

**STATE OF MICHIGAN
COURT OF CLAIMS**

MICHIGAN RISING ACTION,

Plaintiff,

Case No.: 24-_____ -CZ

v.

Hon.

THE MICHIGAN ECONOMIC
DEVELOPMENT CORPORATION, a
government entity.

Complaint

Defendant.

Derk A. Wilcox (P66177)
Stephen A. Delie (P80209)
Patrick J. Wright (P54052)
Mackinac Center Legal Foundation
Attorneys for Plaintiff
140 West Main Street
Midland, MI 48640
(989) 631-0900 – voice
(989) 631-0964 – fax
Wilcox@mackinac.org

COMPLAINT

There is no other pending or resolved civil action arising out of the same transaction or occurrence alleged in the complaint.

NOW COMES Plaintiff, Michigan Rising Action, by and through its attorneys, the Mackinac Center Legal Foundation, and for its Complaint alleges and states as follows:

INTRODUCTION

The plaintiff, Michigan Rising Action, (“Michigan Rising”) is a nonprofit organization dedicated to fighting for limited government, lowering taxes, fighting government over-regulation that stifles freedom, free enterprise, strong national security, and shaping the public policy debate in Michigan. To that end, Michigan Rising routinely uses the Freedom of Information Act (“FOIA”) to obtain relevant documents from state and local governments.

This case deals with a matter of significant public interest, namely, the ability of Michigan’s citizens to accurately evaluate the Michigan Economic Development Corporation’s (MEDC’s) involvement with the American Lidar Company, a Michigan corporation with ties to “the China-based lidar maker Hesai Group, which the U.S. has labeled a security concern.”¹ Michigan Rising was interested in learning the extent of the MEDC’s involvement in potentially funding American Lidar via economic development programs, and submitted a FOIA request to better understand that potential connection on May 29, 2024. Since then, the MEDC has failed to produce any documents in response to Plaintiff’s request. Given the importance of citizens’ ability to understand how government entities are spending their tax dollars, particularly when that spending may be funding a threat to national security, such a lack of transparency is both unacceptable and illegal.

¹ See, e.g., Heather Sommerville, Blacklisted Chinese Companies Rebrand as American to Dodge Crackdown, The Wall Street Journal (May 29, 2024, 12:03AM), <https://www.wsj.com/politics/national-security/url-chinese-companies-rebrand-us-8a0c3872> (last accessed August 27, 2024).

SUMMARY OF FACTS

On May 29, 2024, Michigan Rising made a routine request to MEDC, seeking correspondence between the MEDC and American Lidar Inc. and related entities. MEDC did not issue a 10-business day extension under MCL 15.235(2), but did respond on June 20, 2024 by issuing a fee estimate of \$593.48. Michigan Rising responded to this fee estimate on June 27, 2024 by informing MEDC that it should receive a check for the required amount by July 2, 2024. **Exhibit A, Correspondence with MEDC.** Michigan Rising paid the required 50% deposit of \$296.74 via check, which the MEDC cashed on July 19, 2024. In its June 20th good-faith estimate, MEDC estimated it would take sixteen (16) hours to process Michigan Rising's request. **Exhibit B, MEDC Cost Estimate.**

On July 11, 2024, Michigan Rising contacted MEDC to determine whether its payment had been received. **Exhibit A.** MEDC did not respond. After a month had passed with no further communication from MEDC, Michigan Rising engaged in additional follow up communication, stating:

Ms Crockett,

I am emailing to follow up on my colleague, Mr. Mills', request. Has there been any update? I see that MEDC cashed our organizations check for the good faith payment on 7/19. Since then we have had zero communication from your office. Your organization estimated 16 hours for production of documents. It has now been 6 weeks since the check was cashed. Can you please provide a reasonable explanation for the delay, and/or a timeline for when documents may be expected?

Id. (sic).

The MEDC responded to this message on August 29, 2024, with the only message Michigan Rising has received from the MEDC subsequent to its request for a good-faith deposit:

Good Morning Ms. Mitch,

Thank you for reaching out.

We are currently processing your FOIA request, and we are making steady progress.

We do not currently have an estimated completion date, but please be assured we are actively working on it.

Thank you,

Krista Crockett, MPA

Exhibit A (formatting adjusted).

Despite all requested deposits being paid, MEDC has produced no records. Michigan Rising has now waited approximately six (6) weeks for records that, by MEDC's own admission, should have taken no longer than sixteen (16) hours to produce.

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff, Michigan Rising Action ("Michigan Rising"), is a Michigan nonprofit corporation headquartered in Ingham County, Michigan.
2. Defendant, the Michigan Economic Development Corporation, is a government entity headquartered at 300 North Washington Square, Lansing, Ingham County, Michigan 48913.
3. Venue is proper pursuant to MCL 15.240(1)(b).
4. Pursuant to MCL 15.240(5), this action should be "assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way."
5. Pursuant to MCL 600.6419(1)(a), the Court of Claims has jurisdiction over this claim.

VIOLATIONS OF THE FREEDOM OF INFORMATION ACT

6. The Plaintiff hereby incorporates the preceding paragraphs as if fully restated herein.

7. On May 29, 2024, Michigan Rising employee Brandon Mills submitted a FOIA request to MEDC for the following records:

"FOIA Coordinator,

Pursuant to the Michigan Freedom of Information Act, I would like to request any correspondence between the MEDC and American Lidar INC, Hesai Group, Hesai Technology, or Bob (Geradus) in den Bosch.

Exhibit C, Michigan Rising FOIA Request.

8. On June 20, 2024, MEDC responded to Michigan Rising's FOIA request by providing an estimate of the costs necessary to fulfill the request. **Exhibit A.** The requested estimate of total costs was \$593.48. MEDC also estimated that it would take sixteen (16) hours and forty-five (45) business days to fulfill the request.
9. By failing to respond to Michigan Rising's initial request within 5 business days, MEDC violated MCL 15.235(2).
10. MCL 15.235(2) requires a public body to respond to a FOIA request within 5 business days, either by granting or denying the request, or by extending the deadline for an initial response by 10 business days.
11. On June 27, Brandon Mills informed Krista Crockett, MEDC's Public Records Specialist, that she could expect Michigan Rising's payment by July 2, 2024. **Exhibit A.**
12. MEDC did not respond to Michigan Rising's June 27, 2024 communication.
13. On July 11, 2024, Brandon Mills contacted MEDC again, requesting that it confirm receipt of Michigan Rising's payment.
14. MEDC did not respond to Michigan Rising's July 11, 2024 communication.
15. Michigan Rising paid 50% of the estimated fee as required by MCL 15.234(8) by check. MEDC cashed that check on July 19, 2024. **Exhibit A.**

16. Assuming MEDC did not begin working on Michigan Rising’s request until after having processed payment, MEDC’s 45 business day estimate suggests that records should be produced on September 22, 2024. Despite this, as of August 29, 2024, MEDC could not provide an estimated completion date. **Exhibit A.**

17. To date, MEDC has not provided the requested information.

18. MCL 15.231(2) states:

It is the public policy of this state that all persons, except those persons incarcerated in state or local correctional facilities, 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 this act. The people shall be informed so that they may participate in the democratic process.

19. MCL 15.234(8) indicates that a public body may respond to a FOIA request with a good-faith estimate as to the cost of the FOIA request. However, the statute further states:

The response shall also contain a best efforts estimate by the public body regarding the time frame it will take the public body to comply with the law in providing the public records to the requestor. The time frame estimate is nonbinding upon the public body, but the public body shall provide the estimate in good faith and strive to be reasonably accurate and to provide the public records in a manner based on this state’s policy under [MCL 15.231] and the nature of the request in the particular instance.

20. On December 12, 2017, Michigan’s Attorney General issued Opinion No. 7300, which interpreted the requirements of MCL 15.234(8):

It is my opinion, therefore, that a public body’s “best efforts estimate” under subsection 4(8) of FOIA, as to the time it will take to fulfill a request for public records, must be a calculation that contemplates the public body working diligently to fulfill its obligation to produce records to the requestor. The estimate must be comparable to what a reasonable person in the same circumstances as the public body would provide for fulfilling a similar public records request. In addition, under subsection 4(8), the best efforts estimate must be made in “good faith,” that is, it must be made honestly and without the intention to defraud or delay the requestor.

21. The requested materials were simply correspondence and should have been easily reviewed and provided.
22. MEDC has now failed to provide the requested records for approximately six (6) weeks from the date it cashed Plaintiff's check, despite estimating the time required to process this request being originally sixteen (16) hours.
23. Had MEDC devoted as little as approximately 30 minutes of each business day from July 19, 2024 to August 30, 2024, Michigan Rising would have received the requested records.
24. MEDC's continuing failure to produce records constitutes an unreasonable delay and demonstrates that MEDC is not working diligently to fulfill Plaintiff's request. MEDC's delayed response does not reflect a "public body working diligently to fulfill its obligation to produce records to the requestor." Attorney General Opinion No. 7300.
25. MEDC's failure to provide an initial response to Plaintiff's request within five (5) business days, and subsequent failure to respond to Michigan Rising's follow up requests for a period of over six weeks demonstrates an intent to impermissibly delay the response to Plaintiff's request.
26. An unreasonable delay in providing FOIA documents is a denial under MCL 15.235, MCL 15.240(1), and MCL 15.240(7).
27. MEDC's actions regarding this delay in providing the records responsive to Michigan Rising's request are arbitrary and capricious under MCL 15.240(7), thereby subjecting MEDC to a civil fine of \$1,000.00 payable to the general treasury and a separate \$1,000.00 to Michigan Rising.

28. MEDC's actions regarding this delay in providing the records responsive to Michigan Rising's request constitute willful and intentional failure to comply with FOIA, thereby subjecting it to a civil fine of \$2,500 to \$7,500 payable to the state treasury. MCL 15.240b.
29. Pursuant to MCL 15.240(6), Michigan Rising, if it prevails, is entitled to attorneys' fees and costs:

If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in an action commenced under this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or public body prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages under subsection (7).

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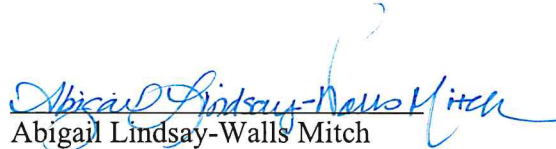
RELIEF REQUESTED


Plaintiff, Michigan Rising Action, respectfully requests that this Court order Defendant, the Michigan Economic Development Corporation, to provide all documents sought in the FOIA request; apply the full penalties available under MCL 15.234(9), MCL 15.240(7), and MCL 15.240b; award attorneys' fees and costs under MCL 15.240(6); and award any other relief this Court determines to be just and equitable to remedy MEDC's delays in providing the requested information and causing the need to bring this suit.

I declare that the statements above are true to the best of my information, knowledge, and belief.

Subscribed and sworn to by Abigail Lindsay-Walls Mitch before me on the 10 day of September, 2024.

Dated: September 10, 2024


Abigail Lindsay-Walls Mitch
Executive Director, Michigan Rising Action
123 W Allegan
Lansing, MI 48933

Signature 
Notary Public, State of Michigan
County of Bay
My Commission Expires: 2/4/2027
Acting in the County of Ingham

AARON J. BAYLIS
NOTARY PUBLIC, STATE OF MI
COUNTY OF BAY
MY COMMISSION EXPIRES Feb 4, 2027
ACTING IN COUNTY OF Ingham

Exhibit A

Delie, Steve

From: Abby Mitch [REDACTED]
Sent: Thursday, August 29, 2024 1:14 PM
To: Delie, Steve
Subject: Fwd: FOIA Response

----- Forwarded message -----

From: **Krista Crockett (MEDC)** <crockettk@michigan.org>
Date: Thu, Aug 29, 2024, 12:15 PM
Subject: RE: FOIA Response
To: Abby Mitch [REDACTED]

Good Morning Ms. Mitch,

Thank you for reaching out.

We are currently processing your FOIA request, and we are making steady progress.

We do not currently have an estimated completion date, but please be assured that we are actively working on it.

Thank you,

Krista Crockett, MPA

Public Records Specialist

Michigan Economic Development Corporation
300 N. Washington Square | Lansing, Michigan 48913
Cell: 517.930.7779 | Email: crockettk@michigan.org



**MICHIGAN ECONOMIC
DEVELOPMENT CORPORATION**

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From: Abby Mitch [REDACTED]
Sent: Tuesday, August 27, 2024 10:12 AM
To: Brandon Mills [REDACTED]
Cc: Krista Crockett (MEDC) <crockettk@michigan.org>
Subject: Re: FOIA Response

Ms Crockett,

I am emailing to follow up on my colleague, Mr. Mills', request. Has there been any update? I see that MEDC cashed our organization's check for the good faith payment on 7/19. Since then we have had zero communication from your office. Your organization estimated 16 hours for production of documents. It has now been 6 weeks since the check was cashed. Can you please provide a reasonable explanation for the delay and/or a timeline for when documents may be expected?

Thank you

Abby Mitch

Abby Mitch

Executive Director

Michigan Rising Action

[REDACTED]

@abigailwmitch

On Thu, Jul 11, 2024 at 2:58 PM Brandon Mills [REDACTED] wrote:

Ms. Crockett,

Can you please confirm receipt of good faith payment? Thank you.

On Jun 27, 2024, at 10:24 AM, Brandon Mills [REDACTED] wrote:

Ms. Crockett,

A check for good faith deposit should arrive by July 2nd. Thank you.

On Jun 20, 2024, at 4:02 PM, Krista Crockett (MEDC)
<crockettk@michigan.org> wrote:

Good Afternoon,

Please see attached.

Thank you,

Krista Crockett, MPA

Public Records Specialist

Michigan Economic Development Corporation
300 N. Washington Square | Lansing, Michigan 48913
Cell: 517.930.7779 | **Email:** crockettk@michigan.org

<image001.png>

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<Mills_GFD Invoice.pdf><Mills_Good Faith Deposit Letter.pdf>

Exhibit B

MICHIGAN ECONOMIC
DEVELOPMENT CORPORATION

June 20, 2024

Brandon Mills
[REDACTED]

Via E-Mail

Dear Brandon Mills:

This written notice is issued in response to your email request dated May 29, 2024, to the Michigan Economic Development Corporation (MEDC) for information under the Freedom of Information Act (FOIA), MCL 15.231 *et. seq.*, which was received at this office on May 30, 2024.

It has been determined that approximately 1226 pages of information may be responsive to your request. The MEDC estimates it will take approximately 16 hours to run reports, review and examine, separate and extract information, and copy the records that fall within the scope of your request. As allowed under Section 4(2) of the FOIA, we are requiring a good-faith deposit of one-half the approximate labor costs. The estimated labor costs are based on the hourly rate of the lowest paid MEDC staff capable of performing the tasks to process this request, as follows: 16 hours @ \$29.43 per hour (\$470.88) to search, retrieve, review, examine, and separate/extract the appropriate information. The estimated total cost is \$593.48. Copying costs will be based on \$.10 per page for standard black and white copying (8½" x 11") is approximately \$122.60. Additionally, there may be added charges due to the need to use odd-size paper and color copies. These will be based on the actual costs and services required to accommodate these needs. Copying costs will be determined upon completion of processing your request.

Upon receipt of your good faith deposit in the amount of \$296.74, the MEDC will begin processing your request. Payment can be made by check made payable to the State of Michigan and sent to the MEDC FOIA Coordinator, 300 North Washington Square, Lansing, Michigan 48913, or by credit card by clicking <https://www.thepayplace.com/mi/medc/foia>. We will send you an invoice indicating the balance due and payable before mailing the records, together with an explanation of the statutory basis for records exemptions from disclosure, if any.

The MEDC estimates that it will be able to provide the documents to you within 45 business days of receipt of payment. This estimate is a nonbinding, best-effort estimate of the time it will take to provide the public records responsive to your request.

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Sincerely,

Krista Crockett

Krista Crockett
MEDC FOIA Coordinator

Attachment

**Michigan Strategic Fund/MEDC
Freedom of Information Act Invoice**



In accordance with P.A. 442, 1976. Failure to return payment to the MSF may result in denial of requested information.

Invoice Date 06/20/2024	
Requestor Name Brandon Mills	Telephone No.
Address Brandon Mills [REDACTED]	Mailing Address (if different)
Requested Information Will Be: <input checked="" type="checkbox"/> Emailed to Requestor Upon Receipt of Payment. <input type="checkbox"/> Made Available for Public Inspection. Copy Fee May Apply. <input type="checkbox"/> Paid For and Picked Up in Person.	MEDC Contact Person Name Krista Crockett
	MEDC Contact Person Telephone No. (517) 930-7779
	[REDACTED]

Section 15.234, P.A. 442, 1976, provides that the Michigan Strategic Fund/MEDC (MSF) may charge a fee for providing a public record; may require a 50% deposit if the estimated fee exceeds \$50.00; or not release requested information until the Requestor provides payment in full. The total estimated costs are listed below. If prior payment or deposit is required, and the Requestor decides to cancel the information request, the Requestor shall notify the MEDC Contact Person shown above. If, after 90 days, the MSF has not received payment, the MSF will assume that the Requestor no longer desires the requested information. The information associated with this Invoice, pursuant to your request includes:

EXPENSES DETAIL

Type of Expense	Amount
Labor (segregating exempt from non-exempt documents); No. of Hours 13 X \$29.43 (hourly rate)	382.59
Labor (Securing, Duplicating, Examining, Extracting); No. of Hours 3 X \$29.43 (hourly rate)	88.29
Duplicating; No. of Sides 1,226 X \$0.10 (per side rate)	122.60
Color Duplicating; No. of Sides X \$0.89 (per side rate)	0.00
Special Fees (overtime, cost of audio tapes, etc.)	0.00
Estimated Total	593.48
Good Faith Deposit*	296.74
Balance Due Upon Receipt of Items	\$296.74

If paying by check, return original invoice copy with your payment.

Make your check payable to: **STATE OF MICHIGAN**
 Send check and original invoice to: Michigan Strategic Fund/MEDC
 Administrative Services
 300 N. Washington Sq.
 Lansing, MI 48913

*If a deposit is required, the Balance Due Upon Receipt of

Items is an ESTIMATE of the actual cost of complying with your request. The actual cost may vary somewhat from this estimated amount. You will be charged for the actual cost.

Note to Cashier: Upon receipt of Requestor's check deposit as follows:
Index:
PCA: 99830
AOBJ: 1525
 Notify FOIA Coordinator upon payment of deposit or balance.

Distribution:
 Original - Requestor
 1st Copy - Requestor
 2nd Copy - Administrative Services
 3rd Copy - FOIA Coordinator

[Click Here to Reset Entire Document and Start Over](#)

Exhibit C

From: [Brandon Mills](#)
To: [MEDC FOIA](#)
Subject: Freedom of Information request
Date: Wednesday, May 29, 2024 3:58:15 PM

FOIA Coordinator,

Pursuant to the Michigan Freedom of Information Act, I would like to request any correspondence between the MEDC and American Lidar INC, Hesai Group, Hesai Technology, or Bob (Geradus) in den Bosch.