

STATE OF MICHIGAN
COURT OF CLAIMS

MICHIGAN FAIR ELECTIONS
INSTITUTE,

Plaintiff,

No. 25-000179-MZ

v

HON. SIMA G. PATEL

MICHIGAN BUREAU OF ELECTIONS,

Defendant.

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**BRIEF IN SUPPORT OF DEFENDANT MICHIGAN BUREAU OF
ELECTIONS' 1/26/2026 MOTION FOR SUMMARY DISPOSITION UNDER
MCR 2.116(C)(8) AND (C)(10)**

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INTRODUCTION

This is a FOIA lawsuit in which Plaintiff Michigan Fair Elections Institute (MFEI) seeks to compel production of voter information that the Michigan Bureau of Elections has stated it does not possess. MFEI flatly asserts that the Bureau has records responsive to its request but makes no factual allegation identifying the specific records sought or establishing that such records actually are in the Bureau's possession or control. MFEI has simply not stated a valid claim under FOIA, and dismissal is appropriate under MCR 2.116(C)(8).

Furthermore, the attached affidavit of Deputy Director of Elections Adam Fracassi establishes that the FOIA request describes records that are kept and maintained by local clerks and are not in the possession of the Bureau of Elections. As a result, there can be no genuine dispute of material fact and the Bureau is entitled to a judgment in its favor.

STATEMENT OF FACTS

In the complaint, MFEI alleges that it submitted a FOIA request on October 20, 2025 seeking "copies of the underlying records referenced by the "Entire State Next Election Voted List" report. That report is produced by the Bureau and includes the names and information for voters who have already returned ballots for the next upcoming election (i.e., absent voters and early voters). Compl., ¶6-7. MFEI's request attempted to clarify its request by adding, "we are not requesting a copy of this report, rather we are requesting copies of the underlying records in the

tables queried to generate this report, whether the specific records would be included in the report or not.” Compl., ¶8.

On October 23, 2025, the Bureau of Elections denied the request, stating that it did not possess records responsive to the request. Compl, ¶10-11. MFEI does not allege that it appealed the Bureau’s decision. MFEI filed this lawsuit on November 17, 2025.

STANDARD OF REVIEW

Summary disposition is proper under MCR 2.116(C)(8) if the opposing party has failed to state a claim on which relief can be granted. *Henry v Dow Chem Co*, 473 Mich 63, 71 (2005). A motion under MCR 2.116(C)(8) may only be granted “where the claims alleged are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.” *Adair v Michigan*, 470 Mich 105, 119 (2004) (quotation marks and citation omitted).

Alternatively, summary disposition is appropriate under MCR 2.116(C)(10) when “there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.” “A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) when the affidavits or other documentary evidence, viewed in the light most favorable to the nonmoving party, show that there is no genuine issue as to any material fact and the moving party is therefore entitled to judgment as a matter of law.” *Lowrey v LMPS & LMPJ, Inc*, 500 Mich 1, 5 (2016).

ARGUMENT

- I. **MFEI has failed to state a claim under FOIA where the Bureau of Elections has stated it has no responsive records and the complaint fails to identify any responsive documents in the Bureau's possession that were not produced, and the Bureau is entitled to summary disposition under MCR 2.116(C)(8).**

MFEI's request asked for "records underlying" a QVF report, and the Bureau responded stating that it did not have records responsive to the request. MFEI did not appeal the denial and instead brought suit immediately. While MFEI was entitled to file suit under the statute, its decision to forgo an appeal to the public body under MCL 15.240 means that there is no further elaboration or discussion as to what responsive records MFEI believes to exist. In its complaint, MFEI makes no attempt to describe the records it thinks should be produced and instead offers only conjecture that "Defendant Bureau of Elections possess records and/or information that are responsive to the Oct 20 FOIA Request." Compl., ¶19. MFEI simply does not describe what it is looking for. Even MFEI's request for relief fails to state what it would have this Court compel the Defendant to produce, opting instead for a recursive demand for an order, "compelling the disclosure of the public records requested." Compl., p 4. In short, exactly what documents does MFEI allege the Bureau possess that are responsive to MFEI's request? By failing to make allegations identifying responsive records in the possession of the Bureau, MFEI has failed to state a claim under MCL 15.240.

It is foreseeable that MFEI may argue that this motion is premature because MFEI hopes to obtain this information through discovery. But that is not how the Michigan Rules work—a party cannot use conjecture to open the doors of civil

discovery. “Allowing discovery on the basis of conjecture would amount to an impermissible fishing expedition.” *Augustine v. Allstate Ins Co*, 292 Mich App 408, 420 (2024) (quoting *VanVorous v Burmeister*, 262 Mich App 467, 477 (2004)). In *Doe v GM, LLC*, 511 Mich 1038, 1038-1039 (2023), the Michigan Supreme Court held that summary disposition may be appropriate before discovery:

Generally, a grant of summary disposition is premature before discovery on a disputed issue is complete. However, summary disposition is appropriate if there is no fair chance that further discovery will result in factual support for the party opposing the motion. Thus, “[t]he dispositive inquiry is whether further discovery presents a fair likelihood of uncovering factual support for the party's position.” (internal citation omitted).

“The party must clearly identify the disputed issue for which it asserts discovery must be conducted and support the issue with independent evidence.” *Powell-Murphy v Revitalizing Auto Communities Environmental Response Trust*, 333 Mich App 234, 253 (2020). “Mere conjecture does not entitle a party to discovery, because such discovery would be no more than a fishing expedition.” *Davis v City of Detroit*, 269 Mich. App. 376, 380 (2005).

Here, MFEI is relying on conjecture that responsive records exist, but they do not support that contention with any independent evidence. As a result, their claims can only be seen as an impermissible “fishing expedition,” and summary disposition is appropriate under MCR 2.116(C)(8).

II. There is no genuine issue of material fact regarding the Bureau's lack of responsive records, and the Bureau of Elections is entitled to summary disposition under MCR 2.116(C)(10).

MCL 15.233(1) requires a requesting party to provide “a written request that describes a public record sufficiently to enable the public body to find the public record.” In *Cobblentz v City of Novi*, 475 Mich 558, 572 (2006), the Court held that “describe sufficiently” was not an exacting standard, but nonetheless required a description, “sufficient to permit identification of the requested items.” A request that is “absurdly overbroad” does not comply with MCL 15.233(1). See *Capitol Info Ass'n v Ann Arbor Police Dep't*, 138 Mich App 655, 658 (1984).

Here, MFEI's request stated that it sought, “copies of the underlying records referenced by the ‘Entire State Next Election Voted List’ report.” Compl., ¶6-7. Attached to this motion is the sworn affidavit of Adam Fracassi, the Deputy Director of Elections, in which he avers that the “underlying records” for that report are the physical applications submitted by voters. (Exhibit A, Fracassi Aff, ¶ 7-9.) Those documents are in the possession of local clerks, and are not kept or maintained by the Bureau of Elections. (Ex A, ¶ 9-11.) The information in those applications is entered by the clerks into the QVF, and so that digital information is produced in the report. (Ex A, ¶ 9, 11.) That information—as entered by the local clerk—will be consistent throughout the QVF. (Ex A, ¶ 9.)

The affidavit firmly establishes that the Bureau does not possess “records underlying” the report. So, the October 23 denial of MFEI's FOIA request was correct, and the Bureau of Elections is entitled to summary disposition under MCR 2.116(C)(10).

CONCLUSION AND RELIEF REQUESTED

For these reasons, Defendant Bureau of Elections respectfully requests that this Honorable Court enter an Order granting summary disposition in its favor and dismissing the complaint with prejudice, together with any other relief that the Court determines to be appropriate under the circumstances.

Respectfully submitted,

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PROOF OF SERVICE

Erik A. Grill certifies that on January 26, 2026, he served a copy of the above document in this matter on all counsel of record and parties *in pro per* via MiFILE.

/s/ Erik A. Grill

Erik A. Grill