

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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DAVID P. LAKIN,

Plaintiff-Appellant,

v

DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

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UNPUBLISHED

September 18, 1998

No. 203450

Ingham Circuit Court

LC No. 94-078116 CZ

Before: Hood, P.J., and Griffin and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals by right the order of the circuit court granting defendant's motion for summary disposition in this action brought under the Michigan Freedom of Information Act (MFOIA), MCL 15.231 *et seq.*; MSA 4.1801(1) *et seq.* We affirm.

**I. Facts and Procedural History**

On March 30, 1994, plaintiff filed an MFOIA request with defendant's central records office. Defendant did not respond within the statutorily provided period, but after a delay of nearly three months granted the request in part, and denied the request in part on the ground that some requested documents did not exist. Plaintiff alleged that he filed a second request, which defendant alleged it did not receive. Although plaintiff commenced this action before receiving defendant's response, defendant responded before the summons was issued or served.

Defendant filed a motion for summary disposition under MCR 2.116(C)(10), which the trial court granted in an opinion and order of May 8, 1997.<sup>1</sup> The court held that there was no evidence to support plaintiff's claim that he had submitted a second MFOIA request, and further held that defendant's response to the initial request was proper even though untimely, because defendant acted in good faith. The court concluded that plaintiff had not prevailed under the statute because the court action had had no substantial causative effect on the delivery of the information, and that because the court did not order production of any documents no punitive damages were in order. The court subsequently reinstated costs and fees upon finding that plaintiff's prison account showed that he had

received almost \$450.00 in the previous six months, this defeating plaintiff's claim of indigency in the matter.

## II. Holding

Defendant's failure to respond to defendant's request within business five days was in violation of its statutory duty. MCL 15.235(2); MSA 4.1801(5)(2); *Hartzell v Mayville Community School Dist*, 183 Mich App 782, 786; 455 NW2d 411 (1990). However, plaintiff did receive all requested information but for documents that did not exist, and the present litigation resulted in the production of no additional documents. Because plaintiff received all existing documents for which he asked, and has shown no prejudice stemming from defendant's several-week delay in responding, defendant's tardiness does not afford plaintiff any basis for damages.

If the plaintiff in an MFOIA action prevails, the court must award reasonable attorney's fees, costs, and disbursements. MCL 15.240(6); MSA 4.1801(10)(6). Generally, a plaintiff has prevailed if the action was reasonably necessary for, and had a substantial causative effect upon, bringing about access to any of the information sought, including the information that the requested document does not exist. *Oakland Co Prosecutor v Dep't of Corrections*, 222 Mich App 654, 663; 564 NW2d 922 (1997). Here, we agree with the trial court that plaintiff did not prevail under the statute. Because the information was provided before the summons and complaint were served, there is no showing that the legal action had a substantial causative effect on the delivery of the information.

We further agree with the trial court that plaintiff is not entitled to punitive damages. MCL 15.240(7); MSA 4.1801(10)(7) authorizes an award of punitive damages where the public body has arbitrarily or capriciously violated its duties under MFOIA. However, the punitive award is appropriate only where the court has ordered disclosure of a public record. *Michigan Council of Trout Unlimited v Dep't of Military Affairs*, 213 Mich App 203, 221; 539 NW2d 745 (1995). Here, because no disclosure was ordered, no punitive damages are appropriate.

Finally, we hold that the trial court did not err in reinstating fees and costs. As required, the court reviewed plaintiff's prison account and made a determination regarding plaintiff's financial status before reinstating fees. *Martin v Dep't of Corrections (On Remand)*, 201 Mich App 331, 335; 505 NW2d 915 (1993). Given the record of deposits into the account, the court properly found that plaintiff was capable of paying the nominal filing fee.

Affirmed.

/s/ Harold Hood  
/s/ Richard Allen Griffin  
/s/ Peter D. O'Connell

<sup>1</sup> We note that shortly before plaintiff commenced this cause of action 1994 PA 131 went into effect, circumscribing prisoners' rights to exercise MFOIA. See MCL 15.231(2) and 15.232(c); MSA

4.1801(1)(2) and 4.1801(2)(c). Although defendant did not resist plaintiff's MFOIA request on that ground, and the trial court did not address that possibility, those amendments to MFOIA afford an alternative basis upon which we may affirm the judgment below.