

**Campaign Finance Complaint Form
Michigan Department of State**

RECEIVED FILED
2019 MAY -2 AM 9: 01

This complaint form may be used to file a complaint alleging that someone violated the Michigan Campaign Finance Act (the MCFA, 1976 PA 388, as amended; MCL 169.201 *et seq.*).

All information on the form must be provided along with an original signature and evidence.

Please print or type all information.

I allege that the MCFA was violated as follows:

Section 1. Complainant		
Your Name Jon-Paul Rutan		Daytime Telephone Number 517-320-1383
Mailing Address 2228 Pondbrooke Dr.		
City Hillsdale	State MI	Zip 49242

Section 2. Alleged Violator		
Name Sheriff Tim Parker		
Mailing Address 165 Fayette St., W.		
City Hillsdale	State MI	Zip 49242

Section 3. Alleged Violations (Use additional sheet if more space is needed.)

Section(s) of the MCFA violated:
MC169.257 Sec. 57 (1)(f),(2)(a), (3), (4)

Explain how those sections were violated:

The Sheriff has been driving a county paid vehicle around the county, to township meetings, after regular business hours,

in uniform, along with the Undersheriff, campaigning for the Sheriff's Millage to be on the ballot on May 7th. The Sheriff

is knowingly violating MCL169.257, Sec 57, (4) as he was admonished by the OSC for campaigning for Sheriff in 2016

in uniform against the Hatch Act OSC File No. HA-16-4854. The OSC warned then Lt. Parker that if he did something

like this again, they would "consider it a knowing and willful violation of the law that could result in disciplinary action.

Evidence that supports those allegations (attach copies of pertinent documents and other information)

https://m.facebook.com/story.php?story_fbid=301182863835340&id=709533569207654

<https://www.facebook.com/PennySwanWard4/videos/612503335871219/>

COMPLAINT PROCESS

Section 15 of the MCFA governs the filing and processing of complaints. If you believe someone has violated the MCFA, you may file a written complaint. The complaint **must** include all of the following:

- Your name, address and telephone number.
- The alleged violator's name and address.
- A description in reasonable detail of the alleged violation, including the section or sections of the MCFA you believe were violated, an explanation of how you believe the MCFA was violated, and any other pertinent information.
- Evidence which supports your allegations.
- A certification that:

To the best of your knowledge, information, and belief, formed after a reasonable inquiry under the circumstances, each factual contention of the complaint is supported by evidence.

- If after a reasonable inquiry under the circumstances, you are unable to certify that certain specifically identified factual contentions of the complaint are supported by evidence, you may also certify that:

To the best of your knowledge, information, or belief, there are grounds to conclude that those specifically identified factual contentions are likely to be supported by evidence after a reasonable opportunity for further inquiry.

- Your signature immediately after the certification or certifications.

WARNING: Section 15(8) of the MCFA (MCL 169.215) provides that a person who files a complaint with a false certification is responsible for a civil violation of the MCFA. Under section 15(16) of the MCFA (MCL 169.215), the Secretary of State may require a person who files a complaint with a false certification to:

- Pay the Department some or all of the expenses incurred by the Department as a direct result of the filing of the complaint.
- Pay the alleged violator some or all of the expenses, including, but not limited to, reasonable attorney fees, incurred by that person as a direct result of the filing of the complaint.
- Pay a civil fine of up to \$1,000.00.

A complaint may be dismissed if any required information is not included, or if the complaint is determined to be frivolous, illegible, or indefinite. All parties are notified of dismissed complaints.

When a complaint meets the above requirements, the Department notifies the alleged violator that a complaint has been filed and provides a copy of the complaint. The alleged violator will have an opportunity to file a response. The complaint filer will have an opportunity to file a rebuttal to any response. All parties receive periodic reports concerning the actions taken by the Department on a complaint.

If the Department finds no reason to believe that the allegations are true, the complaint will be dismissed.

If the Department finds that there may be reason to believe your allegations are true, the Department must attempt to correct the violation or prevent further violations by informal methods such as a conference, conciliation, or persuasion, and may enter into a conciliation agreement with the alleged violator.

If the Department is unable to correct the violation or prevent further violations informally, an administrative hearing may be held to determine whether a civil violation of the MCFA has occurred, or the matter may be referred to the Attorney General for the enforcement of criminal penalties. An administrative hearing could result in the assessment of a civil penalty. Such a hearing would be conducted in accordance with the Michigan Administrative Procedures Act. An order issued as a result of such a hearing may be appealed to the appropriate circuit court.

Accepted complaints and all supporting documentation including responses and rebuttal statements are made available on the Department's website as required by the MCFA at the conclusion of the process.

Questions? Contact us at:

Michigan Department of State
Bureau of Elections
Richard H. Austin Building – 1st Floor
430 West Allegan Street
Lansing, Michigan 48918
Phone: 517-335-3234
Email: Disclosure@Michigan.gov



U.S. OFFICE OF SPECIAL COUNSEL
 1730 M Street, N.W., Suite 218
 Washington, D.C. 20036-4505
 202-254-3400

October 6, 2016

Mr. Jon-Paul Rutan
 2228 Pondbrooke Dr.
 Hillsdale, MI 49242

VA E-MAIL: j-rutan@comcast.net

Re: OSC File No. HA-16-4854

Dear Mr. Rutan:

The U.S. Office of Special Counsel (OSC) has completed its investigation into your allegations that Lieutenant Timothy Parker of the Hillsdale County Sheriff's Office violated the Hatch Act. Specifically, you alleged that Lt. Parker wore his official uniform in connection with his current candidacy for sheriff of Hillsdale County, Michigan. OSC's investigation confirmed that Lt. Parker is covered by the Hatch Act and that his alleged activity violated the Act. Once OSC informed Lt. Parker of his violation, he immediately took steps to come into compliance with the law by removing photographs in which he appears in uniform from his campaign billboards and his official campaign Facebook page.

Because Lt. Parker has taken the appropriate corrective steps to come into compliance with the Hatch Act, we are closing our file without further action at this time. Lt. Parker has been advised that should he engage in activities prohibited by the Hatch Act in the future, OSC would consider it a knowing and willful violation of the law that could result in disciplinary action.

If you have any questions concerning this matter, please contact me at (202) 254-3673.

Sincerely,

A handwritten signature in black ink that reads 'Erica S. Hamrick'.

Erica S. Hamrick
 Deputy Chief
 Hatch Act Unit





STATE OF MICHIGAN
JOCELYN BENSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

May 6, 2019

Sheriff Tim Parker
165 Fayette Street West
Hillsdale, Michigan 49242

Re: *Rutan v. Parker*
Campaign Finance Complaint
No. 2018-05-14-57

Dear Sheriff Parker:

The Department of State (Department) received a formal complaint filed by Jon-Paul Rutan against you alleging violations of the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201 *et seq.* The investigation and resolution of this complaint is governed by section 15 of the Act and the corresponding administrative rules, R 169.51 *et seq.* A copy of the complaint and supporting documentation is enclosed with this letter.

In Michigan it is unlawful for a public body or an individual acting on its behalf to use or authorize the use of equipment, supplies, personnel, funds, or other public resources to make a contribution or expenditure. MCL 169.257(1). The words "contribution" and "expenditure" are terms of art that are generally defined to include a payment or transfer of anything of ascertainable monetary value made for the purpose of influencing or made in assistance of the qualification, passage, or defeat of a ballot question. MCL 169.204(1), 169.206(1). A knowing violation of this provision is a misdemeanor offense punishable by a fine up to \$1,000 and/or imprisonment up to 1 year. MCL 169.257(4).

Mr. Rutan alleges that you used your county paid vehicle to campaign in uniform for the Sheriff's millage which is on the May 2019 ballot. Mr. Rutan also alleges that you have previously been admonished by the U.S. Office of Special Counsel for similar conduct.

The purpose of this letter is to inform you of the Department's examination of these matters and your right to respond to the allegations before the Department proceeds further. It is important to understand that the Department is neither making this complaint nor accepting the allegations as true.

If you wish to file a written response to this complaint, you are required to do so within 15 business days of the date of this letter. Your response may include any written statement or additional documentary evidence you wish to submit. All materials must be sent to the Department of State, Bureau of Elections, Richard H. Austin Building, 1st Floor, 430 West

Sheriff Tim Parker
May 6, 2019
Page 2

Allegan Street, Lansing, Michigan 48918. If you fail to submit a response, the Department will render a decision based on the evidence furnished by the complainant.

A copy of your answer will be provided to Mr. Rutan, who will have an opportunity to submit a rebuttal statement to the Department. After reviewing all of the statements and materials provided by the parties, the Department will determine whether “there may be reason to believe that a violation of [the MCFA] has occurred [.]” MCL 169.215(10). Note that the Department’s enforcement powers include the possibility of entering a conciliation agreement, conducting an administrative hearing, or referring this matter to the Attorney General for enforcement of the criminal penalty provided in section 57(4) of the Act.

If you have any questions concerning this matter, you may contact me at (517) 373-2540.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Fracassi". The signature is written in a cursive style with a large, stylized initial "A".

Adam Fracassi
Bureau of Elections
Michigan Department of State

c: Jon-Paul Rutan

DETROIT OFFICE

JOHN F. YOUNGBLOOD
TIMOTHY J. KRAMER
WILLIAM D. GILBRIDE, JR.
SEAN A. FRASER
GEORGE M. MALIS
ERIN R. COBANE

SENIOR COUNSEL

JOHN R. NICHOLSON
THOMAS R. QUILTER III
GENE J. ESSIAKI

OF COUNSEL

ROBERT G. LEWANDOWSKI



 MERITAS LAW FIRMS WORLDWIDE

300 RIVER PLACE, SUITE 3000
DETROIT, MICHIGAN 48207-4225

1900 W. BIG BEAVER ROAD, SUITE 203
TROY, MICHIGAN 48084

TELEPHONE (313) 566-2500
TELECOPIER (313) 566-2502

WWW.ABBOTTNICHOLSON.COM

TROY OFFICE

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JOHN R. MCGLINCHEY
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HEIDI E. WARREN
KRISTEN L. BAIARDI
ALYSSA C. DECHOW
CARLOS A. ESCUREL

SENIOR COUNSEL

DANIEL G. KIELCZEWSKI

C. RICHARD ABBOTT
(1935-2003)

May 16, 2019

Adam Fracassi
Bureau of Elections
Michigan Department of State
Richard H. Austin Building – 1st Floor
430 W. Allegan
Lansing, Michigan 48918

Re: MCFA Complaint By Jon-Paul Rutan
Against Hillsdale County Sheriff Timothy Parker
No. 2018-05-14-57

RECEIVED/FILED
MICHIGAN DEPT OF STATE
2019 MAY 22 AH 9:25
ELECTION/GREAT SEAL

Dear Mr. Fracassi:

This law firm represents Timothy Parker, Hillsdale County Sheriff, in the above-referenced matter. All future communication and correspondence concerning this matter should be directed to my attention at the address below. On behalf of Sheriff Parker, we are responding to the Complaint, as provided in your letter dated May 6, 2019, to the Sheriff.

First, Hillsdale County provides vehicles to some of its elected officials, including Sheriff Parker and some employees, for their use. Sheriff Parker's vehicle is equipped with law enforcement equipment, such as a police radio, emergency lights and a siren. Sheriff Parker does conduct law enforcement activities while operating this vehicle, regardless of his destination.

On occasion, Sheriff Parker drove this vehicle to various locations where he spoke on behalf of a proposed millage to support additional law enforcement officers. We have no idea what, if anything, this has to do with any other matters referenced by Mr. Rutan in his Complaint. It appears that Mr. Rutan, who was defeated in the election by Sheriff Parker, simply seeks to smear Sheriff Parker.

At no time did Sheriff Parker use any public resources to make a contribution or expenditure, or provide volunteer services as defined in the MCFA, specifically, MCL

Adam Fracassi
Bureau of Elections

2

May 16, 2019

169.257(1). Parker had every right to use his County-owned vehicle to drive himself to places where he opined on the millage. Further, as an elected constitutional official, Parker is not a “public body” under MCL 169.211(6) or a “person acting for a public body.”

Additionally, MCL 169.257(1) expressly states, in relevant part:

This subsection does not apply to any of the following:

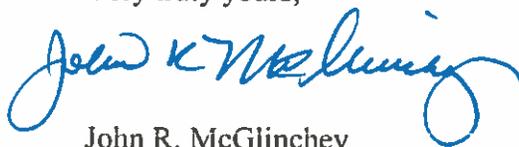
(a) The expression of views by an elected or appointed public official who has policy making responsibilities.

The plain language of the statute expressly allows Sheriff Parker, as an elected official who has policy making responsibilities, to express his views without regard to the restrictions applicable to a “public body” or a “person acting for a public body.” Expressing his views on the proposed millage at locations he drove to in his County provided vehicle is allowed.

To say that because he transported himself in a County provided vehicle to places where he expressed his views somehow violates Section 57 of the MCFA is nonsensical. Mr. Rutan has filed a frivolous Complaint which should not only be dismissed, but Sheriff Parker should be awarded his attorney fees for having to respond to it.

I trust the foregoing adequately sets forth the Sheriff’s response to this Complaint. Please do not hesitate to contact me if you have any questions.

Very truly yours,



John R. McGlinchey

JRM:kjd

cc: Sheriff Timothy Parker

Hillsdale County Board of Commissioners

4842-6046-7351, v. 1



STATE OF MICHIGAN
JOCELYN BENSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

May 30, 2019

Jon-Paul Rutan
2228 Pondbrooke Drive
Hillsdale, Michigan 49242

Dear Mr. Rutan:

The Department of State received a response to the complaint you filed against Sheriff Timothy Parker, which concerns an alleged violation of the Michigan Campaign Finance Act (MCFA), 1976 P.A. 388, MCL 169.201 *et seq.* A copy of the response is provided as an enclosure with this letter.

If you elect to file a rebuttal statement, you are required to send it within 10 business days of the date of this letter to the Bureau of Elections, Richard H. Austin Building, 1st Floor, 430 West Allegan Street, Lansing, Michigan 48918.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Fracassi".

Adam Fracassi
Bureau of Elections
Michigan Department of State

c: John McGlinchey, Attorney for Sheriff Parker

To: Adam Fracassi
Bureau of Elections
Michigan Department of State
Richard H. Austin Building - 1st Floor
430 W. Allegan
Lansing, Michigan 48918

RECEIVED
MICHIGAN DEPARTMENT OF STATE
2019 JUN 10 AM 10:30
NOT AT SEAL

6/10/2019

From: Jon-Paul Rutan
2228 Pondbrooke Dr.
Hillsdale, MI 49242
517-320-1383

Dear Mr. Fracassi:

To answer Mr. McGlinchey's rebuttal, from here on I will refer to him as "Counsel," dated may 16, 2019, I will first summarize his arguments into bullet points, from which I will then give answers to each argument.

1. Sheriff Parker conducts Law Enforcement activities from his vehicle "no matter his destination."
2. This has nothing to do with "any other matter" (which for clarity was that illegal campaign signs were being handed out from the Sheriff's Department) referenced by Mr. Rutan.
3. Mr. Rutan was defeated by Sheriff Parker in an election so this complaint is simply a smear tactic.
4. That Sheriff Parker being in uniform, driving his county owned vehicle is not providing "contribution," "expenditure," or "volunteer services" per MCL 169.257(1).
5. That Sheriff Parker is not a "public body" or "person acting for a public body" per MCL 169.211(6).
6. That Sheriff Parker is expressly exempt from MCL 169.257(1) because of paragraph (a).
7. In Summary that Sheriff Parker's Action did not violate section 57 of the MCFA.
8. That the complaint should be dismissed and Sheriff Parker awarded his attorney fees.

On the subject of bullet point 1, Sheriff Parker came to the Hillsdale County Republican Party meeting on April 4, 2019, in which I was in attendance. Sheriff Parker, notably, was not in uniform, nor was he driving his "county owned vehicle" equipped with law enforcement equipment. At that meeting, Sheriff Parker was very careful to only give "expression of [his] view" and not to actively campaign in urging a "yes" vote on the millage. This meeting starts at 6:00 PM every first Thursday of every month. This was the first time Sheriff Parker has been to a meeting since winning the election in 2016. Sheriff Parker is not in his uniform, nor does he drive his county owned vehicle with law enforcement equipment to church every Sunday where he is a Sunday School Teacher. To make the assertion that Sheriff Parker only wore his uniform and drove a county vehicle with law enforcement equipment to these various township meetings when he does not do it to any other locations on his personal time, was somehow innocent, is laughable.

On the subject of bullet point 2, I filed an FOIA with the county for emails from the County Sheriff's Department that would prove that not only were the illegal campaign signs being handed out from the Sheriff's Department, but there has been a culture of violating this provision of the MCFA for

a number of elections, including this ballot question. My FOIA was denied, contrary to State and Federal law. I am currently filing a law suit to compel the County to deliver the requested emails, as per MCL 15.231 *et seq.* Not only was the request unlawfully denied, but the Letter of Denial did not comply with State Law or the Attorney Generals "Administrative Guide To State Government, dated January 1, 1994 and Revised May 5, 2012. (Exhibits A, B, C & D) I filed this FOIA in a timely manner so as to have this evidence for the Sheriff's rebuttal, I would like to request an extension in the ten day limit, until the end of the court process as this evidence that is being withheld is key evidence to this complaint.

On the subject of bullet point 3, I was defeated in the last election by Sheriff Parker. I was also defeated in the 2012 election by Stan Burchardt. I have been defeated in many competitions throughout my life, and expect to be defeated in many more competitions. To be blunt, I either have a right to file a complaint or I don't. I was not aware that you could only file a complaint for a suspected violation if you were the winner of a competition.

On the subject of bullet point 4, The people that were opposed to this ballot question had to drive their own vehicles, wearing their own clothes, on their own time to give their views on why the ballot question was not needed, They did not have the advantage of public equipment and funds. As I read the provision of the law, it is clear that the Sheriff doing these things was "expending" county resources to "contribute" to his cause, which was to see the ballot question pass.

On the subject of bullet point 5, Counsel is correct that Sheriff Parker is not a "public body" or "person acting for a public body" per MCL 169.211(6). However, Counsel couldn't even get the portion of the law correct in his response. MCL 169.211 (6), deals with "Political Party Committee." Section (7) deals with "Public Body" and "Persons Acting For A Public Body." On this point, Undersheriff Albright was in uniform after business hours, that traveled to at least two of these functions with Sheriff Parker, in the same County paid vehicle, giving his "opinion" and "opining" on the issue. The Undersheriff is a subordinate of the Sheriff. MCL 169.257(1) and MCL 169.257(1)(f) are key to this bullet point. Undersheriff Albright was a person acting for a public body and Sheriff Parker was allowing him to use public monies to express his opinions on the ballot question. That is also against the letter and spirit of this legislation. Perhaps the complaint needs to also encompass Undersheriff Albright as well. The opposition to this ballot question were not given the same opportunity to use these same county assets.

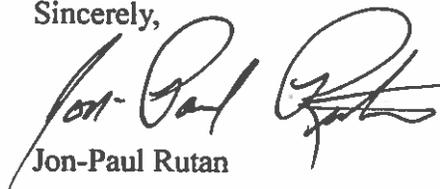
On the subject of bullet point 6, Counsel has read section (a) too narrowly. Although what he cited is true, it does not take into account (b),(c),(d),(e) and most especially (f). First off, if all of these are read in their entirety, it shows the very intent of the Legislation. It was to allow elected official to give facts and insight to ballot questions, so they could inform the voters with "facts and figures." The law says that they can do this. Counsel has engaged in semantics by using words like "opined" or "spoke on behalf of." If that is all that he had done, then Sheriff Parker would have been within the provisions of this legislation. However, Sheriff Parker, on many occasions used words like, "I encourage the voters" and "I would ask the voters to consider this proposal." He even did a nine minute radio spot, the Tuesday before the election in which he, and Chairman of the Board of Commissioners, Mark Wiley, used those exact words. That is not "opining" but rather the language of express advocacy. That is against Subsection 57. Under (f), Sheriff Parker could express advocacy for the ballot question if he was doing it on his own time and using his own money. He would then, not be taking an unfair advantage.

On the subject of bullet point 7, When reading the entirety of subsection 57, along with other case law and “§57 OF THE CAMPAIGN FINANCE ACT Perspectives on Enforcement” by Christopher M. Thomas, Director of Elections, It is clear that this legislation was designed to not give anyone side an unfair advantage over another in elections and ballot questions. Clearly, Sheriff Parker has violated the letter of the law and most importantly, the spirit of the law.

On the subject of bullet point 8, Undersheriff Albright came to the County Board meeting on 5/14/2019, asking that the County taxpayers pay for Sheriff Parker's attorney to answer this complaint. At that meeting, the vote passed 4 to 1. Commissioners Wiley, Brown, Caswell, and Shaw voted “YES” while Commissioner Games voted “NO.” It seems that when I paid my taxes, I paid for Sheriff Parker's attorney fees already. Again, the Sheriff and the County Board of Commissioners are taking unfair advantage. I could not afford a lawyer to handle my complaint, but the County Board, contrary to MCL 169.257(1) saw Sheriff Parker, not as an elected official, but as a “Public Body” or “A Person Acting For A Public Body” when they voted to pay for an attorney for the Sheriff when the complaint clearly said *Rutan v Parker*, not *Rutan v County of Hillsdale*. My point is this, either the Sheriff is an elected official and can answer his own complaint or pay for his own attorney, or he is part of the “Public Body” and is then under section (1) of subsection 57. He can't be both. It is interesting to note that in the same meeting when the Board voted to pay for Sheriff Parker's attorney, it was mentioned that the Sheriff had already spoke with the County's insurance company and they told him that they would not cover this complaint if fines were levied, to which the Board agreed to pay any fines that were assessed. Filing this complaint cost no one anything except me the tax payer, even though it was me the taxpayer that had been the victim of those in authority abusing their power for an unfair advantage in a ballot question.

In closing, I would like to encourage this department to turn this complaint over to the Attorney General's office for further investigation. I have many witnesses to the goings on here, not just in this ballot question, but many elections. There is a culture of abuse of power an unfairness and other issues that this complaint might bring out that boarder on immoral if not illegal behavior.

Sincerely,



Jon-Paul Rutan

F.O.I.A. Request

To: County Clerk Marney Kast
C/O David Hocomb
Courthouse, Room #1
29 N. Howell St.
Hillsdale, MI 49242

Date: 5/22/2019

From: Jon-Paul Rutan
2228 Pondbrooke Dr.
Hillsdale, MI 49242
517-320-1383

I would like to request, through the Federal Freedom of Information Act of 1974, and the Michigan Freedom of Information Act, MCLA Section 15.231 et seq., in conjunction with MCLA Section 750.492, please provide the following documents:

1. All incoming and outgoing emails of J.J. Hodshire from 1/1/2010 to his exit as Undersheriff.
2. All incoming and outgoing emails from Stan Burchardt from 1/1/2010 to his exit as Sheriff.
3. All incoming and outgoing emails from Undersheriff Boardman from 1/1/2010 to his exit.
4. All incoming and outgoing emails from Sheriff Parker from 1/1/2014 to present.
5. All incoming and outgoing emails from Lt. Todd Moore from 1/1/2014 to present.
6. All incoming and outgoing emails from Undersheriff Albright from 1/1/2014 to present.

If all or any part of this request is denied, please list the specific exemptions that are being claimed to withhold information. If you determine that some portions of the requested information are exempt, I will expect, as the Act requires, that you will provide us with the nonexempt portions. I reserve the right to appeal any decision to withhold information and expect that you will list the address and office where such an appeal can be sent.

As you may know, the Michigan Freedom of Information Act permits you to reduce or waive all search and/or copying fees when release of the requested information would be "in the public interest" MCLA Section 15.234(1). I believe that this request fits that category and I, therefore, ask that you waive such fees.

Thank you for the requested information, in advance,


Jon-Paul Rutan

FILED
2019 MAY 22 PM 2:08
MARNEY M. KAST
COUNTY CLERK

Exhibit A



HILLSDALE COUNTY BOARD OF COMMISSIONERS

Courthouse, 2nd Floor

33 McCollum St., Suite 210, Hillsdale, MI 49242

Telephone: (517) 437-3932 Fax: (517) 437-3138

commissioners@co.hillsdale.mi.us

Mark E. Wiley, Chairman, District 3 Julie Games, Vice-Chair, District 2
Ruth E. Brown, District 1 Bruce Caswell, District 4 Tim Shaw, District 5

Jon-Paul Rutan
2228 Pondbrooke Dr.
Hillsdale, MI 49242

RE: F.O.I.A. Request

Dear Mr. Rutan,

This letter is in response to your F.O.I.A. request. The County cannot respond to your request because it does not sufficiently describe the information being requested so as to enable the County to identify the records being sought as required by MCL 15.233(1) and applicable case law. The County will review your request again if you submit additional information to more specifically identify the public records being sought.

Respectfully,

A handwritten signature in black ink that reads "Mark E. Wiley" followed by a stylized flourish.

Mark E. Wiley, Chairman
Hillsdale County Board of Commissioners

SAMPLE LETTER 4
DENIAL OF FOIA REQUEST

[Date]

[Name/Address of Requestor]

Dear [XXX]:

This notice is in response to your letter dated _____ [date] received by the Department of _____ [Dept. name] on _____ [date] requesting records and information under the Freedom of Information Act (FOIA), MCL 15.231 *et seq.*

Your request is denied.

Option 1 – After a search for records responsive to your request, to the best of the Department's knowledge, information and belief, the Department does not possess records under the description given in your request or by other names reasonably known to the Department.

[OR]

Option 2 – The information you seek is exempt from public disclosure under MCL _____ [insert section].

[list each exempt record and specify and explain in detail how the exemptions apply in this case]

[give explanation and cite the applicable exemption]

[include the following language:]

Pursuant to MCL 15.240, because your request was denied, the Department is obligated to inform you that you may do one of the following:

1. Appeal this decision in writing to the Department of _____ [Dept. name]. The writing must specifically state the word "appeal" and must identify the reason or reasons for reversal of the denial. The head of the Department, or his/her designee, must respond to your appeal within 10 days of its receipt. Under unusual circumstances, the time for response to your appeal may be extended by 10 business days.
2. File an action in circuit court to compel the Department's disclosure of the public records within 180 days after the Department's final determination to deny the request. If the circuit court, after judicial review, determines that the Department has not complied with MCL 15.235 and orders disclosure of all or a portion of a public record, the court shall award reasonable attorneys' fees, cost and disbursements. Further, if the circuit court determines that the Department has

- arbitrarily and capriciously violated the FOIA by refusal or delay in disclosing or providing copies of a public record, the court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of \$500.00.

[closing]

[signature and title of responding official]



MENU +

SHARE

FOIA UPDATE: FOIA COUNSELOR: QUESTIONS & ANSWERS

January 1, 1983

FOIA Update
Vol. IV, No. 3
1983

FOIA COUNSELOR: QUESTIONS & ANSWERS

Should the practice of referring requested documents to their agencies of origination (see *FOIA Update*, June 1982, at 5) be altered by the D.C. Circuit's *McGehee* decision?

No. The D.C. Circuit's decision in *McGehee v. CIA*, 697 F.2d 1095, 1105-12 (D.C. Cir.), *vacated in part on panel rehearing, reh'g en banc denied*, 3 GDS ¶ 83,221 (D.C. Cir. 1983), certainly places a cloud over the previously clear case law permitting such referrals. However, the Department of Justice takes the position that the *McGehee* decision is entirely interlocutory and nonbinding on that issue. Therefore, pending the further development of case law on the issue, existing agency referral practices should not be altered.

May an agency continue to invoke Exemption 7(D) protection for the identity of, and information provided by, a confidential source who is now deceased?

Yes. The courts have uniformly upheld postmortem refusals to release both categories of information under Exemption 7(D).



Exhibit D

May an agency continue to invoke Exemption 7(D) protection for the identity of, and information provided by, a confidential source who is now deceased?

Yes. The courts have uniformly upheld postmortem refusals to release both categories of information under Exemption 7(D). See *Cohen v. Smith*, No. 81-5365, mem. op. at 4 (9th Cir. Mar. 25, 1983) (identities of sources); *Kiraly v. FBI*, 3 GDS ¶ 82,466 at 83,138 (N.D. Ohio 1982) (confidential information provided by source); *Stassi v. United States Department of Justice*, Civil No. 78-0536, slip op. at 9-10 (D.D.C. Apr. 12, 1979) (confidential information provided by source who testified at trial). Although these decisions contain little elaboration on this point, the application of Exemption 7(D) protection to deceased sources is supported by sound pragmatic and legal principles. The primary purpose of Exemption 7(D) is to encourage individuals to supply information to law enforcement authorities readily, secure in the knowledge that they will never publicly be acknowledged as informants. "Such encouragement is enhanced if individual sources know that their names will remain confidential even after their death, thereby protecting family and associates." *Cohen v. Smith, supra*. Indeed, in some instances a source may desire that his cooperation with law enforcement authorities remain secret even from his family and close friends. Compare with *FOIA Update*, Sept. 1982, at 5 (privacy protection for deceased persons).

Can an agency deny a FOIA request which requires an extremely burdensome search, and/or encompasses an enormous volume of records, on the ground that the records are not "reasonably described?"

No. The sheer size or burdensomeness of a FOIA request, in and of itself, does not entitle an agency to deny that request on the ground that it does not "reasonably describe" records within the meaning of 5 U.S.C. § 52(a)(3)(A). That provision in the FOIA was intended to ensure that a FOIA request

Can an agency deny a FOIA request which requires an extremely burdensome search, and/or encompasses an enormous volume of records, on the ground that the records are not "reasonably described?"

No. The sheer size or burdensomeness of a FOIA request, in and of itself, does not entitle an agency to deny that request on the ground that it does not "reasonably describe" records within the meaning of 5 U.S.C. § 552(a)(3)(A). That provision in the FOIA was intended to ensure that a FOIA request description "be sufficient [to enable] a professional employee of the agency who was familiar with the subject area of the request to locate the record with a reasonable amount of effort." H.R. Rep. No. 93-876, 93d Cong., 2d Sess. 6 (1974). *See also* S. Rep. No. 93-854, 93d Cong., 2d Sess. 10 (1974) ("[T]he identification standard should not be used to obstruct public access to agency records."); *Bristol-Meyers Co. v. FTC*, 424 F.2d 935, 938 (D.C. Cir.), *cert. denied*, 400 U.S. 824 (1970).

However, it is well established that "broad, sweeping requests lacking specificity are not permissible." *Marks v. United States*, 578 F.2d 261, 263 (9th Cir. 1978). *See, e.g., Irons v. Schuyler*, 465 F.2d 608, 613 (D.C. Cir.) (request seeking "all unpublished manuscript decisions of the Patent Office" held "so broad in the context of the Patent Office files" as to be insufficient), *cert. denied*, 409 U.S. 1076 (1972); *Fonda v. CIA*, 434 F. Supp. 498, 501 (D.D.C. 1977) (request for all documents not mentioning plaintiff's name but which "concern her" held too broad). Further, the "reasonable" description requirement does fairly apply to locations to be searched, as well as to subject matter. *See, e.g., Marks v. United States, supra*, 578 F.2d at 263 ("it would be an unreasonable interpretation of the FOIA" to construe it to require an automatic search of all FBI field offices.); *Shaw v. United States Department of State*, 559 F. Supp. 1053, 1061 (D.D.C. 1983) ("A reasonable description of the desired materials must include the location of the search.").



STATE OF MICHIGAN
JOCELYN BENSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

June 20, 2019

John McGlinchey
Attorney for Sheriff Timothy Parker
Abbott Nicholson
1900 W. Big Beaver Road
Suite 203
Troy, Michigan 48084

Re: *Rutan v. Parker*
Campaign Finance Complaint
No. 2019-5-14-57

Dear Mr. McGlinchey:

This letter concerns the complaint that was recently filed against your client, which relates to a purported violation of the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, MCL 169.201 *et seq.* The Department of State has received a rebuttal statement from the complainant, a copy of which is enclosed with this letter.

Section 15(10) of the MCFA, MCL 169.215(10), requires the Department to determine within 45 business days from the receipt of the rebuttal statement whether there is a reason to believe that a violation of the Act has occurred. The complaint remains under investigation at this time.

If the Department needs more information, you may be contacted. The complaint will remain under investigation until a final determination has been made. At the conclusion of the review, all parties will receive written notice of the outcome of the complaint and the file will be posted on the Department's website.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Fracassi".

Adam Fracassi
Bureau of Elections
Michigan Department of State

c: Jon-Paul Rutan



STATE OF MICHIGAN
JOCELYN BENSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

August 23, 2019

Jon-Paul Rutan
2228 Pondbrooke Drive
Hillsdale, Michigan 49242

Dear Mr. Rutan:

The Department of State (Department) has concluded its investigation into the complaint you filed against Sheriff Tim Parker alleged he has violated the Michigan Campaign Finance Act (MCFA or Act), 1976 PA 388, 169.201 *et al.*, by improperly using county resources to campaign for a ballot question. This letter concerns the disposition of your complaint.

You filed your complaint with the Department on May 2, 2019 and alleged that Sheriff Parker was driving a county paid vehicle to various meetings while in uniform in order to campaign for a sheriff's millage that was on the May 7, 2019 ballot. You alleged that he knowingly violated section 57 of the MCFA because he was previously investigated by the Office of Special Counsel. As evidence to the complaint, you provided links to two videos on Facebook which were records of a council meeting and a community event.

Through his attorney by letter dated May 16, 2019, Sheriff Parker responded and stated that he is assigned a county vehicle and drove his vehicle to various locations to speak on behalf of the proposed millage. Sheriff Parker further argued that he was allowed to use this county-owned vehicle to opine on the millage, that he was not a "person acting for a public body" as that phrase is defined by the Act, and as an elected official, he is allowed to express his views without regard to the restrictions applicable to a public body under section 57.

By letter dated June 10, 2019, you submitted a rebuttal statement to the Department. You stated that Sheriff Parker does not appear at other events in uniform, but only when he was campaigning for the millage. Second, you argued that it was routine practice to use county resources to campaign. Third, you argued that opposition to the millage were not given the same opportunities and resources and the county. Fourth, you disputed that Sheriff Parker is allowed to unconditionally express his views and reads the exemption under section 57 too narrowly. Finally, you alleged that Sheriff Parker does fit under the classification of a public body or a person acting on behalf of a public body. With your rebuttal, you submitted copies of your FOIA request sent to Hillsdale County, the County's denial of your request, and an excerpt of an FAQ document published in 1983 by the U.S. Department of Justice.

In Michigan, it is unlawful for a public body, or an individual acting on its behalf, to use or authorize the use of equipment, supplies, personnel, funds, or other public resources to make a contribution or expenditure. MCL 169.257(1). The words "contribution" and "expenditure" are terms of art that are generally defined to include a payment or transfer of anything of ascertainable monetary value made for the purpose of influencing or made in assistance of the qualification, passage, or defeat of a ballot question. MCL 169.204(1), 169.206(1). A knowing violation of this provision is a misdemeanor offense punishable by a fine up to \$1,000 and/or imprisonment up to 1 year. MCL 169.257(4).

Initially, the Department must first determine whether the materials at issue constitute a contribution or expenditure as defined by the Act. The MCFA excludes any communication from the Act's reach unless it specifically urges voters to "vote yes," "vote no," "elect," "defeat," "support," or "oppose" a candidate, using these or equivalent words and phrases. MCL 169.206(2)(j). The Department is required to "apply the express advocacy test to communications financed by public bodies." *Interpretive Statement to David Murley*, October 31, 2005. In other words, the express advocacy test excludes a communication from the Act's reach unless it specifically urges voters to "vote yes," "vote no," "elect," "defeat," "support," or "oppose" a ballot question or candidate, using these or equivalent words and phrases. The Department may only consider the text of the communication itself and not the broader context in which it was made in determining whether it is subject to MCFA regulation. *Interpretive Statement to Robert LaBrant*, April 20, 2004.

The Department has carefully watched and listened to the two videos provided in the complaint. There are no directives made by Sheriff Parker in these two videos that urge voters to "vote for," "vote against," "defeat," "support," or "oppose" the ballot millage. Nor are there any equivalent words or phrases. Because there are not words of express advocacy or their equivalent, the communication is not covered by the gambit of the Act. Since there are not words of express advocacy, it is unnecessary for the Department to address any of the remaining allegations or arguments presented by the parties.

Because there are no directives made by Sheriff Parker in the videos presented that use words of express advocacy, the Department must dismiss the complaint. The Department's file in this matter has been closed and no further enforcement action will be taken. As required by the MCFA, the entire file will be posted on the Department's website.

Sincerely,



Adam Fracassi
Bureau of Elections
Michigan Department of State

c: John McGlinchey, Attorney for Sheriff Timothy Parker