

STATE OF MICHIGAN
COURT OF APPEALS

FRED MAGER,

Plaintiff-Appellant,

v

DEPARTMENT OF STATE POLICE and
JOHN L. McCARTHY,

Defendants-Appellees.

UNPUBLISHED
December 12, 1997

No. 197222
Ingham Circuit Court
LC No. 96-083751-AZ

Before: Kelly, P.J., and Reilly and Jansen, JJ.

PER CURIAM.

Plaintiff appeals as of right from an August 9, 1996, order of the circuit court denying his motion for summary disposition brought under MCR 2.116(C)(10) and granting defendants' motion for summary disposition pursuant to MCR 2.116(I)(2). We reverse.

Plaintiff brought this action pursuant to the Freedom of Information Act (FOIA), MCL 15.231 *et seq.*; MSA 4.1801(1) *et seq.*, to obtain the names and addresses of people who have purchased handguns. Plaintiff had initially requested, in writing, from the State Police Department the names and addresses of all people who had been issued a "pistol safety certificate" since November 1995. The State Police denied plaintiff's request, claiming that the following exemption from disclosure under the FOIA applied:

(1) A public body may exempt from disclosure as a public record under this act:

(a) Information of a personal nature where the public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy. [MCL 15.243; MSA 4.1801(13).]

Plaintiff then filed suit in the Ingham Circuit Court to compel defendants to provide him with the requested information under the FOIA. Plaintiff subsequently moved for summary disposition pursuant

to MCR 2.116(C)(10), and defendants submitted a brief in opposition and a brief in support of summary disposition in their favor under MCR 2.116(I)(2).

The trial court denied plaintiff's motion for summary disposition and granted defendants' motion. It found that disclosure of the information would constitute a "clearly unwarranted invasion of an individual's privacy." The trial court specifically noted that the pistol certificate holders did not have any contractual relationship with a public body, and that the nature of the disclosure (a list of the owners of firearms and the location of those firearms) involved a serious invasion of privacy. The trial court also ruled that the release of the names and addresses did not satisfy the "core purpose" of the FOIA because it would not aid participation in the democratic process as it would not help citizens to learn about the inner workings of government or the conduct of government officials.

We review the trial court's decision regarding the motions for summary disposition de novo. *Nicita v Detroit (After Remand)*, 216 Mich App 746, 750; 550 NW2d 269 (1996). There are no facts in dispute in this case, and we are required to interpret § 13(1)(a) of the FOIA to determine whether plaintiff's requested information is exempt from disclosure. Interpretation of a statutory provision raises a question of law which is likewise reviewed de novo. *Bradley v Saranac Community Schools Bd of Ed*, 455 Mich 285, 293; 565 NW2d 650 (1997).

The FOIA requires the full disclosure of public records, unless those records are specifically exempted under § 13. *Bradley, supra*, p 293. The exemptions in § 13 are narrowly construed, and the burden of proof rests on the party asserting the exemption. *Id.* If a request for information held by a public body falls within an exemption, the decision to disclose it becomes discretionary. *Id.; Tobin v Civil Service Comm*, 416 Mich 661, 667; 331 NW2d 184 (1982).

The privacy exemption consists of two elements, both of which must be present for the exemption to apply. *Bradley, supra*, p 294. First, the information must be of a personal nature. Second, the disclosure of such information must be a clearly unwarranted invasion of privacy. *Id.* Information is of a personal nature if it reveals intimate or embarrassing details of an individual's private life. *Id.* This standard is evaluated in terms of the customs, mores, or ordinary views of the community. *Id.*

We conclude that the ownership of a gun does not reveal intimate or embarrassing details of an individual's private life. As noted by plaintiff, gun ownership is a highly regulated area of conduct in this state and there are numerous statutes pertaining to ownership or use of a gun.¹ Defendants do not point to, and we are unaware, of any customs, mores, or ordinary views of the community that would lead to the conclusion that gun ownership is an intimate or embarrassing detail of an individual's private life.

Moreover, plaintiff's requested information is only for names and addresses of safety inspection certificate holders. Defendants maintain that safety inspection certificate holders have a privacy interest in their names and addresses. Even were we to accept this as true, under the FOIA, disclosure of the information must constitute a *clearly unwarranted* invasion of an individual's privacy. Thus, the FOIA permits disclosures of public records that are invasions of privacy, as long as that invasion of privacy is not clearly unwarranted. *Bradley, supra.*, p 301. The information sought, names and addresses of

safety inspection certificate holders, is not a clearly unwarranted invasion of privacy. See, e.g., *Tobin, supra*, pp 672-679 (the release of names and addresses of civil service employees would not violate the common-law or constitutional right to privacy); *UPGWA v Dep't of State Police*, 422 Mich 432; 373 NW2d 713 (1985) (there is no clearly unwarranted invasion in releasing the names and addresses of security guards employed by certain security guard agency to a union); *State Employees Ass'n v Dep't of Management & Budget*, 428 Mich 104, 124-125; 404 NW2d 606 (1987) (there is no clearly unwarranted invasion in releasing the home addresses of civil service employees); *Detroit Free Press, Inc v Oakland Co Sheriff*, 164 Mich App 656; 418 NW2d 124 (1987) (booking photographs of a person arrested, charged with a felony, and awaiting trial do not contain information of a personal nature the public disclosure of which would constitute a clearly unwarranted invasion of an individual's privacy).

Accordingly, the trial court erred in granting summary disposition in favor of defendants. The FOIA's privacy exemption does not apply under these facts. We reverse the trial court's grant of summary disposition in favor of defendants and remand for the trial court to enter summary disposition in favor of plaintiff with respect to the information sought.

Plaintiff also requests an award of fees and costs under MCL 15.240(4); MSA 4.1801(10)(4). We agree that the award of reasonable attorney fees, costs, and disbursements is mandatory, *Michigan Tax Management Services Co v Warren*, 437 Mich 506; 473 NW2d 263 (1991), but leave it to the parties to argue on remand in the circuit court regarding how the trial court shall determine an award under § 10(4). However, we deny plaintiff an award of punitive damages under § 10(5) because the denial of the FOIA request was not arbitrary and capricious. *Patterson v Allegan Co Sheriff*, 199 Mich App 638, 640; 502 NW2d 368 (1993).

Reversed and remanded for further proceedings. Jurisdiction is not retained. No taxable costs pursuant to MCR 7.219, an issue of public policy being involved.

/s/ Michael J. Kelly
/s/ Maureen Pulte Reilly
/s/ Kathleen Jansen

¹ Plaintiff has appended to his appellate brief a list of fifty-one statutes that pertain to the use and regulation of guns.