association (“MTA”)’s motion for summary disposition. We affirm.

I. FACTS

This case arises from the partial denial of Haney’s FOIA request by MTA. MTA is a private nonprofit organization. Formed in 1953, MTA provides a number of services to its members including advocacy, legislative representation of township interests, education, newsletters, and magazines. Membership to MTA is voluntary, and a majority of MTA’s members are townships. Approximately 60 percent of MTA’s revenue is derived from member dues, while the remaining revenue comes from sponsorships, rental of exhibition space, book and official pin sales, and advertising. Membership dues are reported to the Internal Revenue Service (“IRS”) as program services revenue.

On March 24, 2018, Haney sent a FOIA request to MTA. Haney first requested that MTA provide him with any and all e-mail correspondence between MTA staff and Fraser Township dating back to November 2017. Haney also requested the IRS 990 Forms filed by MTA for the years 2016 and 2017. In response to Haney’s FOIA request, MTA stated that it was

not a public body subject to the FOIA, but it did provide Haney with the 990 Forms for the years 2015 and 2016.¹

On April 19, 2018, Haney filed a complaint, alleging that MTA improperly denied production of Haney's first FOIA request, i.e., the e-mails. Discovery commenced, and cross motions for summary dispositions were eventually filed. Haney moved for summary disposition arguing that MTA was a public body pursuant to MCL 15.232(h)(iv) because MTA primarily received funding from its township members. Haney further argued that, because MTA does not provide fee-for-services to the public, the member dues are essentially a government subsidy used to conduct quasi-governmental activities such as lobbying, advocating, and making amicus curiae appearances. MTA argued, in relevant part, that it is not a public body because it was not created by state or local authority and is not funded by state or local authority. MTA claimed that it could not be a public body for purposes of the FOIA because the money paid by its members is in exchange for MTA providing goods and services.

Following oral argument on the motions, the trial court held that because MTA is a private corporation funded through payment of dues in exchange for goods and ongoing services, it is not a "public body" for the purposes of the FOIA. Accordingly, the trial court granted MTA's motion for summary disposition and denied Haney's motion for summary disposition. This appeal followed.

II. ANALYSIS

Haney argues that the trial court erred by finding that MTA is not a public body subject to the FOIA. We disagree.

We review de novo a trial court's decision regarding a motion for summary disposition. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). In reviewing a motion for summary disposition brought under MCR 2.116(C)(10),² this Court considers "affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, in the light most favorable to the party opposing the motion." *Id.* (citation omitted). "A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law." *Id.* at 454-455.

"The FOIA is an act to provide for public access to certain public records of public bodies." *Breighner v Mich High Sch Athletic Ass'n*, 255 Mich App 567, 573; 662 NW2d 413

¹ MTA could not provide the 2017 990 Form because it was not available until November 2018.

² The trial court referenced MCR 2.116(C)(8) and (C)(10) when granting MTA's motion for summary disposition. However, because the trial court's consideration went beyond the parties' pleadings, we will consider whether the trial court properly granted summary disposition pursuant to MCR 2.116(C)(10). See *Kosmalski ex rel Kosmalski v St John's Lutheran Church*, 261 Mich App 56, 59; 680 NW2d 50 (2004).

(2003) (quotations omitted). “In enacting the FOIA, the Legislature made it public policy that citizens are entitled to complete information concerning the affairs of their government so that they can fully participate in the democratic process.” *Sclafani v Domestic Violence Escape*, 255 Mich App 260, 263-264; 660 NW2d 97 (2003).

The FOIA defines “public body,” in relevant part, as:

Any other body that is created by state or local authority or is primarily funded by or through state or local authority, except that the judiciary, including the office of the county clerk and its employees when acting in the capacity of clerk to the circuit court, is not included in the definition of public body. [MCL 15.232(h)(iv).]

The Court in *Breighner*, 255 Mich App at 577-578, interpreted MCL 15.232(h)(iv) and held the following:

Our reading of the FOIA, together with our understanding of relevant precedent, leads us to conclude that the question whether the [association] is a public body subject to the FOIA can be answered after application of two separate tests. The first test is whether the [association] was created by state or local authority. Notwithstanding the outcome of the first question, the second inquiry is whether the [association] is primarily funded by or through state or local authority. The latter question involves a two-pronged test. The first question is whether the [funds] come to the [association] by or through the [the state or local authority]. And, if so, the second question is whether the [association] is funded by that money, i.e., by or through a government grant or subsidy, as opposed to the [funds] being a fee for services. [Quotations and citations omitted.]

Because it is undisputed that MTA was not created by state or local authority, we must determine whether MTA is primarily funded by or through state or local authority. This Court has construed the term “primarily funded” to mean that “when the governmental contribution is less than half of an organization’s total funding, the organization is not primarily funded by or through state authority.” *Kubick v Child & Family Servs of Mich Inc*, 171 Mich App 304, 308; 429 NW2d 881 (1988). An organization that receives more than half of its funding from a state or local authority is considered to be “primarily funded” by that authority. See *Jackson v Eastern Mich Univ Foundation*, 215 Mich App 240, 245-246; 544 NW2d 737 (1996) (holding that the defendant foundation met the FOIA’s definition of public body because the state university provided the defendant foundation with a majority of its financial resources).

In *State Defender Union v Legal Aid*, 230 Mich App 426, 426; 584 NW2d 359 (1998), this Court examined the term “funded” and addressed the narrow issue of “whether an organization that receives payment from governmental sources in return for providing services is

‘funded by or through state or local authority,’ irrespective of the amount of those payments.”³ *Id.* at 431. The *State Defender Union* Court defined the term “funded” as “the receipt of a governmental grant or subsidy” or “something other than an exchange of services or goods for money, even if the source of money is a governmental entity.” *Id.* at 432-433. The Court held that a private organization is not a public body “merely because public monies paid in exchange for goods provided or services rendered comprise a certain percentage of the organization’s revenue.” *Id.* at 433. In so holding, the *State Defender Union* Court stated the following:

Earned fees are simply not a grant, subsidy, or funding in any reasonable, common-sense construction of those synonymous words. Rather, it is clear that, in the FOIA, funded means something other than an exchange of services or goods for money, even if the source of money is a governmental entity. Were we to hold otherwise, every organization doing the primary part of its business with the state or with local governments would have its books and records subject to the FOIA’s disclosure provisions. In light of the plain meaning of the language our Legislature used in the FOIA, we do not believe that it intended such an extraordinary result. [*Id.*]

In this case, MTA is a private, nonprofit organization whose mission is to provide a unified voice for Michigan’s townships. MTA membership is voluntary. Although the majority of MTA’s revenue is derived from its members, most of which are governmental entities, those members pay dues to be associated with MTA in exchange for the services it provides. Consequently, MTA is not subject to the FOIA because it is not “funded” by the townships, i.e., by or through a grant or subsidy as opposed to fees for the services it provides to members. See *State Defender Union*, 230 Mich App at 433. We therefore conclude that the trial court did not err by granting MTA’s motion for summary disposition and by denying Haney’s motion for summary disposition.⁴

Affirmed.

/s/ Anica Letica
/s/ Michael F. Gadola
/s/ Thomas C. Cameron

³ Although Haney urges this Court to reject the holding in *State Defender Union*, we are bound by that decision. MCR 7.215(J)(1). Further, we decline Haney’s invitation to declare a conflict under MCR 7.215(J)(2).

⁴ In light of our conclusion that MTA is not a public body under the FOIA, we need not address Haney’s arguments concerning the Title-Object Clause, 1963 Const, art 4, § 24, which was not addressed by the trial court.

