



New Freedom of Information Act Case: Documents Do Not Have to be Produced by the Time the FOIA Response is Due

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Foster Swift Municipal Law News

July 19, 2016

On June 23, 2016, the Michigan Court of Appeals issued an opinion that affects how public bodies must respond to certain FOIA requests and when the public body is required to produce documents. In *Cramer v Village of Oakley*, the plaintiff, Ms. Cramer, filed six separate FOIA requests on May 15, 2015, seeking information from the Village's police department. The FOIA provides that a village must respond by (1) granting, (2) denying, (3) granting in part and denying in part or (4) seeking an extension within five business days after receipt of a FOIA request. On May 20, 2015, within the statutory response time permitted under FOIA, the Village sent letters stating that the FOIA request was "granted" but that the Village would conduct a search of the records and provide the copies that they were able to locate.

The plaintiff objected to this response on the basis that it was not sufficient and did not comply within the FOIA. Ms. Cramer argued that the Village also needed to **produce the documents** requested within the time required under the FOIA. As a result, the plaintiff filed the lawsuit, alleging the wrongful denials of plaintiff's six FOIA requests.

The trial court agreed with Ms. Cramer. Because the documents were not produced within the statutory time frame, the trial court concluded the responses were effectively denials of the FOIA requests. Put another way, the trial court found that a public body can only grant a request by delivering the requested documents within the time period specified by the statute for a response.

The Court of Appeals disagreed. Using the principles of statutory interpretation, the court concluded that the FOIA did not require the actual provision of documents within the statutory time frame. The court found that there was a difference in meaning between "granting" a request and "fulfilling" a request under the FOIA. Thus, a public body could respond and "grant" the request within the five (5) business days but the public body did not have to actually turn over, or "fulfill," the documents within that same statutory time frame.

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As a basis for its decision, the court provided an interpretation of one of the newly amended sections of the FOIA. In July of 2015, Section 4(8) of the FOIA, dealing with deposits, was added to the statute. Section 4(8) provides that in either the public body's initial response or subsequent response, the public body may require a good faith deposit from the person requesting the information. The provision further describes how to calculate the good faith deposit. In that same paragraph, the Legislature provided that

the response shall also contain a best efforts estimate by the public body regarding the time frame in which it will take the public body to comply with the law in providing the public records to the requester. The time frame estimate is nonbinding upon the public body, but the public body should provide the estimate in good faith and strive to be reasonably accurate and to provide the public records in a manner based on the state's public policy under Section 1 and the nature of the request in the particular instance.

The *Cramer* court interpreted this provision to apply to more than deposit requests. The court stated that Section 4(8) expressly provides that a public body's response shall also contain a best efforts estimate by the public body of how long it will take to provide the public records. In a footnote, the court acknowledged that the "best efforts estimate" language is contained in Section 4, involving fees, but concludes that the requirement applies more broadly to all responses by a public body and not just those that ask for deposits or fees.

This case is important for municipalities because it may affect how you respond to FOIA requests when the municipality intends to provide documents. If you have questions about complying with the FOIA, please call Anne Seuryncck at (616) 726-2240 or e-mail aseuryncck@fosterswift.com.