

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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CHARLES BOLDARINI, Personal Representative of  
the Estate of CAROLINE BOLDARINI,

UNPUBLISHED  
September 27, 1996

Plaintiff-Appellant,

v

No. 178250  
LC No. 94-400739-AZ

DEARBORN POLICE DEPARTMENT and CITY  
OF DEARBORN,

Defendants-Appellees.

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Before: Wahls, P.J., and Fitzgerald and L.P. Borrello,\* JJ.

PER CURIAM.

Plaintiff sued defendant under the Michigan Freedom of Information Act (FOIA), MCL 15.231 *et seq.*; MSA 4.1801(1) *et seq.*, to compel defendant to produce records regarding the shooting of plaintiff's decedent, Caroline Boldarini. Plaintiff appeals as of right from an order dismissing his complaint on the trial court's own motion. We reverse and remand for further proceedings.

Once a proper request to produce records has been made, the FOIA requires a public body to disclose public records, including writings and other means of recording. *Farrell v City of Detroit*, 209 Mich App 7, 11; 530 NW2d 105 (1995). The FOIA presumes that all records are to be disclosed unless the governmental agency can show that records are exempt from disclosure under the statute. *Id.*

A public body may charge a fee for providing copies of requested public records. MCL 15.234(1); MSA 4.1801(4)(1). If the copying fee will exceed \$50, the public body may request a good faith deposit from the requester, which cannot exceed half of the total fee. MCL 15.234(2); MSA 4.1801(4)(2). A public body that receives a request for records under the act must respond within five days and must either grant the request, deny the request in writing, or grant the request in part and deny the balance in writing. MCL 15.235(2); MSA 4.1801(5)(2). The agency may extend its time to respond by ten business days. MCL 15.235(2)(d); MSA 4.1801(5)(2)(d).

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\* Circuit judge, sitting on the Court of Appeals by assignment.

Although the FOIA does not delineate the obligations of a governmental agency regarding a request for which it has sought a deposit, the sections of the statute can be read together to conclude that an agency's request for a deposit constitutes a response within the meaning of MCL 15.235(2); MSA 4.1801(5)(2), and that the agency's obligation to further respond arises once the requester has paid the deposit.

Here, plaintiff alleged in his first amended complaint that he paid the \$100 deposit requested by defendants, and the record contains no evidence to refute this averment. Defendants were therefore obligated to produce the records within five days after they received the deposit from plaintiff. Defendants argue that they could not be sued under the FOIA until they denied plaintiff's request, which they never did. However, MCL 15.235(3); MSA 4.1801(5)(3) provides that a failure to respond constitutes a final decision to deny the request. Plaintiff was therefore entitled to sue defendants after defendants received plaintiff's deposit and failed to respond.

The trial court dismissed plaintiff's complaint because it concluded that the records sought by plaintiff were discoverable in the wrongful death suit pending in federal court between the parties. This Court has held, however, that persons involved in litigation are entitled to records under the FOIA to the same extent as those not involved in litigation. *Local 312 of the American Federation of State, County and Municipal Employees, AFL-CIO v City of Detroit*, 207 Mich App 472, 473; 525 NW2d 487 (1994). The trial court thus erred in dismissing plaintiff's complaint on this basis.

Plaintiff also argues that the trial court should have granted him a default judgment. Because plaintiff did not move for or otherwise seek a default judgment, no error resulted from the trial court's failure to grant such a judgment.

Last, plaintiff asserts that the trial court erred by failing to award him reasonable attorney fees, costs, and punitive damages as permitted by the FOIA. Because the trial court dismissed plaintiff's complaint, plaintiff could not request attorney fees or other damages, and therefore the trial court did not address the issues of fees and costs. Given our conclusion that the trial court erred by failing to order defendant to produce the records requested by plaintiff, on remand the trial court shall determine whether plaintiff is entitled to attorney fees, costs, or punitive damages under MCL 15.240(4) and (5); MSA 4.1801(10)(4) and (5).

Reversed and remanded for further proceedings consistent with this opinion. Jurisdiction is not retained.

/s/ Myron H. Wahls

/s/ E. Thomas Fitzgerald

/s/ Leopold P. Borrello