

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

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MIDWESTERN AUDIT SERVICES, INC.,

Plaintiff-Appellant,

v

DEPARTMENT OF STATE POLICE,

Defendant-Appellee.

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UNPUBLISHED

June 23, 2000

No. 218066

Ingham Circuit Court

LC No. 96-083727-CZ

Before: Gage, P.J., and Gribbs and Sawyer, JJ.

PER CURIAM.

Plaintiff appeals as of right from orders granting judgment in favor of defendant pursuant to MCR 2.116(I)(2) and denying its motions for summary disposition pursuant to MCR 2.116(C)(10). This case arises out of plaintiff's request under the Freedom of Information Act (FOIA), MCL 15.231 *et seq.*, MSA 4.1801(1) *et seq.*, for unredacted copies of all UD-10 traffic crash reports for a period of three years. Defendant denied plaintiff's request for unredacted copies on the ground of the privacy exemption contained in MCL 15.243(1)(a); MSA 4.1801(13)(1)(a), among other grounds. Plaintiff argues that the privacy exemption is not applicable to prevent release of the information sought and that defendant's denial constituted a denial of equal protection because defendant previously released the forms to others. We disagree and affirm the trial court's orders.

A motion for summary disposition under MCR 2.116(C)(10), which tests the factual support of a claim, is subject to de novo review by this Court. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999); *Michigan Mutual Ins Co v Dowell*, 204 Mich App 81, 86; 514 NW2d 185 (1994). In so doing, we review the entire record, including affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, in the light most favorable to the nonmovant, making all legitimate inferences in the nonmovant's favor. *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996).

Where there is no genuine issue of material fact, on a motion for summary disposition, a movant is entitled to judgment as a matter of law pursuant to MCR 2.116(C)(10). *Smith, supra* at 454-455; *McCluskey v Womack*, 188 Mich App 465, 469; 470 NW2d 443 (1991). A party opposing a summary disposition motion on this ground may not rest on his or her pleadings but must set forth

specific facts establishing that there is a genuine issue of material fact for trial by submitting affidavits, depositions, admissions, or other documentary evidence. *Smith, supra* at 455; *McCluskey, supra* at 469.

We also review de novo constitutional issues because they are questions of law. *Yaldo v North Pointe Ins Co*, 217 Mich App 617, 623; 552 NW2d 657 (1996), *aff'd* 457 Mich 341; 518 NW2d 274 (1998). Whether a public record falls within a statutory exemption under the FOIA is also a question of law we review de novo. *Kent Co Deputy Sheriffs' Ass'n v Kent Co Sheriff*, 238 Mich App 310, 330; 605 NW2d 363 (1999).

## I

Plaintiff first asserts that the information it sought was not exempt because it was not personal information and its public disclosure would not constitute a clearly unwarranted invasion of an individual's privacy. Defendant, on the other hand, contends that the information sought did include personal information, such as names and addresses of accident victims, their gender and birth dates, and numerous details of the event, including whether there were injuries and their extent, as well as information regarding the ambulance and hospital used.

Under the FOIA, it is the policy of this state that all persons except prisoners are entitled to complete information regarding the affairs of government and the official acts of those who represent them so that they may fully participate in the democratic process. MCL 15.231(2); MSA 4.1801(1)(2); *Mager v Dep't of State Police*, 460 Mich 134, 146 n 22; 595 NW2d 142 (1999); *Shroeder v Detroit*, 221 Mich App 364, 365; 561 NW2d 497 (1997). Under the FOIA, a public body must disclose all public records which are not specifically exempt under the act. MCL 15.233(1); MSA 4.1801(3)(1); *Schroeder, supra* at 365. The burden is on the public body to sustain its denial of disclosure. MCL 15.240(4); MSA 4.1801(10)(4); *Schroeder, supra* at 365-366. The exemptions are to be narrowly construed and the burden of proving their applicability is also on the public body. *Booth Newspapers, Inc v Univ of Mich Bd of Regents*, 444 Mich 211, 232; 507 NW2d 422 (1993); *Herald Co v Bay City*, 228 Mich App 268, 286; 577 NW2d 696 (1998).

A public body may exempt information of a personal nature from disclosure as a public record under the FOIA where the public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy. MCL 15.243(1)(a); MSA 4.1801(13)(1)(a). Our Supreme Court recently clarified that determination of whether the privacy exemption applied consisted of a two-part inquiry: (1) whether the information is of a "personal nature," and (2) whether disclosure of the information would be a "clearly unwarranted invasion of privacy." *Mager, supra* at 141, citing *Bradley v Saranac Community Schools Bd of Ed*, 455 Mich 285, 294; 565 NW2d 650 (1997). Information is of a personal nature if it reveals intimate or embarrassing details of an individual's *private* life. *Id.* at 142. Determination of whether a disclosure is a clearly unwarranted invasion of privacy requires balancing the public interest in disclosure against the interests the exemption is intended to protect. *Id.* at 144-145, citing *United States Dep't of Defense v Federal Labor Relations Authority*, 510 US 487, 495; 114 S Ct 1006; 127 L Ed 2d 325 (1994). However, the only relevant public interest in disclosure that is to be weighed in this balance is the extent to which disclosure would serve the core

purpose of the FOIA, which is contributing significantly to public understanding of the operations or activities of the government. *Id.* at 145.

We conclude that *Mager* is controlling here. The core purpose of the FOIA is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct. *Id.* Therefore, fulfilling a request for information about private citizens—a request entirely unrelated to any inquiry regarding the inner workings of government, or how well the Department of State Police is fulfilling its statutory functions—would be an unwarranted invasion of the privacy of those citizens. *Id.* at 146. In *Mager*, the Court held that the privacy exemption applied to prevent the plaintiff, who sought to recruit other gun owners to his cause of changing certain laws relating to firearms, from receiving the names and addresses of persons who complied with the statutory requirement that handguns be registered. *Id.* at 135-136, 146-147.

Here, the disclosures sought relate only to the private lives of private citizens who happen to have been involved in a motor vehicle accident. The information sought is relatively extensive and includes intimate details of individuals' private lives. Plaintiff would urge this Court to view the UD-10 forms as involving public information about public and newsworthy events because they involve accidents on public highways and would have this Court ignore the fact that the information sought pertains to the private lives of private individuals. However, names and addresses have been protected when they belonged to private citizens who were, as here, merely complying with their statutory duties. In *Mager*, although the Court spoke in terms of the fact of gun ownership being of a personal nature, what the Court prevented disclosure of was the gun registration information that was requested, i.e., names and addresses. *Mager, supra* at 135, 144, 147. More importantly, we see no manner in which disclosure of the information sought is relevant to serve the core purpose of the FOIA, which is contributing significantly to public understanding of the operations or activities of the government. This is the only interest that must be balanced against protection of privacy afforded by the exemption. Because the disclosure does not serve the core purpose of the FOIA, it cannot outweigh the privacy interests protected by the exemption contained in MCL 15.243(1)(a); MSA 4.1801(13)(1)(a). Consequently, the trial court did not err when it granted judgment in favor of defendant and denied plaintiff's motion for summary disposition. Because we have determined that the privacy exemption applies to prevent the disclosure sought by plaintiff, it is unnecessary for us to address other exemptions argued by the parties.

## II

Plaintiff also argues that defendant violated its state and federal constitutional rights to equal protection of the laws when it denied disclosure of the forms to plaintiff despite disclosures to others. We disagree.

Equal protection of the law is guaranteed by the federal and state constitutions and both afford similar protection. US Const, Am XIV; Const 1963, art 1, § 2; *Frame v Nehls*, 452 Mich 171, 183; 550 NW2d 739 (1996); *Doe v Dep't of Social Services*, 439 Mich 650, 670-672; 487 NW2d 166 (1992). The purpose of the equal protection clause is to protect every person within a state's

jurisdiction against intentional and arbitrary discrimination, whether by express terms of a statute or by its improper execution. *Village of Willowbrook v Olech*, 528 US \_\_\_; 120 S Ct 1073; 145 L Ed 2d 1060, 1063 (2000). An equal protection claim may be brought by a class of one where the plaintiff alleges that it has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment. *Id.*, citing *Sioux City Bridge Co v Dakota Co*, 260 US 441; 43 S Ct 190; 67 L Ed 340 (1923), and *Allegheny Pittsburgh Coal Co v Comm of Webster City*, 488 US 336; 109 S Ct 633; 102 L Ed 2d 688 (1989). However, equal protection guarantees ensure that people under similar circumstances will be treated alike, but do not require that persons under different circumstances be treated the same. *Yaldo, supra* at 623. We conclude on the facts of this case that plaintiff was not similarly situated to other requestors because it was not a subject or agent of a subject of a report. Consequently, we need not reach the issue of whether there was a rational basis for the allegedly differing treatment because equal protection does not require that persons under different circumstances be treated the same. *Yaldo, supra* at 623. Although the trial court came to somewhat different conclusions, it reached the correct result and did not err in granting judgment in defendant's favor. *Warren v Howlett*, 148 Mich App 417, 426; 383 NW2d 636 (1986).

Affirmed.

/s/ Hilda R. Gage

/s/ Roman S. Gribbs

/s/ David H. Sawyer