

STATE OF MICHIGAN
COURT OF APPEALS

PADRAIC I. MULLIN,

UNPUBLISHED
November 8, 1996

Plaintiff-Appellant,

v

No. 180931
LC No. 94-401152

UNIVERSITY A CITIZENS DISTRICT
COUNCIL,

Defendant-Appellee.

Before: Gribbs, P.J. and Young and W. J. Caprathe,* JJ.

PER CURIAM.

Plaintiff appeals the circuit court's denial of plaintiff's request for attorney fees, costs and punitive damages. We affirm in part, reverse in part and remand for further proceedings.

Plaintiff sought, and defendant denied, certain documents under the Freedom of Information Act (FOIA), MCL 15.231 *et seq*; MSA 347.1 *et seq*. After plaintiff filed suit, the trial court agreed that the documents were not exempt and granted plaintiff's motion for summary disposition. The trial court denied without prejudice plaintiff's request for attorney fees and punitive damages.

The FOIA "declares that it is the public policy of this state to entitle all persons to complete information regarding governmental affairs so that they may participate fully in the democratic process." *Grebner v Clinton Twp*, 216 Mich App 736, 740; ___ NW2d ___ (1996). When a person seeking disclosure of a public record "prevails in an action commenced pursuant to [the FOIA], the court *shall* award reasonable attorneys' fees, costs, and disbursements." MCL 15.240(4); MSA 4. 1801(10)(4), emphasis added; *Trout Unlimited v Military Affairs*, 213 Mich App 203, 221-222; ___ NW2d ___ (1995). An award of attorney fees is mandatory when a requester prevails completely, and a partial award is to be made when a requester prevails in part. *Id*. Therefore, plaintiff is entitled to an award in this case. However, what constitutes a reasonable fee is left to the sound discretion of the trial court. *Michigan Tax Management Services v City of Warren*, 437 Mich 506, 509; 473 NW2d 263

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

(1991). In determining a reasonable fee, the trial court may consider the type of lawsuit, the nature of the issues in dispute, the attorney-client relationship, whether defendant's discretion was reasonable rather than whimsical, and a wide variety of other factors. *Id.* We remand for determination of a reasonable fee.

Plaintiff also contends that the trial court erred in denying his request for punitive damages. Punitive damages are required only when a public body arbitrarily and capriciously violates the FOIA by refusal or delay in disclosing or providing copies of a record. MCL 15.240(5); MSA 4.1801(10)(5). See *Patterson v Allegan Co Sheriff*, 199 Mich App 638, 640; 502 NW2d 36 (1993), *Williams v Martimucci*, 88 Mich App 198, 201; 276 NW2d 876 (1979). It is implicit in the trial court's bench ruling on plaintiff's motion that the court did not find defendant's actions arbitrary and capricious. We find no error in the trial court's denial of punitive damages.

The trial court's denial of plaintiff's motion for punitive damages is affirmed. The trial court's denial of plaintiff's motion for reasonable attorney fees is reversed and this matter is remanded for determination of a reasonable fee in this case. We do not retain jurisdiction.

/s/ Roman S. Gribbs
/s/ Robert P. Young, Jr.
/s/ William J. Caprathe