

AGENDA REPORT

TO: Mayor Pat Humphrey & Clare City Commissioners
FROM: Diane Lyon, City Clerk
DATE: June 22, 2023
RE: *Communications

For the Agenda of July 3, 2023

***Note: This is a Consent Agenda item and is considered as routine by the City Commission. As such, this matter shall be automatically enacted by one motion with all other Consent Agenda items unless a Commissioner or citizen requests this item be individually discussed, in which event it shall be removed from the Consent Agenda and considered and acted upon in its designated sequence on the approved Clare City Commission agenda of July 3, 2023.**

FOIA Requests & Responses: The most recent FOIA requests and responses are attached for information. Appeal of FOIA denial-Clarissa Filhart and Response Letter-Jeremy Howard. Request and Response Letter – Bachelder Law

Attachments. As noted above.

Diane Lyon

Subject: FW: Freedom of Information Act APPEAL
Attachments: 05.15.2023 FOIA Response-Granted in Part-Clarissa Filhart (6).pdf; 05.16.2023 FOIA Response-Denied-Clarissa Filhart (1).pdf; Untitled document (1).pdf; mcl-15-244 - Separation of exempt and non-exempt material (1).pdf; Exhibit 5 - mcl-168-810 - Poll list; delivery to clerk (1).pdf; Exhibit 6 - mcl-168-811 - Election returns, records, and applications; preservation; destruction; time..pdf; Exhibit 7 - mcl-750-248 - Making, altering, forging, or counterfeiting public record; intent; felony; penalty; exception; venue; distributed ledger technology defined.pdf; Exhibit 8 - mcl-750-478a - Legal process; intimidation, hindering, or obstruction of public officer or employee (1) (1) (1).pdf; Exhibit 9 - mcl-15-235 - Request to inspect or receive copy of public record; response to request (5b Annotated) (1).pdf; EPB history redacted (1) (1) (1).pdf; Exhibit 11 - State of Michigan-EPB Refresh Instructions for Clerks (pages 1 and 41).pdf; Title52Chapter207-FederalElectionRetentionSchedule (1).pdf; mcl-168-509gg.pdf; 20230517 email exchange between Macomb County Clerk Anthony Forlini and Lori Bourbonais.pdf; State Letter Michael Brady0001.pdf; rptIndividualVoterHistory-Filhart,ClarissaA.pdf

Importance: High

From: Clarissa Filhart <cookiefil@yahoo.com>
Sent: Monday, June 19, 2023 2:54 PM
To: Jeremy Howard <JHoward@cityofclare.gov>
Cc: Diane Lyon <DLyon@cityofclare.gov>; Jaynie Hoerauf <jaynie@hoerauflaw.com>; phumphrey@cityofclare.gov; Maegan Jenkins <MJenkins@cityofclare.gov>; Bob Bonham <Bob.Bonham@cityofclare.gov>; Gus Murphy <CMurphy@cityofclare.gov>; Kim Horwood-Bussell <KBussell@cityofclare.gov>
Subject: Freedom of Information Act APPEAL

June 19, 2023

Attention: Clare City Manager, Jeremy Howard
202 W. Fifth St.
Clare, MI 48617

Manager Howard,

I hope this correspondence finds you well!

After having a telephone conversation with you about the next Clare City Commission meeting, I read that the City of Clare's procedures and guidelines allows for a written **appeal** to you, the city manager, if a request has been denied. Therefore, I would like to appeal to you regarding a Freedom of Information Act request I made to City of Clare Clerk, Diane Lyon, on May 7, 2023, (exhibits 1 and 2). I have included the Clare City Commission members on this communication in an effort to have this information be made public.

The request I made to Clerk Lyon was for the "electronic pollbook flash drive contents in the EPB_HISTORY/CSV_FILES for May 2, 2023, election". I have attached the Clerks Electronic Poll Book Refresh Manual for reference (exhibit 11). I also made note of the known exemptions in my

original request per MCL 168.509gg (exhibit 13). Additionally, items that are exempt can be separated per MCL 168.244 (exhibit 4).

When the electronic poll book (EPB) replaced the paper poll book, the EPB now records a person's original vote record. This vote record is created when a person scans their driver's license at a polling location. The three reports related to an election that are printed at the end of election night do NOT contain the same data as the EPB HISTORY and CSV FILES. What I am attempting to obtain is the date and time a vote record was created and the voter identification number sections. These two pieces of data are not recorded in the other three reports I mentioned previously. For clarity, the three reports that are printed are a REMARKS report, a BALLOT SUMMARY REPORT and a VOTER LIST.

Per MCL 168.810, a poll list should be delivered to the clerk (exhibit 5). Therefore, Clerk Lyon should have this list available to inspect, or copy for a period of at least 22 months based on USC 52, 20701 (exhibit 12). The Michigan State retention period is 24 months, per MCL 168.811. The election records should also be made available to inspect or examine, per MCL 168.235 (exhibit 9). If there is a reason that these documents should not be released, based on law, I would like you to share it with me. I am willing to set up a mutually convenient time to inspect the records, Mr. Howard.

Clerk Lyon has made reference to two different pieces of correspondence she has received from the Michigan Bureau of Elections (MBOE) and the Secretary of State, Jocelyn Benson's legal counsel, Michael Brady, but did not cite the law(s) that makes these items exempt from disclosure. The city attorney, Jaynie Hoerauf, has also interceded on Clerk Lyon's behalf, but did not cite any relevant laws pertaining to what I am requesting (exhibit 3).

If I may ask, do you ever recall, while acting as clerk for the City of Mt. Pleasant, Lori Bourbonais ever issuing a directive that said a person needed to request their election records from the state? Beyond that, did legal counsel ever send letters using wording like "if you give this information out, you may need to purchase new EPB laptops"? There appears to be some fear tactics being used which is an unfriendly behavior along with being a violation of MCL 750.478a (exhibit 8).

The information I wish to see is related to individual's having two voter identification numbers. Also, MBOE vote records all have a zero-time stamp (00:00:00). Which is an inaccurate depiction of the truth. When a license is scanned into the EPB, a specific time is recorded in the files. My MBOE record is exhibit 16 below. Please note the static time. I have also provided Lori Bourbonais' answers to why there are two voter identification numbers and zero time (exhibit 14). Ms. Bourbonais' responses are in red. These explanations provided do NOT suffice for me. Furthermore, I asked Ms. Bourbonais in a June 1, 2023, FOIA request about my specific data and she has yet to respond to my inquiries.

Mr. Howard, I am one of several people in the community that are seeking this EPB information in an effort to have our questions answered. I'm confident you can understand that getting answer from Lansing is going to be a brutal task. That is why I am pushing so hard to have my questions answered here at a local level. I have no desire to impede you, or Clerk Lyon, in doing your jobs, but this information can only be obtained through these requests.

The example EPB document in exhibit 10 is available for you to verify that there is no cybersecurity issue, or privacy issues being violated by sharing this data. The EPB information is from my voting jurisdiction. You can find my name on page 4 and compare the voter ID listed therein to the voter ID Clerk Lyon has available in the QVF for me. You will see that the two DO NOT match. Nor does the BOE report voter ID match that EPB voter ID. The time I voted on November 8, 2022 (11:31), is also

visible in the EPB document. However, if you look at the BOE report, you will see my November 8, 2022, vote record inaccurately depicts a 00:00:00 vote time.

In relation to the EPB data I received from my own voting jurisdiction, I would like to point out that the clerk has NOT been contacted by the Department of State, or the Attorney General regarding this data being shared. Michael Brady's correspondence stating those ideas were an intimidation tactic. That tactic began being used when the BOE and SOS realized that people were looking into their vote records and finding that local and state records differed greatly.

I do find it necessary to point out that if the EPB records I am requesting, have been deleted, or the EPB uninstalled from the City of Clare's election laptop, it IS a violation of both state and federal law along with a violation of MCL 750.248. Which is related to public records and separate from election records law (exhibit 7). I hope that through conversation with Clerk Lyon the two of you can discern what may be the best course of action to fulfill my request.

Thank you for your consideration in this matter.

Respectfully,
Clarissa Filhart
9088 N. Leaton Rd.
Clare, MI 48617
(989) 339-6850
cookiefil@yahoo.com

FREEDOM OF INFORMATION ACT

REQUEST FORM

Name Paige N. Bachelder

Company Bachelder Law

Address 203 North Fifth Street, West Branch, Michigan 48661

Telephone Number (989) 345-4447

I request under the Freedom of Information Act, being P.A. 442, 1976 as amended, a copy of the following information:

Any and all Clare City Police Department reports/accident investigation reports,
photographs/videos, body/dash camera footage, and accident reconstruction reports concerning
Incident Number 20-247. This accident occurred on July 7, 2020, at the intersection
of McEwan Street and E. 5th Street, and was investigated by Officer David Thompson (46-5)
(a copy of UD-10 report attached).

I understand that my request for this information shall be supplied within a minimum of five (5) days and not later than ten (10) days after approval. If the information requested cannot be furnished or is not approved within the time frame outlined, a written explanation stating the reason(s) will be forwarded to me. I also understand a person receiving written denial of information requested has the right to bring a lawsuit in Circuit Court to compel disclosure of the public record. If the Court finds that the information withheld by a public body was not exempt from disclosure, the requester may receive the records and, at the discretion of the Court, could receive reasonable attorney fees, costs and damages.

I also understand that I am responsible for the cost of compiling, duplicating and providing the requested information, within the guidelines of the Freedom of Information Act.

Respectively submitted,

Dated: 6/16/2023



PAIGE N. BACHELDER (P82769)

Attorney at Law

203 N. Fifth Street

West Branch, Michigan 48661

(989) 345-4447



202 West Fifth Street, Clare, Michigan 48617
www.cityofclare.org
phone: (989) 386-7541 fax: (989) 386-4508

June 28, 2023

Paige N. Bachelder
Attorney at Law
203 North Fifth St.
West Branch, MI 48661

RE: **FOIA Request: Deborah Jared**

Your request for public record(s) under the Michigan Freedom of Information Act ("FOIA"), dated June 16, 2023, and received in this office on June 22, 2023, for the following records is acknowledged: **Any and all police/accident reports, video, body/dash cam footage, and accident reconstruction reports concerning Incident # 20-247 on July 7, 2020.** Your request is hereby: **Granted in part.**

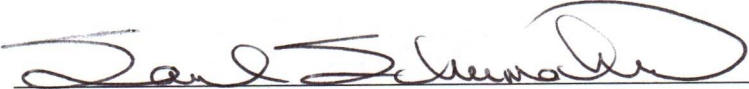
1. All non-exempt information is being provided at this time. Personal information (birthdates, phone number and addresses) had been redacted under the provisions of **MCL 15.243 Section 13.1(a).**
2. Body camera footage does not exist – It has been purged from our system in accordance with the city's retention schedule.

A copy of this request will be kept on file for no less than one (1) year.

The City of Clare's FOIA Procedures and Guidelines and Summary are available for review on our website at www.cityofclare.org. A copy of this request will be kept on file for no less than one (1) year.

If your FOIA request has been denied in whole or in part, you may do one of the following at your option:

- (1) Commence an action in the circuit court to compel disclosure of the public records or information within 180 days after the governmental unit's final determination to deny your request. If the circuit court orders disclosure of all or a portion of the public record or information, you have the right to receive reasonable attorney's fees, costs, and disbursements. If the circuit court determines that the governmental unit arbitrarily and capriciously denied your request, you also have the right to receive punitive damages in the amount of \$500.00. Please see MCL 12.231 *et seq.* for further information on the Freedom of Information Act.
- (2) Submit to the City Manager a written appeal that specifically states the word "**appeal**" and identifies the reason(s) for reversal of the denial. Your appeal should be sent to City of Clare – City Manager, 202 West Fifth Street, Clare, MI 48617-1490.



Sarah Schumacher, for Diane Lyon, Freedom of Information Coordinator

June 28, 2023
Date