

STATE OF MICHIGAN  
WASHTENAW COUNTY TRIAL COURT

PATRICIA D. LESKO, THOMAS  
STULBERG and THOMAS F. WIEDER,

Case No. 19-639 CZ

Plaintiffs,

Hon.  
Circuit Judge Carol Kuhnke

v.

CITY OF ANN ARBOR,

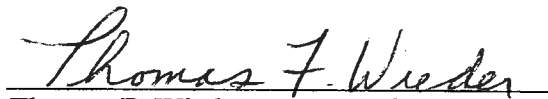
Defendant.

RECEIVED /

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JUN 12 2019  
Washtenaw County  
Clerk of the Court

There is no other pending or resolved civil action  
arising out of the transaction or occurrence which  
is the subject of the Complaint.

  
Thomas F. Wieder, Attorney for Plaintiffs

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

For their Complaint, Plaintiffs state:

1. Plaintiffs are residents of Washtenaw County, Michigan.
2. Defendant City of Ann Arbor (hereinafter the "City") is a Michigan Municipal Corporation located in Washtenaw County, Michigan.

3. On or about April 18, 2019, Luis Vazquez filed a Michigan Freedom of Information Act (“FOIA”) request with the City, which the City has designated as Request #1980 (the “Request”). (A copy of the Request is attached hereto as Exhibit A.)

4. The Request seeks the following material with regard to the Plaintiffs:

1. Copies of all text messages, electronic mail (email), and messages sent via social media direct messaging received by any city of Ann Arbor staff and/or council members, from Thomas Wieder, dated January 1, 2019 to present (including any messages sent to council members’ nongovernmental accounts, because these are also subject to Michigan FOIA)
2. Copies of all text messages, email messages, and messages sent via social media direct messaging (including any email messages sent via council members’ nongovernmental accounts, because these are also subject to Michigan FOIA) exchanged between Patricia Lesko, and any City Council member dated January 1, 2019 to present.
3. Copies of all text messages, email messages, and messages sent via social media direct messaging received by any employee of the Ann Arbor City Attorney’s office and/or council members from Tom Stulberg, dated January 1, 2019 to present (including any messages sent to council members’ nongovernmental accounts, because these are also subject to Michigan FOIA)

5. None of the Plaintiffs is an employee, agent, contractor, or elected or appointed official of the City, and any communications that they may have had which are described in the Request would have been made as private citizens.

6. The FOIA provides:

It is the public policy of this state that all persons...are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with this act. MCL 15.231(1).

7. On its face, it is clear that the Request is not consistent with the stated purpose of the FOIA, in that it seeks no records of any action taken by the City or its agents; it seeks no record of any communication made by any employee or agent of the City; it identifies no subject

matter; and its sole purpose is to examine the actions of private citizens who have chosen to communicate with City employees and/or elected officials.

8. The FOIA permits any person to obtain “public records” of a public body, with “public record” defined as:

[A] writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function. (emphasis added) MCL 15.232(2)(i).

9. The communications sought are not “public records,” because they do not record any action by a public body “in the performance of an official function.”

10. The records sought were not prepared or owned by the City in the performance of an official function, and Michigan law is clear that the mere possession or retention of a document by a public body does not subject the document to the FOIA, unless the document constitutes performance of an official function.

11. With regard to communications made to members of the City Council on their personal accounts, those communications are not subject to the Request, because they are not communications made to or possessed by a “public body” as defined in the FOIA, and the FOIA does not require, or authorize, the City to compel the production of such communications and to provide them to a FOIA requester.

12. Even if the communications described in the Request could be regarded as public records, many or most would be exempted from required disclosure under the FOIA.

13. MCL 15.243(1)(a) provides that a public record is exempt from disclosure if disclosure of the information would constitute a clearly unwarranted invasion of an individual’s privacy.

14. The disclosure to any member of the public who desires to view them, of the opinions, questions, complaints, etc. about various matters that the Plaintiffs have communicated privately to elected and appointed officials would have a chilling effect on the exercise of their First Amendment rights to participate in civic matters and is not justified to satisfy the idle curiosity of a person purporting to act under the FOIA.

15. Through its counsel, the City has indicated that there are documents in its possession which it believes are responsive to the Request and are subject to the FOIA, and that the City intends to provide those documents to Mr. Vazquez.

16. This Court should declare that the City is not required by the FOIA to produce all or any of the material sought in the Request.

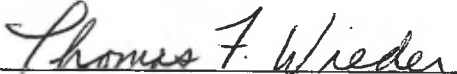
17. Because the Plaintiffs desire and expect to communicate with City officials in the future and need to be informed as to whether such communications would be subject to disclosure pursuant to the FOIA, they ask this Court to declare that the City is not required by the FOIA to disclose any such future communications.

18. Plaintiffs ask this Court to declare that voluntary surrender of such communications creates an impermissible chilling effect on, and interference with, the exercise of Plaintiffs' First Amendment rights.

19. Plaintiffs have no other remedy at law or in equity which would protect their interests and are entitled to have the Court preliminarily and permanently enjoin Defendant City from taking any action to provide the material sought in the Request and such material sought in any future request.

WHEREFORE, Plaintiffs ask this Court to grant the following relief:

- A. Declare that the City is not required to produce the material sought in the Request or such material sought in any future request;
- B. Preliminarily enjoin the City from granting any portion of the Request, as it relates to Plaintiffs, so that the Court might review any such materials before any disclosure or production of the materials takes place.
- C. Permanently enjoin the City from disclosing or producing any of the subject materials, whether in response to a FOIA request or for any other purpose.
- D. Award costs and attorney fees to Plaintiff.
- E. Such other relief as the Court finds to be reasonable and just.

  
Thomas F. Wieder (P33228)  
Attorney for Plaintiffs

Dated: June 12, 2019

## EXHIBIT A

1980 Vaquez

4/18/19

5/22/19

Deposit

1. Copies of all text messages, electronic mail (email), and messages sent via social media direct messaging received by any city of Ann Arbor staff and/or council members, from Thomas Wieder, dated January 1, 2019 to present (including any messages sent to council members' nongovernmental accounts, because these are also subject to Michigan FOIA)
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4. Copies of all text messages, email messages, and messages sent via social media direct messaging (including any messages sent on nongovernmental accounts because these are also subject to Michigan FOIA) exchanged between any of the following: Anne Bannister, Jeff Hayner, Jack Eaton, Kathy Griswold, and Elizabeth Nelson dated January 1, 2019 to present.