

STATE OF MICHIGAN
COURT OF APPEALS

SOUTHGATE COMMUNITY SCHOOL
DISTRICT,

UNPUBLISHED
December 20, 2005

Plaintiff-Appellant,

v

No. 254717
Wayne Circuit Court
LC No. 04-402586-CZ

COUNTY OF WAYNE and WAYNE COUNTY
PROSECUTING ATTORNEY,

Defendants-Appellees.

Before: Owens, P.J., and Saad and Fort Hood, JJ.

PER CURIAM.

In this action under the Michigan Freedom of Information Act (FOIA), MCL 15.231 *et seq.*, plaintiff appeals as of right from the circuit court order granting its motion for production of documents, but denying release of the documents until the completion of a criminal trial. We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

The stated purpose of the FOIA is that all persons, except prisoners, “are entitled to full and 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). A public body must disclose all public records that are not specifically exempt under the Act upon written request. MCL 15.233(1); *Bradley v Saranac Community Schools Bd of Ed*, 455 Mich 285, 293; 565 NW2d 650 (1997); *Scharret v City of Berkley*, 249 Mich App 405, 412; 642 NW2d 685 (2002). On receipt of a request, a public body must respond within five business days by granting the request, denying the request, or granting and denying the request in part. MCL 15.235(2); *Federated Publications, Inc v City of Lansing*, 467 Mich 98, 102; 649 NW2d 383 (2002); *Scharret, supra* at 412. A denial of a request must contain the reason for the denial or an explanation of the basis for the exemption from disclosure. MCL 15.235(4); *Federated Publications, supra* at 102. The burden is on the public body to justify its denial. MCL 15.240(4); *Thomas v New Baltimore*, 254 Mich App 196, 203; 657 NW2d 530 (2002). If a public body denies an FOIA request, the requesting person may either submit a written appeal to the head of the public body or commence an action in circuit court to compel disclosure. MCL 15.240(1).

Plaintiff made its FOIA request to the prosecuting attorney’s office and requested

documents and records pertaining to the upcoming criminal trial of a teacher charged with criminal sexual conduct involving a student. The written response denying the request indicated that, because the criminal proceedings were still in progress, the documents were exempt pursuant to MCL 15. 243(1)(b), which exempts from disclosure investigating records compiled for law enforcement purposes to the extent that disclosure as a public record would either interfere with law enforcement proceedings or deprive a person of the right to a fair trial. The letter failed to specify the specific basis upon which the prosecuting attorney's office relied in denying the request for production. Plaintiff appealed to the Wayne County Executive, arguing that the denial was deficient because it contained conclusory comments and did not enumerate with sufficient specificity why the material was exempt and requesting that the documents be released immediately. The Wayne County Executive granted plaintiff's appeal with regard to its assertions that the prosecuting attorney's office failed to enumerate sufficient grounds upon which to base the denial, but denied the appeal with respect to the request that the documents be released immediately, noting that plaintiff's appeal did not argue that the denial was improper but that the grounds were not sufficiently enumerated. The matter was sent back to the prosecuting attorney's office for a more detailed statement of justification for the claim of exemption. However, before the prosecuting attorney was able to respond and a final determination of the appeal was made, plaintiff commenced the instant action in circuit court.¹

At the FOIA hearing before the circuit court, the prosecuting attorney indicated that the criminal trial would be held within two weeks and that disclosure of the requested documents before trial would jeopardize the defendant's chances of a fair trial. The court granted plaintiff's motion for production of the documents but noted that the tenure hearing could be adjourned and ordered that the documents not be released until after the completion of the criminal trial.

The circuit court did not clearly err in entering this order. The circuit court appears to have weighed the risk of disclosure, the denial of a fair trial in the criminal case, against the harm in delaying the tenure hearing. When determining whether the public interest in disclosure outweighs the public interest in nondisclosure, inclusion of a record generally within a statutory exemption suggests a public interest in nondisclosure. *Federated Publications, supra* at 109. We note that the circuit court did not deny plaintiff's request but merely delayed release of the documents. The circuit court did not commit clear error in so doing.

Affirmed.

/s/ Donald S. Owens
/s/ Henry William Saad
/s/ Karen M. Fort Hood

¹ Plaintiff is arguably not entitled to relief on appeal because plaintiff improperly commenced an action in circuit court before completion of its appeal to the Wayne County Executive. Under MCL 15.240(1), if a public body denies an FOIA request, the requesting person may either submit a written appeal to the head of the public body or commence an action in circuit court to compel disclosure.