

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND**

PETER S. ARABO,
Plaintiff,

Case No.: 2013-133668 -CZ
Honorable JUDGE COLLEEN OBRIEN

v.

COMPLAINT

MICHIGAN GAMING CONTROL BOARD,
Defendant

MR. PHILIP L. ELLISON (P74117)
OUTSIDE LEGAL COUNSEL PLC
Attorney for Plaintiff
PO Box 107
Hemlock, MI 48626
Phone: (989) 642-0055
Fax: (888) 398-7003
pellison@olcplc.com

COMPLAINT

NOW COMES PETER S. ARABO, by and through counsel, and as his complaint states as follows:

INTRODUCTION

1. This is an action under the Freedom of Information Act ("FOIA"), MCL 15.231 et seq, for appropriate relief in the release of public records requested by Plaintiff from Defendant MICHIGAN GAMING CONTROL BOARD ("MGCB") without the unlawful and unreasonable processing costs for irrelevant records.

PARTIES

2. Plaintiff PETER S. ARABO is a resident of County of Oakland, State of Michigan.
3. Defendant MICHIGAN GAMING CONTROL BOARD is a state agency formed and existing under the laws of the State of Michigan.
4. Defendant MICHIGAN GAMING CONTROL BOARD is a public body as that term is defined by Michigan's Freedom of Information Act, MCL 15.232(d)(i).

JURISDICTION

5. This Court has jurisdiction by statute pursuant to MCL 15.240(1)(b).

6. Venue is proper in this county as Plaintiff resides in this County. MCL 15.240(4).

GENERAL ALLEGATIONS

7. This lawsuit involves a Freedom of Information Act request with the Michigan Gaming Control Board ("MGCB").

8. Michigan law directs that citizens 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 FOIA. MCL 15.231(2).

9. On February 15, 2013, Plaintiff filed (via email) a FOIA request with Ms. Latasha Cohen, the FOIA Coordinator of Defendant MGCB. See **Exhibit A**.

10. On information and belief, the request was received by Defendant MGCB on February 19, 2013.

11. The filed FOIA request sought two sets of records: the "Countermeasures Request" and the "Rules Request."

12. The first set (hereinafter the "Countermeasures Request") sought information, writing(s), document(s), or other public record(s) regarding [w]hich of the following countermeasures have ever been in effect, or were in effect since 01/01/1996 to 02/15/2013, that authorized or authorizes MGM Grand Detroit, Greektown Casino & Hotel, and the Motorcity Casino to prevent card counters from profiting at the game of blackjack, and that is or was also approved by the Michigan gaming Control Board:

- Harassment of suspected card counters by casino staff. This may be as simple as engaging a suspected card counter in a conversation to break their concentration.
- Decreasing penetration, the percentage of the cards dealt before a shuffle. This reduces the ability of a counter to take advantage of a high count that has developed.
- Card-counter identification, using books of photos and facial recognition systems to "blacklist" known counters.
- Computerized scanners in blackjack tables that can identify counting systems when in use (such as MindPlay).
- Heuristic systems that keep a count and track players' bets, looking for increases/decreases matching rises and falls in the count.
- Computer systems used in surveillance rooms that surveillance staff use to target suspect players to quantify their threat to the house.
- Shuffling at-will.

- Changing rules for splitting, doubling down, or playing multiple hands. This also includes changing a table's stakes.
 - Flat betting a player or making it so they cannot change the amount they bet during a shoe.
 - Temporary or permanent exclusion from casino property with or without notification to the Michigan Gaming Control Board.
 - Permanent exclusion from the game of blackjack but not excluded from the property and is allowed to play other games in the casino.
13. The second set (hereinafter the "Rules Request") sought information, writing(s), document(s), or other public record(s) regarding "any rule(s) or law(s) by the Michigan Gaming Control Board that allows MGM Grand Detroit, Greektown Casino & Hotel, and the Motorcity Casino to exclude skillful players at the game of blackjack or any other game that has ever been in effect since 01/01/1996 to 02/15/2013."
 14. On February 25, 2013, Defendant MGCB provided a response. See **Exhibit B**.
 15. As to the Rules Request, Defendant MGCB did not respond in any way.
 16. Failure to respond within five (5) days constituted a complete denial by Defendant MGCB pursuant to MCL 15.235(3).
 17. As to the Countermeasures Request, Defendant MGCB purportedly granted the request.
 18. However, the request was premised on payment of reimbursement costs for 6,206 pages of documents "which might be relevant to your request." **Exhibit B, page 1** (emphasis added).
 19. Defendant MGCB demanded \$4,303.34 for the cost of search, retrieval, examination, review, and the deletion of exempt information, if any.
 20. This quoted fee did not include actual copying and mailing costs, which would require additional charges.
 21. To begin the process of searching for responsive records which may or may not be relevant to the discovery request, Defendant MGCB demanded a deposit of \$2,151.67.
 22. Plaintiff subsequently requested the Director of Defendant MCGB to waive the fee given the high costs and the potential interest of primarily benefiting the general public.
 23. Defendant MCGB responded on March 18, 2013 explaining and explicitly stating that costs involved for the 6,206 pages of documents was not for searching, but rather to examine and redact said 6,206 pages as identified. See **Exhibit C**.
 24. Unsatisfied, Plaintiff brought the instant action.

COUNT I
VIOLATION OF FREEDOM OF INFORMATION ACT BY
WRONGFUL DENIAL OF REQUESTED RECORDS UNDER FOIA

25. Plaintiff incorporates by reference the previous allegations as if set forth word for word herein.
26. Plaintiff made his Rules Request pursuant to FOIA on February 15, 2013.
27. A response was required within five (5) business days.
28. By failing to respond to the Rules Request, Defendant MGCB issued by operation of law a complete denial pursuant to MCL 15.235(3).
29. Defendant MGCB wrongfully and improperly withheld relevant public records in violation of the requirements of FOIA.
30. Given Defendant MGCB's failure to respond, Plaintiff seeks an order to Defendant MGCB's disclosure of the public records.

COUNT II - MCL 15.234(3)
VIOLATION OF THE FREEDOM OF INFORMATION ACT
FOR IMPOSING COST IN EXCESS OF FOIA REQUIREMENTS

31. Plaintiff incorporates by reference the previous allegations as if set forth word for word herein.
32. MCL 15.234(3) describes how the public body may calculate the cost of producing FOIA documents.
33. In calculating the cost of labor incurred in duplication and mailing and the cost of examination, review, separation, and deletion..., a public body may not charge more than the hourly wage of the lowest paid public body employee capable of retrieving the information necessary to comply with a request under this act.
34. By the letter of March 18, 2013, the cost of \$4,303.34 was not for searching but rather for examining and redacting the 6,206 pages of documents previously identified.
35. Defendant MGCB's method of reviewing through more than 6,000 pages of documents which might or not be relevant (see ¶18) to Plaintiff's Countermeasure Request violates the cost provisions of MCL 15.234(3) in that the reviewing procedure of examining more than 6,000 pages of records was utilized to needlessly increase the cost of fulfillment of the FOIA request.
36. Defendant MGCB's method of reviewing more than 6,000 pages of documents was explicitly or implicitly designed to block or otherwise prevent the disclosure of simple responsive documents that would fulfill Plaintiff's request through the imposition of unlawful and unreasonable charges and costs.

37. Plaintiff's request may be fulfilled by a simpler and more effective method than examining more than twelve reams of pages of documents, which only "might" be relevant to Plaintiff's request.
38. On information and belief, the examination of 6,000 pages of documents held by Defendant MGCB is not required to fulfill the FOIA request made by Plaintiff on February 15, 2013 for copies of officials records from Defendant MGCB authorization or non-authorization of certain countermeasures.

RELIEF REQUESTED

WHEREFORE, Plaintiff requests this Court enter an order—

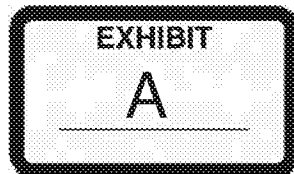
- a. requiring Defendant to immediately fulfill the Rules Request made by Plaintiff with appropriate responsive record(s);
- b. requiring Defendant to immediately fulfill the Countermeasure Request made by Plaintiff with simple responsive documents without the time and expense of reviewing more than 6,000 pages of irrelevant documents;
- c. awarding reasonable attorney fees, costs, and disbursements;
- d. awarding punitive damages in the amount of \$500.00; and
- e. granting all other relief that Court deems equitable and just.

RESPECTFULLY SUBMITTED:

Philip L Ellison

OUTSIDE LEGAL COUNSEL PLC
BY PHILIP L. ELLISON (P74117)
Attorney for Plaintiff
PO Box 107 · Hemlock, MI 48626
Phone: (989) 642-0055
Fax: (888) 398-7003
Email: pellison@olcplc.com

Date: April 25, 2013



Friday, February 15, 2013

Peter S. Arabo
28125 Glasgow
Southfield, MI 48076

VIA E-MAIL to "cohenl1@michigan.gov"

Latasha Cohen
FOIA Coordinator
Michigan Gaming Control Board
3062 West Grand Blvd., Suite L-700
Detroit, MI 48202-6062

Re: Freedom of Information Act/Open Meetings Act/Privacy Act request

Dear Latasha Cohen,

This is a formal request under the Michigan Freedom of Information Act (FOIA), P.A. 442 of 1976 as amended; Open Meetings Act, P.A. 267 of 1976 as amended; Privacy Act of 1974 [Public Law 93-579]; and Title 5 U.S.C. §552 & §552(a) [Public Law 104-98].

For purposes of this FOIA request, the following definitions apply:

The term "documents" as used here includes: writings, drawings, graphs, charts, photographs, recordings, data compilations (translated, if necessary by the respondent through detection devices into reasonable usable form), contracts, agreements, correspondence, memoranda, reports, notes, requests, bills, orders, notices, writs, declarations, complaints, answers and other court pleadings, schedules, tabulations, checks, diary entries, telegrams, diagrams, films, newspaper clippings, computer files, e-mails, and other writings and recordings of whatever nature, whether signed or unsigned, transcribed or not, and whether asserted to be privileged or not.

I request to view/copy, or upon further request receive certified copies of the requested documentation, as prescribed in M.C.L. 15.233 §3(1)(2)(5) of the FOIA.

It is hereby requested that you disclose the following information, writing(s), document(s), or other public record(s), as indicated below according to Title 5 U.S.C. §552(a)(3); M.C.L. 15.232(c)(e), and M.C.L. 15.269:

- 1. Which of the following countermeasures have ever been in effect, or were in effect since 01/01/1996 to 02/15/2013, that authorized or authorizes MGM Grand Detroit, Greektown Casino & Hotel, and the Motorcity Casino to prevent card counters from profiting at the game of blackjack, and that is or was also approved by the Michigan gaming Control Board:**

- Harassment of suspected card counters by casino staff. This may be as simple as engaging a suspected card counter in a conversation to break their concentration.
- Decreasing penetration, the percentage of the cards dealt before a shuffle. This reduces the ability of a counter to take advantage of a high count that has developed.
- Card-counter identification, using books of photos and facial recognition systems to "blacklist" known counters.
- Computerized scanners in blackjack tables that can identify counting systems when in use (such as MindPlay).
- Heuristic systems that keep a count and track players' bets, looking for increases/decreases matching rises and falls in the count.
- Computer systems used in surveillance rooms that surveillance staff use to target suspect players to quantify their threat to the house.
- Shuffling at-will.
- Changing rules for splitting, doubling down, or playing multiple hands. This also includes changing a table's stakes.
- Flat betting a player or making it so they cannot change the amount they bet during a shoe.
- Temporary or permanent exclusion from casino property with or without notification to the Michigan Gaming Control Board.
- Permanent exclusion from the game of blackjack but not excluded from the property and is allowed to play other games in the casino.

2. Provide any rule(s) or law(s) by the Michigan Gaming Control Board that allows MGM Grand Detroit, Greektown Casino & Hotel, and the Motorcity Casino to exclude skillful players at the game of blackjack or any other game that has ever been in effect since 01/01/1996 to 02/15/2013.

As provided by Title 5 U.S.C. §552(a)(6)(A)(i), and §5(2) of the Michigan FOIA, I expect to receive an answer to my request as soon as possible, but at least within ten (10) working days of the above addressee's receipt of this request.

If you decide to deny this request in whole or in part, cite the specific exemption(s) which you think justifies your refusal, and inform me of the appeal procedures available. I expect to receive written certification of this decision as provided in Title 5 U.S.C. §552 (a)(6)(A)(i), and M.C.L. 15.235 §5(4) through §5(4)(d).

I also request that any fees be waived pursuant to Title 5 U.S.C. §552 (a)(4)(A), and M.C.L. 15.234 in that this information will benefit the public at large once disseminated.

SECRET DOCUMENTS AND/OR RECORDS

Put all answers and correspondence in a language and form that can be easily understood by anyone possessing an average intelligence, as anything short of that specificity will constitute Vague and Ambiguous Language and will therefore be *Void for Vagueness*.

FALSE PRETENSES

This requestor understands those provisions of Title 5 U.S.C. §552(a)(i)(3) for one's requesting and obtaining access to information under false pretenses.

EXPECTATIONS

This requestor reasonably expects those requested document(s) and/or record(s) to be organized in an intelligible manner, and referenced or indexed such that they are capable of being read and understood by one possessing average skills, intellect, and training. If for some reason the requested document(s) and/or record(s) are in any manner codified such that they cannot be readily understood, the undersigned expects to receive additionally all required decoding documents necessary to provide a clear and intelligible understanding of the contents and meaning of the requested document(s) and/or record(s).

APPROPRIATE RECIPIENT

If this request is improperly addressed to you in your official capacity, please forward this request to the appropriate person, thereafter immediately informing the undersigned of such forwarding, inclusive of such person's name, title, mailing address, date of origin and location of such forwarding action.

AFFIDAVIT OF TRUTH BY PETER S. ARABO

State of Michigan

ss

County of Oakland

Peter S. Arabo, Affiant herein, being first duly sworn according to law, having first hand knowledge of the facts herein, and being competent to testify, do affirm that the facts stated herein by your Affiant are true, correct, and complete in all material fact, not misrepresented and made under the penalties of perjury pursuant to the laws of the United States of America.

1. Your Affiant is Peter S. Arabo and of age to testify.
2. Your Affiant has read the statement regarding perjury under Title 18 U.S.C. §1621.
3. Your Affiant makes this firsthand statement under the penalties of perjury pursuant to the laws of the United States of America.
4. Your Affiant has read and understands the tenor of the foregoing Formal Request for the production of documents.
5. Your Affiant is lawfully authorized and legally empowered to make this document request on his own behalf.
6. Your Affiant has substantial interests in the document(s) and/or record(s) being sought herein.

7. Your Affiant has a legal right to require that this Formal Request for the production of document(s) be answered promptly.
8. That the document(s) and/or record(s) that your Affiant is requesting are for your Affiant's use.
9. That any failure to answer this Formal Request for the production of document(s) promptly may jeopardize or damage your Affiant's rights to liberty and property.

Further Affiant Sayeth Naught this 15th day of February 2013 without prejudice and all Rights reserved, UCC 1-207; and without recourse, UCC 1-103.

/s/Peter S. Arabo

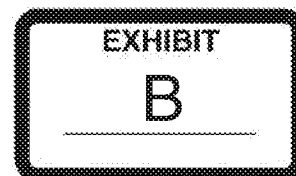
Peter S. Arabo , Affiant
28125 Glasgow
Southfield, MI 48076

NOTE: Please no backdating, forgeries, un-dated, unsigned, or false documents. All documents will be professionally verified. Remember your Oath of Office when acting as a public servant.



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
MICHIGAN GAMING CONTROL BOARD
DETROIT



RICHARD S. KALM
EXECUTIVE DIRECTOR

February 25, 2013

Peter S. Arabo
28125 Glasgow
Southfield, MI 48076

RE: Freedom of Information Request 20130061

Dear Mr. Arabo,

This notice is issued in response to your February 15, 2013, request for information under the Freedom of Information Act (FOIA), MCL 15.231 et seq, in conjunction with the Michigan Gaming Control and Revenue Act MCL 432.201 received by the Michigan Gaming Control Board (MGCB) on February 19, 2013.

You have requested information that you describe as follows:

"...[I] request to view/copy, or upon further request receive certified copies of the requested documentation, as prescribed in M.C.L. 15.233 Sections 3(1)(2)(5) of the FOIA.

It is hereby requested that you disclose the following information, writing(s), document(s), or other public record(s), as indicated below according to Title 5 U.S.C. Sections 552(a)(3); M.C.L. 15.232(e)(e), and M.C.L. 15.269:

- 1. Which of the following countermeasures have ever been in effect, or were in effect since 01/01/1996 to 02/15/2013, that authorized or authorizes MGM Grand Detroit, Greektown Casino & Hotel, and the Motorcity Casino to prevent card counters from profiting at the game of blackjack, and that is or was also approved by the Michigan gaming Control Board:..."

MGCB grants your request for existing, non-exempt information in our possession that is relevant to your request.

Section 4(1) of the FOIA permits a public body to charge a fee for the necessary copying of documents and for the cost of search, retrieval, examination, review, and the deletion of exempt information, if any.

Due to the substantial volume of records that may be responsive to your request, the numerous hours required to process this request; and the unreasonably high cost to MGCB in the absence of charging a fee in this particular instance, MGCB has determined that it must seek reimbursement.

There are approximately 6,206 pages of information which might be relevant to your request. It will take approximately 103 hours to search, retrieve, examine, review, and redact exempt from non-exempt information from records described in this request. The following is a breakdown of the cost based on the respective hourly

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Peter Arabo
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rate of the lowest paid MGCB employee capable of performing the tasks necessary to commence the processing of your request:

6,206 pages	103 hours
Department Analyst, Records Section	103 hours @ 41.78 = <u>\$4,303.34</u>
	TOTAL <u>\$4,303.34</u>

This estimate does not include the actual copying and mailing costs. MGCB would determine necessary postage fees upon completion of your request.

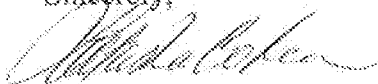
If you wish to narrow or modify your request, notify us in writing. In the alternative, feel free to contact us by mail or telephone if you wish to discuss the scope of your current request.

Section 4(2) of the FOIA permits a public body to require a good faith deposit at the time a request is made which in this instance is **\$2,151.67**. Payments are submitted in the form of a check or money order made payable to "State of Michigan" and delivered to:

Michigan Gaming Control Board
P.O. Box 30786
Lansing, MI 48909
Attention: Freedom of Information Coordinator

Upon completion of processing the request, you will be notified in writing of the balance payable before records are disclosed. Additionally, you will be informed of exempt records, if any, with the specific statutory basis for the exemptions explained at that time.

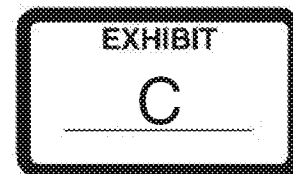
Sincerely,



Latasha Cohen, FOIA Coordinator
Michigan Gaming Control Board

RFI: 20130061

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RICK SNYDER
GOVERNOR



STATE OF MICHIGAN
MICHIGAN GAMING CONTROL BOARD
DETROIT

RICHARD S. KALM
EXECUTIVE DIRECTOR

March 18, 2013

Peter S. Arabo
28125 Glasgow
Southfield, MI 48076

RE: Freedom of Information Request 20130061

Dear Mr. Arabo,

Although the Freedom of Information Act (FOIA), MCL 15.231 *et seq* does not provide for an appeal of a fee notice, the Michigan Gaming Control Board (Board) will take this opportunity to address your concerns as set forth in your March 2, 2013 e-mail. The e-mail was concerning the Board's February 25, 2013, notice granting your request for information under FOIA, in conjunction with the Michigan Gaming Control Revenue Act MCL 432.201, *et seq* in response to your request dated February 15, 2013.

The FOIA does not require the taxpayers to subsidize a requesting person's FOIA processing costs. The Board recognizes that the purpose of the FOIA is to promote access to government records in the most efficient and economical way possible. The Board's response to the instant FOIA request is entirely consistent with those purposes. The fees included for the processing of your request are the actual costs to the Board. The costs incurred include fees for the search, examination, review and the deletion and separation of exempt from nonexempt material because a member of the Board's staff will be taken away from his/her normal duties for a significant period of time in order to process your request.

Further, section 4(3) of the FOIA, MCL 15.234(3), mandates that "[f]ees shall be uniform and not dependent on the identity of the requesting person." In this instance, we are charging you the same fees we would charge another requestor making the same FOIA request. In the FOIA, the Legislature has balanced the public's important right to be informed about the workings of government with a public body's legitimate need to safeguard the taxpayer's resources it is entrusted to conserve.

Therefore, the Board denies your request for a waiver of the fees. The denial is based upon Section 4(1)(2)(3)¹ of the Michigan Freedom of Information Act, MCL 15.243(1)(2)(3). The estimated fee given in Board's February 25, 2013 written notice was based on the hourly wage of the lowest paid Board employee capable of performing the necessary tasks.

As to the fee calculation, Board employees will expend approximately 103 hours performing the tasks necessary to process your FOIA request. The breakdown of the time, tasks and costs are as follows:

- Department Analyst, Records Section - Examine and redact the 6,206 pages of documents previously identified as well as additional documents that are retrieved 106 hrs. @ \$41.78/hr. = \$4,303.34; Photocopying costs and postage are to be determined.

Peter Arabo
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March 18, 2013

The anticipated fee for providing the information is \$4,303.34, explained above.

This estimate does not include the actual copying and mailing costs. The Board would determine those fees upon completing the review.


Section 4(2) of the FOIA permits a public body to require a good faith deposit at the time a request is made which in this instance is **\$2,151.67**. Payments are submitted in the form of a check or money order made payable to "State of Michigan" and delivered to:

Michigan Gaming Control Board
P.O. Box 30786
Lansing, MI 48909
Attention: Freedom of Information Coordinator

Upon completion of processing the request, you will be notified in writing of the balance payable before records are disclosed. Additionally, you will be informed of exempt records, if any, with the specific statutory basis for the exemptions explained at that time.

As to your request for a refund of \$222.65 for the previous fee notice dated February 22, 2012, that request is also denied. According to Section 4(1) of FOIA, 15.234(1), a public body may charge a fee for a public record search, retrieval, examination, review, and the deletion of exempt information. In the February 22, 2012 fee notice, you were advised that it would take approximately 5 hours to search, retrieve, examine, and review documents that may be relevant to your FOIA request. After searching, retrieving, reviewing, and examining 60 pages of documents, it was determined that the documents were not responsive to your request. Therefore, even though the documents turned out to not be responsive to your request, the Board still expended the 5 hours of time to do the search, retrieval, and review. Your request for refund is denied.

Sincerely,



Karen E. Finch, Administrative Services Manager
Michigan Gaming Control Board

RFI: 20130061

.....
MCL 15.234

¹ Sec. 4(1) A public body may charge a fee for a public record search, the necessary copying of a public record for inspection, or for providing a copy of a public record.

(2) A public body may require at the time a request is made a good faith deposit from the person requesting the public record or series of public records, if the fee authorized under this section exceeds \$50.00. The deposit shall not exceed 1/2 of the total fee.

(3) Fees shall be uniform and not dependent upon the identity of the requesting person.

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