

STATE OF MICHIGAN COURT OF CLAIMS	SUMMONS	CASE NO. 22- 000017 -MZ Thomas C Cameron
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Court address
925 W. Ottawa St. P.O. Box 30185 Lansing, MI 48909

Court telephone no.
517-373-0807

Plaintiff's name(s), address(es), and telephone no(s). ERIN WAGNER c/o Plaintiff's Counsel
Plaintiff's attorney, bar no., address, and telephone no. Matthew E. Gronda (P73693) PO Box 70 St Charles, MI 48655 (989) 249-0350 matt@matthewgronda.com

v

Defendant's name(s), address(es), and telephone no(s). MICHIGAN INDEPENDENT CITIZENS REDISTRICTING COMMISSION P. O. Box 30318 Lansing, MI 48909 redistricting@michigan.gov

Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (form MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case

- ☐ There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.
- ☐ There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. I have separately filed a completed confidential case inventory (form MC 21) listing those cases.
- ☐ It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

- ☐ This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.
- ☐ MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).
- ☒ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- ☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has

been previously filed in ☐ this court, ☐ _____ Court, where

it was given case number _____ and assigned to Judge _____.

The action ☐ remains ☐ is no longer pending.

Summons section completed by court clerk.

SUMMONS



NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date February 16, 2022	Expiration date* May 18, 2022	Court clerk <i>Jerome W. Zimmer Jr.</i>
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*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

PROOF OF SERVICE**SUMMONS**

Case No. 22- 000017 -M2

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE☐ **OFFICER CERTIFICATE**

OR

☐ **AFFIDAVIT OF PROCESS SERVER**

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)

Being first duly sworn, I state that I am a legally competent adult, and I am not a party or an officer of a corporate party (MCR 2.103[A]), and that: (notarization required)

- ☐ I served personally a copy of the summons and complaint,
☐ I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint,

together with _____
List all documents served with the summons and complaint

_____ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

- ☐ I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

I declare under the penalties of perjury that this proof of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Service fee \$	Miles traveled	Fee \$	TOTAL FEE \$	Signature
Incorrect address fee \$	Miles traveled	Fee \$		Name (type or print)
				Title

Subscribed and sworn to before me on _____, _____ County, Michigan.
Date

My commission expires: _____ Date Signature: _____
Deputy court clerk/Notary public

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with _____
Attachments

_____ on _____
Day, date, time

Signature _____ on behalf of _____

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Court of Claims Number: 22-000017-MZ
Hon. Thomas C Cameron

**STATE OF MICHIGAN
IN THE COURT OF CLAIMS**

ERIN WAGNER
Plaintiff

v.

MICHIGAN INDEPENDENT CITIZENS REDISTRICTING
COMMISSION
Defendant

VERIFIED COMPLAINT

Case Contacts:

Matthew E. Gronda (P73693)
Attorney for Plaintiff
P. O. Box 70
St. Charles, Michigan 48655
989-249-0350
matt@matthewgronda.com

Erin Wagner (hereinafter “Plaintiff”), by and through her counsel Matthew E. Gronda, states the following for her complaint against the Michigan Independent Citizens Redistricting Commission (hereinafter “Defendant”).

PARTIES

1. Plaintiff is a resident of Eaton County, Michigan. Plaintiff was appointed to the office of commissioner of the Michigan Independent Citizens Redistricting Commission in 2020.
2. She brings this complaint in her personal capacity.
3. Defendant is a permanent commission in the legislative branch of government. Const 1963, Art 4, § 6(1).

JURISDICTION

4. This action seeks monetary relief in the form of restitution against a commission of the State of Michigan.
5. Therefore, the Court of Claims has exclusive subject matter jurisdiction over this action. MCL 600.6419(1); MCL 600.6419(7).¹

¹ This Court will be called upon by Plaintiff to review and confirm its jurisdiction following service of this complaint. Defendant was established by a voter-initiated amendment to the Michigan Constitution of 1963. That amendment, specifically being Article 4, Section 6 of the Constitution, dictates:

The supreme court, in the exercise of original jurisdiction, shall direct the secretary of state or the commission to perform their respective duties, may review a challenge to any plan adopted by the commission, and shall remand a plan to the commission for further action if the plan fails to comply with the requirements of this constitution, the constitution of the United States or superseding federal law. In no event shall any body, except the independent citizens redistricting commission acting pursuant to this section, promulgate and adopt a redistricting plan or plans for this state.

The Michigan Supreme Court’s grant of exclusive jurisdiction appears limited to those actions seeking mandamus relief or review of promulgated districting plans. At

6. This Court has general personal jurisdiction over Plaintiff, whom is a resident of the State of Michigan, under MCL 600.701(2).

7. This Court has general personal jurisdiction over Defendant, a commission of the State of Michigan which is capable of suing and being sued. MCL 600.2501(4).

MATERIAL FACTS

8. On December 23, 2021, Plaintiff made a written request to Defendant for public records pursuant to the *Michigan Freedom of Information Act*, MCL 15231 *et seq* (“FOIA”).

9. The request was forwarded by email to Defendant at *micrc-foia@michigan.gov* which is the email account designated by Defendant to receive electronic requests for its public records.

10. Plaintiff expressly identifies in her written request that it was a “FOIA” request made under the “Michigan Freedom of Information Act” within the first 250 words of said request.

11. An accurate copy of the December 23, 2021 request, with email cover, is attached as Exhibit 1.

12. The request sought production of the following public records:

1. Produce all communications, whether in paper or electronic (email) form, received and/or sent to one or more commissioners from/to any attorney(s) serving on behalf of the Michigan Independent Citizens Redistricting Commission not covered by

the time of this complaint, the Michigan Supreme Court has resolved two original actions relating Defendant brought under Article 4, Section 6. Neither provides substantive guidance on this issue. Detroit Caucus v. Indep. Citizens Redistricting Comm'n, No. 163926, 2022 WL 329915, at *1 (Mich. Feb. 3, 2022) (“this Court has authority to review a challenge to any plan adopted by the commission”); Detroit News, Inc. v. Indep. Citizens Redistricting Comm'n, No. 163823, 2021 WL 6058031 (Mich. Dec. 20, 2021) (providing no substantive statement on jurisdiction).

attorney-client privilege in light of *The Detroit News v Independent Citizen Redistricting Commission*, __ Mich __ (2021). Please limit the scope of this request to communications from October 1, 2021 to present.

2. Unless previously produced in Request No. 1, produce all communications, whether in paper or electronic (email) form, received and/or sent and/or copied by and between two or more but less than all thirteen currently serving members of the Michigan Independent Citizens Redistricting Commission. Please limit the scope of this request to communications from October 1, 2021 to present.

3. Unless previously produced in Request Nos. 1 and 2, produce all communications, whether in paper or electronic (email) form, jointly received by and/or sent to all thirteen currently serving members of the Michigan Independent Citizens Redistricting Commission. Please limit the scope of this request to communications from October 1, 2021 to present.

13. On January 4, 2022, Defendant advised Plaintiff, through counsel, that it had received her request for public records. Defendant further advised that it would be taking the maximum possible extension of 10 business days to respond to Plaintiff's request.

14. An accurate copy of the January 4, 2022 email message is attached as Exhibit 2.

15. Defendant did not produce a response to Plaintiff within the extended deadline.

16. In fact, through the date of the complaint – nearly a month after the expiration of the extended deadline – Defendant has still not signaled whether it will deny or grant Plaintiff's request nor has it produced any of the requested public records.

COUNT I
WRONGFUL DENIAL OF REQUESTED RECORDS UNDER THE
MICHIGAN FREEDOM OF INFORMATION ACT, MCL 15.231 ET
SEQ.

17. All previous allegations are incorporated into this Count I as if restated word for word.

18. Under FOIA, a public body has a duty to produce copies of a requested public record upon “written request.” MCL 15.233.

19. A written request can be submitted by mail, email, facsimile, or any other method of electronic submission. MCL 15.235.

20. Within 5 business days, or up to 15 business days if a full extension is claimed, a public body must: (1) grant a request; (2) deny a request; or (3) grant the request in part and deny the request in part. MCL 15.235(2).

21. A failure to grant, deny, or grant in part and deny in part a request for public records within the permitted timeframe constitutes the public body’s determination to deny the request. Scharret v. City of Berkley, 249 Mich. App. 405, 412, 642 N.W.2d 685, 688 (2002).

22. Plaintiff emailed a request for public records to Defendant on December 23, 2021.

23. Defendant is deemed by statute to have received the request the following day, December 24, 2021. MCL 15.235(1).

24. Defendant’s response was due January 3, 2022.

25. On January 4, 2022, Defendant responded late by taking a 10 extension. Ignoring this FOIA violation, Defendant’s response was then due on or before January 17, 2022.

26. Defendant did not provide a response to Plaintiff’s request for public records on or before January 17, 2022 (or, indeed, through the date of this complaint).

27. This constitutes a denial of Plaintiff's request. Scharret, supra.

28. This automatic denial is a per se violation of FOIA as the denial was not given in writing. MCL 15.235(2).


29. More important, Defendant violated FOIA by not timely producing the public records sought by Plaintiff.

RELIEF REQUESTED

30. WHEREFORE, Plaintiff requests that this Court:

- a. enter an order against Defendant compelling the immediate disclosure of the records/information sought under the Freedom of Information Act;
- b. declare, pursuant to MCR 2.605 and MCL 15.240(4), that the nondisclosure by Defendant violates the Freedom of Information Act;
- c. award all costs, disbursements, and actual/reasonable attorney fees, as required by MCL 15.240(6) and any other basis for doing so;
- d. award punitive damages of \$1,000.00 in favor of Plaintiff pursuant to MCL 15.240(7) for arbitrary and capricious violation of FOIA; and
- e. award such other relief as the court deems appropriate and just.

Date: February 15, 2022


MATTHEW E. GRONDA (P73693)
For Plaintiff

I declare under the penalties of perjury that this complaint has been examined by me and that its contents are true to the best of my information, knowledge, and belief:

Date: February 15, 2022

Erin Wagner
ERIN WAGNER
Plaintiff

EXHIBIT 1

Subject: FOIA - 12/23/2021
Date: Thursday, December 23, 2021 at 1:22:27 PM Eastern Standard Time
From: Matthew Gronda
To: micrc-foia@michigan.gov
Attachments: 2021-12-23 - FOIA.pdf

FOIA Coordinator:

Please see attached FOIA request dated December 23, 2021.

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Matthew E. Gronda

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December 23, 2021

Via Email

To: Michigan Independent Citizens Redistricting Commission
Attn: FOIA Coordinator
micrc-foia@michigan.gov

Re: FOIA Request – December 23, 2021

FOIA Coordinator:

Pursuant to the *Michigan Freedom of Information Act* (MCL § 15.231 et seq), Erin Wagner, by counsel, hereby formally and separately requests /demands copies of the following records / documents / information:

1. Produce all communications, whether in paper or electronic (email) form, received and/or sent to one or more commissioners from/to any attorney(s) serving on behalf of the Michigan Independent Citizens Redistricting Commission not covered by attorney-client privilege in light of *The Detroit News v Independent Citizen Redistricting Commission*, __ Mich __ (2021). Please limit the scope of this request to communications from October 1, 2021 to present.
2. Unless previously produced in Request No. 1, produce all communications, whether in paper or electronic (email) form, received and/or sent and/or copied by and between two or more but less than all thirteen currently serving members of the Michigan Independent Citizens Redistricting Commission. Please limit the scope of this request to communications from October 1, 2021 to present.
3. Unless previously produced in Request Nos. 1 and 2, produce all communications, whether in paper or electronic (email) form, jointly received by and/or sent to all thirteen currently serving members of the Michigan Independent Citizens Redistricting Commission. Please limit the scope of this request to communications from October 1, 2021 to present.

Please treat each numbered paragraph above as a separate and distinct FOIA request for all purposes under the FOIA statute.

Matthew E. Gronda, as counsel for requestor, is willing to pay reasonable fees, in accordance with FOIA costs regulations, for the fulfillment of this request. If the fee will exceed \$50.00, please contact him before proceeding. Please email the requested information to matt@matthewgronda.com or, if use of email is not possible, by mail to Attorney Matthew E. Gronda, P. O. Box 70, Saint Charles, Michigan 48655.

Should you decide to invoke a FOIA exemption as the basis for withholding any record or part of any record in response to this request, please include the required disclosures under MCL 15.235(5). Please also include

From the desk of:

Matthew E. Gronda, Attorney

Return Mail: P.O. Box 70, Saint Charles, Michigan 48655
By Appointment: 4800 Fashion Square Boulevard, Suite 200, Saginaw, Michigan 48604
Phone: [989] 249-0350 Email: matthewgronda@gmail.com

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a detailed explanation and justification which specifically includes an identification of the exemption within FOIA by which the document or any part thereof was withheld.

Notwithstanding and to the extent you opt to redact information, you are directed to provide the remaining portion of any document which is not exempt. You are also directed to review your obligations under FOIA pursuant to MCL 15.235(5)(a)-(d) as well as MCL 15.244.

Consistent with the requirements of the Act, your response and/or actual production of records is expected and due within five (5) business days.

Your help and assistance is appreciated. Thank you.

Best Regards,



MATTHEW E. GRONDA

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EXHIBIT 2

Subject: RE: FOIA - 12/23/2021

Date: Tuesday, January 4, 2022 at 2:06:37 PM Eastern Standard Time

From: ICRC-FOIA

To: Matthew Gronda

CC: ICRC-FOIA

for records under the Michigan Freedom of Information Act (FOIA), 1976 PA 442, MCL 15.231 *et seq.* Pursuant to section 15.235(1) of the FOIA, your request was considered received by the MICRC on December 27, 2021, the business day following the transmission of your email message.

In order to determine whether the MICRC possesses existing, nonexempt public records responsive to your request, we are extending the time for responding to your request by 10 business days (in addition to the standard 5 business days allowed for a response), as permitted by FOIA, MCL 15.235. A notice will be issued to you on or before January 19, 2022.

Sincerely,

Julianne Pastula

General Counsel

State of Michigan

Independent Citizens Redistricting Commission

517.331.6318

From: Matthew Gronda <matt@matthewgronda.com>

Sent: Thursday, December 23, 2021 1:22 PM

To: ICRC-FOIA <ICRC-FOIA@michigan.gov>

Subject: FOIA - 12/23/2021

CAUTION: This is an External email. Please send suspicious emails to abuse@michigan.gov

FOIA Coordinator:

Please see attached FOIA request dated December 23, 2021.

STATE OF MICHIGAN
COURT OF CLAIMS

Bundle Cover Sheet

Lower Court:	L Ct No.:	COC No.: TEMP-XQQV9JR1
Case Title: ERIN WAGNER v. MICRC		
Priority: NONE	Filing Option: File Only	

Filer Information

<u>Filer</u> Matthew Gronda P. O. Box 70 Saint Charles, MI 48655 matt@matthewgronda.com	<u>Attorney</u> Matthew Gronda, P73693(MI) P. O. Box 70 Saint Charles, MI 48655 matt@matthewgronda.com
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Filing Summary

Filing Type	Filing Name	Fee
Summons and Complaint	Complaint	\$150.00
	eFiling System Fee:	\$25.00
	NON-REFUNDABLE Automated Payment Service Fee:	\$5.25
	Total:	\$180.25

Alternate Payment Reason: None

The document(s) listed above were electronically filed with the Michigan Court of Claims.

TEMP-XQQV9JR1-21313213

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