

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

**POSSE (Parents of Sister Survivors Engage),
Valerie von Frank, Jane Doe Z1, Jane Doe Z2,
Sarah Allen, Alexis Alvarado, Alyssa Avery, Kaitlyn Basel, Arianna Castillo, Jennifer Hayes, Annette Howlett-Hill, Melissa Hudecz, Elizabeth Maurer, Kathryn Middleton, Angelika Martinez-McGhee Hillary Rich, Jessica Schedler Laura Scudder, Clasina Syrový John Nichols, Vivian Green, Glen Black, Sue Moore, Nancy Avery, Steve Blayer, Ronda Blayer, Suzanne Maurer, Kayla Spicher, Kristin Nagle, & Amanda Cormier**

Case No. _____-CZ
Hon.

Plaintiffs,

v

Dianne Byrum, Dennis Denno, Dan Kelly, Renee Knake Jefferson, Sandy Pierce, Brianna Scott, Kelly Tebay, Rema Reynolds Vassar, Michigan State University, and Michigan State University Board of Trustees

Defendants.

_____/

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<p style="text-align: center;">COMPLAINT FOR VIOLATIONS OF THE FREEDOM OF INFORMATION ACT (FOIA), OPEN MEETINGS ACT AND MICHIGAN CONSTITUTION</p>
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There is no civil action between other parties arising out of the transaction or occurrence alleged in the Complaint between the parties.

/s/Azzam Elder
Azzam Elder (P53661)

NOW COME Plaintiffs, by and through their attorney, Azzam Elder, and for their Complaint for violations of the Open Meetings Act (“OMA”), the Michigan Constitution state and Freedom of Information Act as follows:

INTRODUCTION

The OMA’s Purpose

[T]he OMA’s legislative purposes were to . . . promote a new era in governmental accountability. Legislators hailed the act as “a major step forward in opening the political process to public scrutiny.” . . . [L]awmakers perceived openness in government as a means of promoting responsible decision making. Moreover, it also provided a way to educate the general public about policy decisions and issues. It fostered belief in the efficacy of the system. Legal commentators noted that “open government is believed to serve as both a light and disinfectant in exposing potential abuse and misuse of power. The deliberation of public policy in the public forum is an important check and balance on self-government.”

– *Booth Newspapers v Univ of Mich Bd of Regents*, 444 Mich 211, 222–23; 507 NW2d 422 (1993) (citations omitted).

1. This action is in pursuit of justice and truth for Survivors of Larry Nassar and all citizens to the open and transparent government provided for under the Freedom Of Information Act (FOIA), Michigan Constitution and Open Meetings Act (OMA).

PARTIES

2. Plaintiff POSSE (aka Parents of Sister Survivors Engage), a group of parents of Nassar survivors, residing in multiple cities and states.
3. Plaintiff Valerie von Frank is a resident of Ingham County.
4. Plaintiff Survivors are residents of numerous Counties through the United States.

5. Defendants Dianne Byrum, Dennis Denno, Dan Kelly, Renee Knake Jefferson, Sandy Pierce, Brianna Scott, Kelly Tebay, Rema Reynolds Vassar, are Board of Trustees members who serve on the Michigan State University governing board (“BOT”).
6. Michigan State University (“MSU”) and Michigan State University Board of Trustees (“BOT”) is a “public body” under the Open Meetings Act. *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 222-223; 507 NW2d 422 (1993).

JURISDICTION AND VENUE

7. The acts which are the subject of this Complaint occurred in Ingham County, Michigan. This Court has jurisdiction under, *inter alia*, MCL 15.270 (4), MCL 15.270(1), MCL 15.271(2), and MCL 600.605. Venue is proper under, *inter alia*, MCL 15.270(4) and MCL 15.271(2)

GENERAL ALLEGATIONS

MICHIGAN STATE UNIVERSITY

8. Michigan State University (“MSU”) is a public university. The Michigan [Constitution](#) provides that UM, MSU, and WSU are to be governed by independently elected, eight-member boards. See, Const. 1963, Art. VIII, § 5, Eff. Jan. 1, 1964.
9. Today, MSU has the largest undergraduate enrollment among Michigan's colleges and universities and approximately 634,300 living alumni worldwide.

THE UNCOVERING OF LARRY NASSAR

10. On Sept. 12, 2016, *The Indianapolis Star* first reported that Larry Nassar had sexually abused at least three gymnasts.

<https://www.indystar.com/story/news/2016/09/12/former-usa-gymnastics-doctor-accused-abuse/89995734/> The University already had been put on notice about Nassar's conduct not only with individual reports to multiple employees within the system during the decades of the 1990s and 2000s, but with a formal complaint in 2014 to the Title IX office. On Dec. 21, 2016, the Federal Bureau of Investigation found 37,000 images of child pornography on Nassar's home computer. Michigan State University issued a statement saying: "The current federal charges do not relate to Nassar's employment at MSU" despite the well-researched connections between child pornography and pedophilia. Nassar was indicted and pleaded guilty to receiving child pornography in 2004, possessing child pornography from 2003 to 2016, and to destroying and concealing evidence in 2016. He was sentenced to 60 years in federal prison.

Additionally, Nassar pleaded guilty on Nov. 22, 2017, in Ingham County to seven counts of first-degree criminal sexual conduct with seven victims, three of whom were under the age of 13, and was sentenced to 40 to 175 years on Jan. 24, 2018. In Eaton County, Nassar pleaded guilty to three additional counts of first degree criminal sexual conduct, one of a child under the age of 13 and two with victims between the ages of 13 and 15, and was sentenced Jan. 31, 2018, to 40 to 125 years in prison. More than 150 victims came forward to make public statements in court proceedings in the two counties. At least 500 victims ultimately settled claims with the university for sexual assaults by the MSU employee.

11. MSU has repeatedly been less than transparent with the public, including Survivors and families of Survivors.

(a) In its December 16, 2022 meeting, board member Melanie Foster announced without any public board discussion that the women's swim and dive team, eliminated in October 2020, would not be reinstated. This happened despite the fact that the university was found to be out of compliance with Title IX requirements for female athletic programs. ([https://www.detroitnews.com/story/sports/college/michigan-state-university/spartans/2022/12/16/msu-trustee-says-theres-no-path-forward-for-swimming-and-diving-programs/69734759007/.](https://www.detroitnews.com/story/sports/college/michigan-state-university/spartans/2022/12/16/msu-trustee-says-theres-no-path-forward-for-swimming-and-diving-programs/69734759007/))

(b) Ironically, on February 10, 2023, just two months earlier than the Nassar decision, the MSU Board of Trustees voted 8-0 and decided not to hide behind “attorney client privilege” and released the legal findings of an investigation into Title IX procedures around sexual violence at MSU. This action, which is effectively a waiver of attorney-client privilege, was conducted through “a surprise motion” at the board meeting without any public discussion. (<https://statenews.com/article/2023/02/board-unanimously-votes-to-release-quinn-emanuel-findings-in-one-report>)

(c) On Oct. 28, 2022, the Board of Trustees voted 8-0 without public discussion to effectively waive privilege to release the findings of an investigation into the university's compliance with state regulations for reporting on Title IX matters to the state. These findings are commonly referred to as the “Honigman report” which is the law firm hired by MSU. At this meeting, Trustee Brianna Scott inadvertently acknowledged that the Board's decisions are made outside of the public meeting, saying, “I do feel somewhat blindsided by some of the things that (Trustee Pat O'Keefe)

just said, especially in light ... that *we were going to try to collectively talk about things before we actually publicly spoke* about them” (emphasis added).

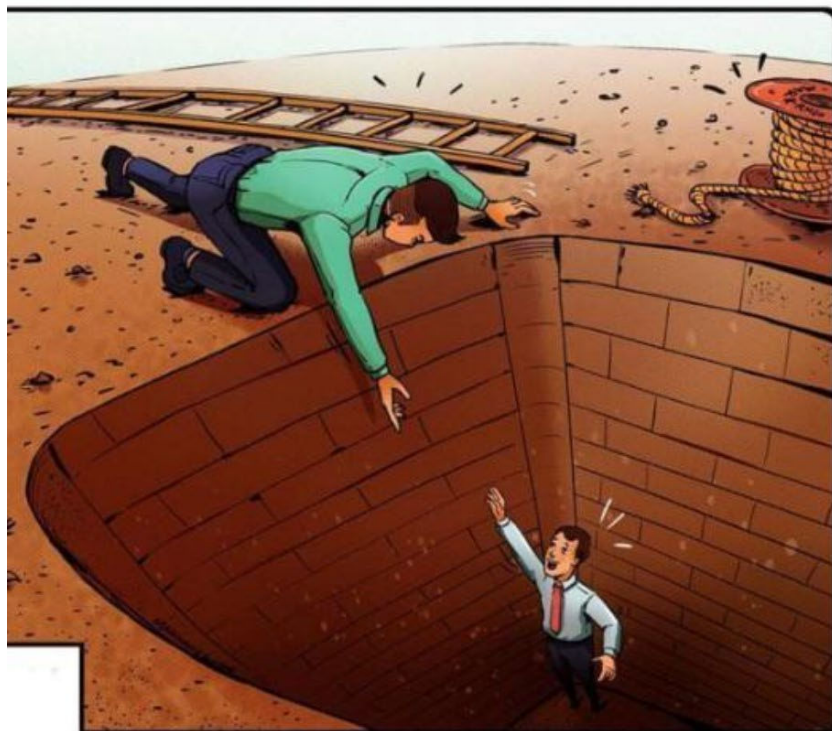
(<https://www.crainsdetroit.com/education/embattled-msu-trustees-sound-emotional-meeting>).

12. It was the MSU Board of Trustees who requested that the AG investigate. However, for years now, since 2018, MSU has refused to cooperate with the AG’s investigation, by asserting “privilege”.
13. In 2018, the former members of the Board of Trustees refused to release documents to the Attorney General’s office, claiming “attorney client” privilege.
14. For years now since 2018, survivors, advocates, the general public, the MSU community and even a significant number of legislators have been demanding full transparency and the release of the “Nassar documents.” The public has a right to know about who at MSU may have turned a blind eye to Nassar’s activities, when his actions were reported and to whom, but the MSU Trustees as a body continued to hide information and evidence.
15. During the criminal proceedings and numerous MSU public board meetings, survivors spoke publicly about the trauma and pain they continue to suffer. Identifying themselves and sharing details about their abuse and trauma symptoms took tremendous courage.
16. During election seasons, several of the current Board of Trustees members made public pledges to release the documents relating to the Larry Nassar investigation and not hide behind “attorney client” privilege.
17. A majority of current trustees have indicated support even in 2023 for releasing the “Nassar documents.”
18. In private meetings with Survivors and Survivor advocates, Trustees felt comfortable

making commitments for full transparency to release all “Nassar documents.”

**SOME TURNCOAT TRUSTEES
TELL SURVIVORS ONE THING,
THEN SECRETLY VOTE AGAINST THEM**

**SOME PEOPLE ARE JUST
PRETENDING TO HELP YOU.**



19. Upon information and belief, the current MSU Board of Trustees had illegal secret votes and made decisions in private to hide their position on whether or not to release the “Nassar documents.”

20. This action is being filed against the MSU Board of Trustees for violating laws designed to protect the public interest and governmental transparency.

21. The following Trustees made false campaign promises and false representations to release all of the documents relating to the Larry Nassar cover-up:

1) Trustees Renee Knake Jefferson and Dennis Denno have publicly supported being fully transparent and releasing all of the “Nassar documents”:

<https://www.fox47news.com/neighborhoods/msu-campus/meet-the-two-democratic-candidates-for-michigan-state-university-board-of-trustees>

2) Additionally, Trustee Renee Knake Jefferson stated at the February 11, 2023, board meeting that the board should release the documents. (Listen to her statement at 2:05:29 at this MSU link. <https://trustees.msu.edu/meetings/documents/2023/MSU-BOT-2023-02-10.mp3>.) Furthermore, as a candidate for office, Trustee Renee Knake Jefferson interviewed with POSSE seeking an endorsement. In a private conversation to clarify her statements in that interview, she said she supported releasing the “Nassar documents.”

3) Trustee Sandy Pierce can be heard at the February 11, 2023, board meeting stating that “Our commitment to transparency is real.” (Listen to her statement at 2:11:00 at this MSU link. <https://trustees.msu.edu/meetings/documents/2023/MSU-BOT-2023-02-10.mp3>

4) Trustee Rema Vassar made a written statement to POSSE supporting the release of

the records as a 2020 candidate. She stated, “All documents should be made public to promote healing, to repair the reputation of the institution”. More recently on March 20, 2023, she told WKAR she wanted the “Nassar documents” released:

<https://www.wkar.org/wkar-news/2023-03-20/msu-trustees-chair-gives-update-on-presidential-search-release-of-nassar-docs>

- 5) Trustee Brianna Scott at the February 1, 2023, board meeting when asked about her position on releasing the “Nassar documents” has told POSSE and victim advocates that she "wants to make things right" with survivors. Trustee Scott’s representation was welcomed given the fact that she has previously worked closely with former Trustee Joel Ferguson and voted to shut down an independent investigation back in 2020. <https://www.freep.com/story/news/education/2019/09/11/msu-trustees-scott-ferguson-muskegon-building/2287096001/>
- 6) Trustee Kelly Tebay ran for Trustee in 2018 as a survivor supporting survivors. She has repeatedly represented, over her time as trustee, that she is a supporter of all survivors, and the release of the “Nassar documents”. Prior to 2023, Tebay made victims’ advocates believe that but for the majority of other Trustees blocking the release of “Nassar documents,” she was in favor of transparency and releasing the documents. Last year Tebay said, “I want you to know that I am on your side, but I’m not a dictator, and I don’t make decisions on my own, and they’re certainly not easy things for me to experience.” Tebay said, “I would appreciate if you understand that I am fighting for you and I am trying...” <https://www.mlive.com/news/2021/04/michigan-state-university-students-call-on-board-to-release-nassar-related-documents.html>. Now In 2023 with a new

board and new chairperson elected, victims' advocates believed that Tebay was supportive of releasing "Nassar documents" if the majority of the board of trustees would support her.

- 7) Trustees Diane Byrum and Dan Kelly were on the Board of Trustee when the Nassar nightmare and crimes were uncovered and are the only remaining board members who were seated during 2016-17, the period during which the revelations unfolded.
- 8) Plaintiffs believe this MSU BOT violated the open meetings act by secretly voting on Nassar issues and made decisions behind closed doors prior to the April 21, 2023, public meeting.
- 9) Neither Byrum nor Knake Jefferson attended the Board of Trustees meeting on April 21, 2023, either in person or remotely, breaching their "duty of care," a phrase Knake Jefferson has used to threaten fellow board members, according to a *Detroit News* article published March 5, 2023.
<https://www.detroitnews.com/story/news/local/michigan/2023/03/05/how-power-plays-presidential-posturing-roil-msu-boardroom-howes/69966892007/>. Meeting schedules for the year are set in January, and the trustees meet only six times. Kelly announced he would recuse himself from future decisions about the documents due to conflict of interest, stating his rationale at the Board of Trustees meeting April 21, 2023.



EVENTS LEADING UP TO VIOLATING THE OPEN MEETINGS ACT

22. On April 21, 2023, POSSE and Survivors expected that the Board of Trustees would finally have a public vote on releasing the “Nassar documents” because it was the first public meeting after AG Dana Nessel requested the documents again from the MSU BOT. **However, the public was cheated, and the open meetings act was violated...**
23. During approximately two months leading up to April 21, 2023, private discussions and public pledges by a majority of Trustees indicated support for releasing the “Nassar documents.”
24. Upon information and belief, certain MSU Board of Trustees members contacted the AG’s office with the understanding, based on discussion with trustees, that a majority

supported a public vote to release the “Nassar documents.”

25. At the request of MSU Trustees, AG Dana Nessel sent a formal letter to the board seeking the “Nassar documents” be released to her office. This was prior to the Trustees scheduled April 21, 2023, Presumably that is why AG Dana Nessel’s office (“AG”) expected that there would be a public vote to release the records on April 21, 2023. **(Exhibit 1, State News Article).**
26. The AG honored this request on April 14, 2023, and sent the MSU of Trustees a letter requesting that the “Nassar documents” be released to her office. **(Exhibit 2, AG letter requested by Trustees).**
27. According to media reports, the AG and MSU Board Chair were blindsided by what happened next.
28. Sometime after the AG sent the letter on April 14, 2023, the majority of the MSU Board of Trustees decided not to release the “Nassar documents.” This decision was made in secret “behind closed doors.”
29. This lawsuit will prove that some Trustees were two-faced and acting in bad faith, never intending to release the documents even though they made promises to do so.
30. After the AG letter was sent, the majority of the Board of Trustees also decided not to allow for a public vote to take place on April 21, 2023 to openly document the decision in a public forum in compliance with state law. Jointly, the trustees worked to hide their decisions from public scrutiny, in direct violation of the Open Meetings Act.
31. Ironically, the board Chair read a prepared statement out loud at the close of the April 21, 2023, meeting:

“I must share that in response to the Attorney General’s most recent request to

waive attorney-client privilege, MSU's general counsel will inform the AG's Office that we will **not take any new action**. Therefore, we will continue to maintain attorney-client privilege."

This lawsuit will establish that this statement "will not take any new action" is misleading because the majority of the Board of Trustees did make a private decision not to release the "Nassar documents" during the week of April 17th. By the very fact that it was prepared ahead and carefully worded, this public statement actually proves that the Board of Trustees did take new action and the majority of the Board of Trustees decided privately not to release the "Nassar documents" and not to have a public vote on the matter on April 21, 2023. (<https://msu.edu/issues-statements/2023-04-21-board-chair-statement-on-nassar-docs>)

32. Discovery and video depositions of Trustees under oath will allow the public to know the truth about Trustees' gamesmanship and lack of transparency about how some MSU Trustees are making decisions secretly on information about sexual violence that directly and intimately affects the lives of those on campus and survivors and families.
33. Plaintiffs seek to test the principles adopted by MSU and show how some of the Trustees are not worthy of the public trust:

GOVERNING PRINCIPLES

Under MSU's Strategic Plan, created in the wake of the Nassar situation, the university defined its values to include "collaboration, equity, excellence, and integrity." In introducing these values, it states: "Michigan State University is committed to the highest ethical and academic standards. As a public institution, we are committed to transparent decision making and accountable governance. As a community, we commit to live these values." It further states: "We will eliminate barriers to access and success, challenge

discrimination and bias, and address past and present inequalities.” Further: “We will create and sustain a culture of safety where we can learn, work, teach, live and visit ...” (emphasis added) (<https://strategicplan.msu.edu/mission>)

COUNT I – VIOLATIONS OF THE OPEN MEETINGS ACT
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34. Plaintiffs adopt and incorporate by reference each and every allegation in the foregoing paragraphs as if fully set forth herein.
35. The Open Meetings Act applies to Michigan State University and its Board of Trustee. *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 222-223; 507 NW2d 422 (1993). MCL 46.1(2).
36. The Open Meetings Act requires that all deliberations and decisions of a public body must take place at a public meeting in an accessible place open to the general public at which a person can address the meeting:
- (1) All meetings of a public body must be open to the public and must be held in a place available to the general public. All persons must be permitted to attend any meeting except as otherwise provided in this act. The right of a person to attend a meeting of a public body includes the right to tape-record, to videotape, to broadcast live on radio, and to telecast live on television the proceedings of a public body at a public meeting.
...
 - (2) All decisions of a public body must be made at a meeting open to the public.
...
 - (3) All deliberations of a public body constituting a quorum of its members must take place at a meeting open to the public
...
 - (5) A person must be permitted to address a meeting of a public body under rules established and recorded by the public body.
...
 - (6) A person must not be excluded from a meeting otherwise open to the public except for a breach of the peace actually committed at the meeting.

MCL 15.263(1), (2), (3), (5), and (6).

37. The Open Meetings Act also has specific requirements for the public notice of meetings:

(1) A meeting of a public body shall not be held unless public notice is given as provided in this section by a person designated by the public body.

(2) For regular meetings of a public body, there shall be posted within 10 days after the first meeting of the public body in each calendar or fiscal year a public notice stating the dates, times, and places of its regular meetings.

(3) If there is a change in the schedule of regular meetings of a public body, there shall be posted within 3 days after the meeting at which the change is made, a public notice stating the new dates, times, and places of its regular meetings.

(4) Except as provided in this subsection or in subsection (6), for a rescheduled regular or a special meeting of a public body, a public notice stating the date, time, and place of the meeting shall be posted at least 18 hours before the meeting in a prominent and conspicuous place at both the public body's principal office and, if the public body directly or indirectly maintains an official internet presence that includes monthly or more frequent updates of public meeting agendas or minutes, on a portion of the website that is fully accessible to the public. The public notice on the website shall be included on either the homepage or on a separate webpage dedicated to public notices for nonregularly scheduled public meetings and accessible via a prominent and conspicuous link on the website's homepage that clearly describes its purpose for public notification of those nonregularly scheduled public meetings. . . .

MCL 15.265(1)–(4).

38. The Open Meetings Act also has specific requirements for the contents of the notice of meetings:

(a) A public notice shall always contain the name of the public body to which the notice applies, its telephone number if one exists, and its address.

(b) A public notice for a public body shall always be posted at its principal office and any other locations considered appropriate by the public body. Cable television may also be utilized for purposes of posting public notice.

(c) If a public body is a part of a state department, part of the legislative or judicial branch of state government, part of an institution of higher

education, or part of a political subdivision or school district, a public notice shall also be posted in the respective principal office of the state department, the institution of higher education, clerk of the house of representatives, secretary of the state senate, clerk of the supreme court, or political subdivision or school district.

MCL 15.264(a)–(c).

39. The Open Meetings Act requires that minutes be kept of public meetings. MCL 15.269(1).

40. The Open Meetings Act defines a “public body” as:

any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function; a lessee of such a body performing an essential public purpose and function pursuant to the lease agreement; or the board of a nonprofit corporation formed by a city under section 4o of the home rule city act, 1909 PA 279, MCL 117.4o.

MCL 15.262(a).

41. The Open Meetings Act should be liberally construed to achieve its purposes. *See, e g, Wexford Co Prosecutor v Pranger*, 83 Mich App 197, 201; 268 NW2d 344 (1978); *Esperance v Chesterfield Twp*, 89 Mich App 456, 463; 280 NW2d 559 (1979).

42. The Open Meetings Act should also be construed to preclude evasion of its requirements. *See, e g, Herald Co v Bay City*, 463 Mich 111, 134–35; 614 NW2d 873(2000).

43. The law has long recognized *de facto* legal status, *de facto* government actions, *de facto* government organizations, and *de facto* government authority. *See, e g, Duray Dev, LLC v Perrin*, 288 Mich App 143, 152; 792 NW2d 749 (2010) (*per curiam*), *lv denied*, 488 Mich 994; 791 NW2d 438 (2010) (*de facto* corporation); *People v Kaplan*, 256 Mich 36,

38–39; 239 NW 349 (1931) (*de facto* grand jury); *Merkur Steel Supply, Inc v Detroit*, 261 Mich App 116, 125; 680 NW2d 485 (2004), *lv denied*, 471 Mich 884; 688 NW2d 502 (2004) (*de facto* taking of private property); *De Hoop v Peninsular Life Ins Co*, 193 Mich 380, 390; 159 NW 500 (1916) (*de facto* agent); *Killingbeck v Killingbeck*, 269 Mich App 132, 158–59; 711 NW2d 759 (2005) (COOPER, J., concurring in part and dissenting in part) (*de facto* parent); *Smith v Cameron*, 158 Mich 174, 176; 122 NW 564 (1909) (*de facto* guardian); *In re Andrews*, 265 Mich 661, 666; 252 NW 482 (1934) (*de facto* corporate director); *Farm Bureau Ins Co v Pedlow*, 3 Mich App 478, 484; 142 NW2d 877 (1966), *lv denied*, 378 Mich 727; _NW2d _ (1966) (*de facto* employee); *Auto Electric & Serv Corp v Rockwell Int’l Corp*, 111 Mich App 292, 296–97; 314 NW2d 592 (1981) (*de facto* termination of contract); *Flemming v Heffner & Flemming*, 263 Mich 561, 567–68; 248 NW 900 (1933) (*de facto* corporate dissolution); *Turner v Bituminous Cas Co*, 397 Mich 406, 419–20; 244 NW2d 873 (1976) (*de facto* corporate merger).

44. In government transparency law, courts have also recognized the principle of *de facto* public bodies. *See, e.g., Breighner v Mich High Sch Athletic Ass’n*, 471 Mich 217, 230; 683 NW2d 639 (2004) (recognizing that a *de facto* “public body” can exist under the Freedom of Information Act but declining to declare the MHSAA a *de facto* public body); *News Journal Co v Del Solid Waste*, unreported opinion of the Superior Court of Delaware, issued February 8, 1982 (Docket No. 81C-JN-17), p 6 (under Delaware FOIA, entities exercising *de facto* authority may be “public bodies”).
45. The MSU Board of Trustees has 8 Trustees who constitute a *de facto* public body subject to the Open Meetings Act because during the periods outlined in this complaint they (1) constituted a majority and a quorum of the incoming MSU Board of Trustees; (2)

performed government functions by meeting and communicating in person or electronically to deliberate and make decisions on public policy; (3) exercised government authority by directing, voting, and making decisions.

46. As a *de facto* public body between April 10 and April 21st, 2023, the majority of the MSU Board of Trustees violated the Open Meetings Act, specifically MCL 15.263(1), (2), (3), and (5); MCL 15.265(1)–(4); MCL 15.264(a)–(c); and MCL 15.269(1) as set forth in §§ 18– 31.
47. Between April 10 and April 21st, 2023, the MSU Board of Trustees made closed door decisions and voted not to release the “Nassar documents” and to not have a public vote.
48. The failure of the MSU Board of Trustees to give public notice of their meetings between during which these decisions were made between April 10 and April 21st, 2023, in accordance with MCL 15.265 interfered with substantial compliance of MCL 15.263(1)–(3).
49. The failure of the MSU Board of Trustees to allow public attendance at decision-making sessions between April 10 and April 21 substantially interfered with both the intent of the law and compliance under MCL 15.263(3).
50. The public was denied the right to hear deliberations.
51. Noncompliance with MCL 15.263(1)–(3) and MCL 15.265 by the MSU Board of Trustees has impaired the rights of the public under the Open Meetings Act.

**COUNT II – VIOLATION OF THE PUBLIC’S CONSTITUTIONAL
RIGHT TO INFORMATION ABOUT GOVERNMENT
ACTIVITIES**

A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or Tragedy; or, perhaps both.

9 The Writings of James Madison
(Hunt ed., 1910), p. 103.

52. Plaintiffs adopt and incorporate by reference each and every allegation in the foregoing paragraphs as if fully set forth herein.

53. Article 1, §§ 3 and 5 of the Michigan Constitution collectively protect, *inter alia*, freedom of speech, instruction, and to petition:

The people have the right peaceably to assemble, to consult for the common good, to instruct their representatives and to petition the government for redress of grievances.

...

Every person may freely speak, write, express and publish his views on all subjects, being responsible for the abuse of such right; and no law shall be enacted to restrain or abridge the liberty of speech or of the press.

54. The rights of speech, association, and to petition under Michigan’s Constitution are coextensive with those under the First Amendment to the U.S. Constitution. *Woodland v Mich Citizens Lobby*, 423 Mich 188, 208; 378 NW2d 337 (1985) (“[The] same liberty of speech . . . is secured by the Constitution of the State of Michigan’ as is guaranteed by the First Amendment.”), *quoting Book Tower Garage, Inc v UAW Local No 415*, 295 Mich 580, 587; 295 NW 320 (1940); *Mich Up & Out of Poverty Now Coalition v Michigan*, 210 Mich App 162, 168–69; 533 NW2d 339 (1995) (“We thus

review plaintiff’s challenges to the new procedures in accordance with federal authority construing the First Amendment.”) (citing Michigan Supreme Court authority).

55. Under the First Amendment, not only are the rights of speakers protected but

[i]t is now well established that the Constitution *protects the right to receive information and ideas*. “This freedom [of speech and press] . . . necessarily protects the right to receive . . .” This right to receive information and ideas, regardless of their social worth, is fundamental to our free society.

Stanley v Georgia, 394 US 557, 564; 89 S Ct 1243; 22 L Ed 2d 542 (1969) (citations omitted) (emphasis added).

56. Under these authorities, the citizens of Michigan and the MSU community had the state constitutional right to be timely informed of decisions on actionable items that were being made by the MSU Board of Trustees between April 10 and April 21st, 2023.

57. When the MSU Board of Trustee’s failed to timely inform the citizens of Michigan and the MSU community of the actionable item decisions being made, the MSU Board of Trustees violated Article 1, §§ 3 and 5 of the Michigan Constitution.

58. When the MSU Board of Trustees failed to inform the citizens of Michigan and MSU community of the actionable item decisions being made by the MSU Board of Trustees between April 10 and April 21st, 2023, the citizens of Michigan and MSU community were denied their right to instruct their representatives under Article 1, § 3.

59. When the MSU Board of Trustees failed to inform the citizens of Michigan and MSU community of the actionable item decisions being made by the MSU Board of Trustees between April 10 and April 21st, 2023, the citizens of Michigan and MSU community were denied their right to petition the government under Article 1, § 3.

60. Based on the facts above, communication among Trustees will reveal through the

Freedom of Information Act that secret decisions were made and a vote was taken behind closed doors.

61. Based on the facts above, between April 10 and April 21st, 2023, communications will show there was a decision made and a vote taken in secret not to release the “Nassar documents,” a clear violation of the Open Meetings Act. This action will prove that elected Trustees lied, broke their promises to Survivors and are trying to hide their actions from public scrutiny.

COUNT III – VIOLATION OF THE FREEDOM OF INFORMATION ACT

62. This is an action to enforce the Michigan Freedom of Information Act (FOIA), MCL 15.231 et seq.

63. Defendant MSU is a public university with offices, inter alia, in Ingham County, Michigan.

64. Defendant MSU is a “public body” as defined by FOIA. MCL 15.232(h). The public records maintained by the University are subject to disclosure under the provisions of FOIA.

65. Jurisdiction is proper in this court pursuant to MCL 15.240(1), because the Plaintiff’s counsel has requested under FOIA that the University disclose certain documents in its possession, and the Defendant University has not complied with the FOIA statute.

66. Venue is proper in this court pursuant to MCL 15.240(4), the Defendant University maintains an office in Ingham County.

67. Freedom of Information Act seeking Compelled Disclosure of Public Records,

Declaratory Relief, Attorney Fees, and Jury Trial.

68. The Plaintiffs incorporate by reference the allegations contained in paragraphs 1–67.

69. On April 25, 2023, Plaintiff’s counsel sent a FOIA Request to the Defendant MSU University, see attached as **Exhibit 3**. The FOIA request seeks:

Dear MSU FOIA Coordinator,

This is a request under the Michigan Freedom of Information Act (MCLA § 15.231 et. seq.). I write to request all communications (emails, texts, or written documents) between:

Parties to search:

1. Michigan State University Trustees, MSU administrators/staff, and each other
2. MSU Trustees, MSU administrators/staff and Survivors of Larry Nassar, and/or Survivors advocates
3. MSU Trustees, MSU administrators/staff and the Attorney General’s office (AG).

Please search from all communications beginning

Time Period:

February 1, 2023 through April 26, 2023,

Relating to the following subjects or words contained in the communications:

Agenda, Published Agenda, AG demand, AG, Written demand from the AG Releasing privileged documents, Privileged documents, Vote, Voting , Votes, Meet, Decision made, support, approve, agreement, majority

The purpose of searching these words is to uncover any communications relating to the Board of Trustees making decisions to avoid releasing privileged documents or avoid putting on the agenda whether or not to release privileged documents or the “Nassar documents.”

The Michigan Freedom of Information Act requires a response to this request within five days. If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Thank you for considering my request.

70. On May 3, 2023, Defendant MSU sent a request of payment of fees, see attached as **Exhibit 4**.
71. On May 3, 2023, Plaintiff's counsel informed Defendants that a check will be overnight to them, see attached as **Exhibit 5**.
72. On May 4, 2023, Plaintiff's counsel sent an email to Defendants seeking any public document and emails used to do MSU business including private email accounts used by MSU Trustees, see attached as **Exhibit 6**.
73. On May 24, 2023, Plaintiff's counsel sent Defendants an email expressing that the FOIA request is past due and sought an explanation of why it was taking too long, see attached as **Exhibit 7**.
74. On May 25, 2023, Defendant MSU sent a letter granting the FOIA request but unilaterally gave themselves until June 5, 2023, to comply, see attached as **Exhibit 8**.
75. On June 5, 2023, Defendants sent another letter unilaterally extending the time to disclose the public documents requested under FOIA to July 11, 2023, see attached as **Exhibit 9**.
76. On June 15, 2023, Plaintiff's counsel called and left a voicemail, and also sent an email to MSU General Counsel Brian Quinn explaining that the statute of limitations for the Open Meetings Act claim is about to expire and a tolling agreement needed to be agreed upon or Plaintiff's counsel would have to file this lawsuit to preserve the public and Survivors rights, see attached as **Exhibit 10**.
77. On June 15, 2023, MSU legal counsel contacted Plaintiff's counsel to avoid this lawsuit from being filed and MSU agreed that Plaintiffs statute of limitations under FOIA/OMA

will be tolled until July 31, 2023, in order to give MSU time to fully comply, see attached as **Exhibit 11**.

78. The Defendant MSU delays, and explanations are insufficient, as a matter of law, to justify noncompliance with not disclosing the public information requested. See, e.g., *Lansing Ass'n of Sch Adm'rs v Lansing Sch Dist Bd of Educ*, 216 Mich App 79, 549 NW2d 15 (1996).
79. While FOIA does not require that a party have any purpose in requesting public documents, the documents sought by Plaintiffs are essential to vindicating the public's interest in monitoring the MSU Trustees and their program and the administration of the University by its elected and appointed officials.
80. Notwithstanding the urgent public interest in immediate production of the requested documents, the Plaintiff's counsel has made extensive efforts over the past months to resolve this dispute without recourse to litigation. These efforts have been unsuccessful, and the need for public disclosure of the requested information has increased because of the passage of time. The Plaintiffs, and the public, will be irreparably injured absent immediate and full disclosure of information on this matter of enormous public concern.
81. On July 6, 2023, MSU sent a letter outlining a second tier cost of the FOIA, and sent the production of FOIA documents totaling approximately 600 pages, **Exhibit 12 requires that you use the dropbox link in paragraph 82 to access these documents.**
82. A review of the July 6, 2023, FOIA documents produced by MSU revealed that the documents were not in compliance with the FOIA request. The dropbox link below will give you access to all the documents produced by MSU.

DROPBOX LINK:

<https://www.dropbox.com/s/nokr2ilsp9mbdl5/FOIA%20response%20elder%20MSUF026723%20nd%20tier-final.pdf?dl=0>

83. The documents produced by MSU were irrelevant to the FOIA demands made and attempted to skirt the time frame specifically requested- April 10-21, 2023. Documents were produced that were dated only through February 16, 2023, and included irrelevant, nonresponsive materials, including a trustee’s newsletter from The Cherry Republic and other subscribed sites, presidential election reports. Below are a few examples taken from the 600 pages (see Dropbox Link) that MSU’s legal department approved to release which merely mock the Survivors by haughtily producing 600 pages of garbage in response to a FOIA request seeking information about MSU Trustees.

84. In response to the FOIA requesting documents about Trustees making decisions and voting about the “Nassar documents” in secret sometime between April 10-21st, 2023, the court can see these few examples of what MSU produced:

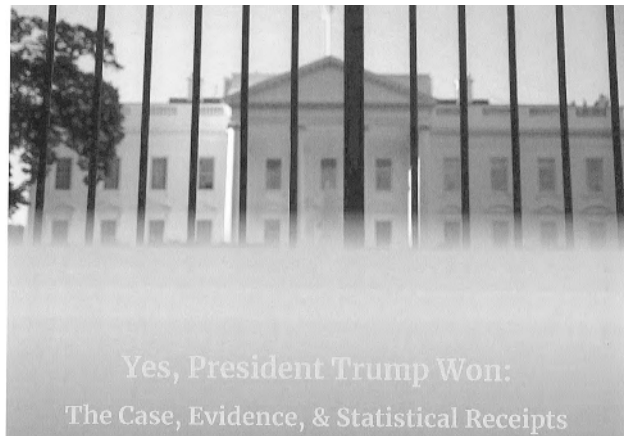
Example #1



Example #2

Vote Irregularities and Illegals by Category and State						
	ARIZONA	GEORGIA	MICHIGAN	NEVADA	PENNSYLVANIA	WISCONSIN
Absentee ballots cast without statutorily required application						170,140
Absentee ballots cast that arrived after Election Day					10,000	
Absentee ballots cast that were requested before & after statutory deadline		305,701				
Absentee ballots cast from addresses other than where voters legally reside	19,997			15,000	14,328	
Absentee ballots cast that were returned on or before the postmark date	22,903				58,221	

Example #3



Example #4

New York Appeals Court Upholds Contempt Sanction Against Trump

By Jonathan H. Adler

Today a New York state appeals court upheld a \$110,000 contempt sanction against Donald Trump for failing to comply with a court order

85. On July 9, 2023, Plaintiff counsel sent an email to MSU General Counsel Brian Quinn and others expressing concerns that MSU failed to comply with the FOIA, see attached

Exhibit 13:

From: Azzam Elder
Sent: Sunday, July 9, 2023 7:58 AM
To: FOIA <foia@msu.edu>
Subject: RE: Your FOIA Request to MSU

Dear FOIA Coordinator, Attorneys Quinn, and Watz;

I have reviewed the FOIA response you sent me on July 6, 2023, and its non-responsive to my FOIA request. The documents produced show emails dated only through February 18, 2023. The MSU FOIA response provides irrelevant information none of which reveal decisions/votes made by the MSU Trustees during the time period of my FOIA request. Please note my FOIA request was for Trustee emails/communications through April 26, 2023. Communications on voting decisions among the Trustees between April 14-April 21, 2023 is crucial to my FOIA request. Please provide me with this information.

If you choose not to do so, I will file suit and subpoena every Trustee compelling them to testify about emails they have regarding making closed door votes. This will support the fact that MSU with its current leadership lacks transparency and does not follow laws which give the public and the Larry Nasser victims the right to know what MSU Trustees are voting on behind closed doors.

I respectfully request that you ensure that you have done a thorough, and complete search of my FOIA request as soon as possible.

| Azzam Elder, Esq
| Attorney

86. MSU responded on July 10, 2023, see attached **Exhibit 14**, stating that they will in essence verify for a second time that the FOIA request was comprehensive and complete:

Thank you for your July 9, 2023, email in which you express concerns regarding the comprehensiveness of our July 6, 2023, response to your April 25, 2023, FOIA request. In light of your concerns, the search for Michigan State University Board of Trustees University account emails responsive to your request is being made again to ensure that all records responsive to your request are provided. No additional fees will be assessed for this redoubled processing of your request, which will be undertaken as expeditiously as possible.

87. On July 21, 2023, MSU sent an email admitting that after further search MSU discovered additional emails that fall within the FOIA request but unilaterally extended their deadline to August 4, 2023, attached as **Exhibit 15**:

Since our July 10th FOIA follow-up response to you, a redoubled electronic search for emails falling within the timeframe set out in your April 25th request, containing keywords you specified, has been accomplished, yielding emails additional to those provided to you on July 6th. We are reviewing those records, informed by the clarifications provided in your July 9th email to us, to identify emails you seek, and to determine if information exempt from public disclosure under the Michigan Freedom of Information Act (MIFOIA), must be separated from that which is not exempt. At this time, we anticipate responding to you with regard to this processing on or before Friday, August 4, 2023.

88. The August 4, 2023, extension made by MSU is in violation of the FOIA statute but more importantly it extends beyond the tolling agreement of July 31, 2023, which was agreed

to with the MSU general counsel's office, see attached **Exhibit 11**.

89. The Plaintiffs, survivors, and public have no adequate remedy at law to redress the injury they will sustain if they do not receive immediate and full disclosure of the information requested from the Defendants.

RELIEF SOUGHT

WHEREFORE, Plaintiffs pray that the Court:

90. Plaintiffs respectfully request the court to issue an order relief and enjoin further noncompliance and compel disclosure of the following public records:

- a. all public documents, written communications, emails including all memos and documents pertaining to MSU taking any vote or making any decision on any subject matter described in this complaint during the month of April 2023.
- b. declare that the nondisclosure of the requested documents violated the FOIA statute.;
- c. sanction and fine MSU per the statute.

91. Award Plaintiffs' actual and reasonable attorney fees, as required by MCL 15.240(6); and award such other relief as the court deems appropriate.

92. Declare that the MSU Board of Trustees which includes **Dianne Byrum, Dennis Denno, Dan Kelly, Renee Knake Jefferson, Sandy Pierce, Brianna Scott, Kelly Tebay, Rema Reynolds Vassar** were a *de facto* public body under the Open Meetings Act and State Constitution from April 10 to April 21, 2023.

93. Declare that all votes and decisions made in secret by the MSU Board of Trustees between April 10 and April 21, 2023, violated the Open Meetings Act and the State Constitution.

94. Invalidate all decisions made by the MSU Board of Trustees relating to releasing the “Nassar documents” between April 10 and April 21, 2023;
95. Compel the MSU Board of Trustees including **Dianne Byrum, Dennis Denno, Dan Kelly, Renee Knake Jefferson, Sandy Pierce, Brianna Scott, Kelly Tebay, Rema Reynolds Vassar** to comply with the Open Meetings Act and State Constitution;
96. Compel the MSU Board of Trustees including **Dianne Byrum, Dennis Denno, Dan Kelly, Renee Knake Jefferson, Sandy Pierce, Brianna Scott, Kelly Tebay, Rema Reynolds Vassar** to correct their violation of the Open Meetings Act and State Constitution and retake the vote in compliance with law by:
- 1) Providing public notice of a meeting with an agenda in compliance with the OMA;
 - 2) By censoring the MSU Board of Trustees for violating the OMA when they made decisions behind closed doors and held a secret vote;
 - 3) By ordering the MSU Board of Trustees to ethically and properly retake the vote and make the decision by an open and public vote in compliance with laws in order to allow the public to witness how each Trustee votes on whether to release “Nassar documents” and waive the “attorney client privilege,” and
 - 4) Enjoin further noncompliance by the MSU Board of Trustees with the FOIA, Open Meetings Act and State Constitution.
97. In the public interest, and spirit of the Open Meetings Act, order quick discovery and the video depositions of **Dianne Byrum, Dennis Denno, Dan Kelly, Renee Knake Jefferson, Sandy Pierce, Brianna Scott, Kelly Tebay, Rema Reynolds Vassar** to allow for efficiency and less costly litigation.

98. Award actual attorneys' fees and court costs to Plaintiffs pursuant to MCL 15.271(4);
and award such other relief as is appropriate and just.

Respectfully submitted,

/s/ Azzam Elder
AZZAM ELDER (P53661)
ELDER BRINKMAN LAW
Attorneys for Plaintiffs 1360 Porter St,
Suite 250
Dearborn, MI 48124
(313) 946-2000, 1-800-MyLawFirm
Aelder@elderbrinkmanlaw.com

Dated: July 27, 2023

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

**POSSE (Parents of Sister Survivors Engage),
Valerie von Frank, Jane Doe Z1, Jane Doe Z2,
Sarah Allen, Alexis Alvarado, Alyssa Avery, Kaitlyn Basel, Arianna Castillo, Jennifer Hayes, Annette Howlett-Hill, Melissa Hudecz, Elizabeth Maurer, Kathryn Middleton, Angelika Martinez-McGhee Hillary Rich, Jessica Schedler Laura Scudder, Clasina Syrovoy John Nichols, Vivian Green, Glen Black, Sue Moore, Nancy Avery, Steve Blayer, Ronda Blayer, Suzanne Maurer, Kayla Spicher, Kristin Nagle, & Amanda Cormier**

Case No. _____-CZ
Hon.

Plaintiffs,

v

Dianne Byrum, Dennis Denno, Dan Kelly, Renee Knake Jefferson, Sandy Pierce, Brianna Scott, Kelly Tebay, Rema Reynolds Vassar, Michigan State University, and Michigan State University Board of Trustees

Defendants.

_____/

AZZAM ELDER (P53661)
ELDER BRINKMAN LAW
Attorneys for Plaintiffs 1360 Porter St, Suite 250
Dearborn, MI 48124
(313) 946-2000, 1-800-MyLawFirm
Aelder@elderbrinkmanlaw.com

_____/

JURY DEMAND

Plaintiffs, by and through their attorneys, hereby demand a trial by jury.

Respectfully submitted,

/S/AZZAM E. ELDER

AZZAM E. ELDER (P53661)

Attorneys for Plaintiff

1360 Porter Street, Suite 200

Dearborn, MI 48124

PH (313) 582-5800 / FX (313) 202-9548

e-Mail: aelder@elderbrinkmanlaw.com

DATED: July 27, 2023

EXHIBITS

1-15

[news / campus](#)

Nessel: MSU board chair orchestrated plan to release Nassar documents, but didn't follow through

[Alex Walters](#)

April 21, 2023



Chairperson Vassar speaking at the Board of Trustees Meeting held at the Hannah Administration Building on Apr. 21, 2023. — Photo by [Denille Reid](#) | The State News

Michigan State University board chair Rema Vassar contacted the state's attorney general to tell her she had the votes to release thousands of long-withheld documents relating to the university's handling of disgraced ex-MSU doctor Larry Nassar.

Attorney General Dana Nessel told The State News that Vassar asked her to send [the recent letter](#) re-affirming the demand for the documents' release in hopes of reopening the investigation, and that it would be voted on at the meeting Friday.

But, when Vassar made her remarks, she announced that university would not waive attorney client privilege, and would further withhold the documents.

Nessel said she has “literally no idea” why the board changed its mind.

“I think that would be a great question for (Vassar),” Nessel said.

Vassar did not return calls and text messages at the time of publication.

“They requested this letter and said they needed it by last Friday in order to be able to conduct a vote today,” Nessel said. “Then at the meeting today there’s not even a vote. It's bizarre. It's perplexing. I think it does a disservice to the survivor community as well as to the student body at Michigan State that, like us, has long awaited answers.”

Nessel said it “makes no sense whatsoever” that Vassar would ask her to send the letter if she was going to change her mind or not follow through.

At a press conference after the meeting, Vassar said the denial was intended to help survivors, arguing that it would be “retraumatizing” for them if the investigation resumed.

When asked if she’s heard such concerns from any survivors, Vassar said she hasn't, but that she can’t “speak to all survivors.” Survivor advocates called that argument a “betrayal” and “another strawman.”

Nessel also took issue with Vassar’s rhetoric, saying she was “stunned that (she) would say such a thing when this was her idea to begin with.”

“I don't understand the game playing when these are people's lives that we're talking about,” Nessel said.

Without the remaining documents, Nessel said she will not be able to re-open the investigation like she had hoped.

“Now there remains nothing left for us to do except, I guess, to apologize to all the survivors that this gave hope to during the last week,” Nessel said. “As much as I would like to say I hope the board will reconsider, I've said that so many times now that I don't have any realistic hope that that's going to happen, unfortunately.”

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



DANA NESSEL
ATTORNEY GENERAL

P.O. Box 30212
LANSING, MICHIGAN 48909

April 14, 2023

Office of the Secretary of the Board of Trustees
Michigan State University
426 Auditorium Road
Hannah Administration Building
Room 450
East Lansing, MI 48824-1046

Re: Investigation by the Michigan Attorney General into Michigan State University's handling of the Larry Nassar matter and related incidents

Dear Secretary:

The Department of Attorney General, along with the Michigan State University Police and Public Safety Department, and the Michigan State Police have conducted a years-long investigation into Larry Nassar. With new membership and leadership of the Board of Trustees, we are renewing our request for additional information in hopes that we can bring a fitting close to the investigation that included a review to determine what information was known to Michigan State University regarding Nassar's criminal behavior. Since 2018 the Department has repeatedly called upon the Board of Trustees to release approximately 6,000 documents that were previously withheld under a claim of privilege. We are again asking the MSU Board of Trustees' to vote to release the remaining documents our office requested and to fulfill its stated pledge to continue cooperating with the investigation through its conclusion.

In the spirit of this pledged cooperation, please consider this letter to be a formal request for all records of any investigation conducted by Michigan State University into this matter. This request includes, but is not limited to, unredacted copies of any records or work products of any internal investigation provided to MSU, including one conducted by Patrick Fitzgerald; any and all versions of reports, documents and notes generated as a result of any and all such investigations, and any and all reports generated by the Michigan State Police Department regarding its investigation of the Nassar matter that have not previously been released to the Attorney General's office.

MSU Secretary
Page 2
April 14, 2023

This Department also is requesting that you provide us with any and all records in Michigan State University's possession concerning Kathie Klages, Brooke Lemmen and William Strampel, former Dean of the Michigan State University College of Osteopathic Medicine. This would include their complete personnel files, any records of complaints made against them, concerning Nassar or otherwise, and any and all reports generated as a result of investigations concerning their conduct while employed with Michigan State University.

The Department is renewing its request for all email and text communications to or from any of the following individuals which relate to or discuss Larry Nassar: Lou Anna Simon, Mark Hollis, William Strampel, William (Bill) Beekman, Brian Breslin, Joel Ferguson, Dianne Byrum, Melanie Foster, Dan Kelly, Mitch Lyons, Brian Mosallam, George Perles, Kathie Klages, Brooke Lemmen, Lianna Hadden, Jeffrey Kovan, Lisa DeStefano, Destiny Teachnor-Hauk, Sue Carter, and Shelley Appelbaum.

In sum, the requested documents would include all documents sent to Judge Richard Ball, complete and unredacted, to be used solely in the Attorney General's investigation of the Nassar matter, along with any documents per the above requests that were missed in the University's prior response.

Please provide this Department with the Judge Ball records in both paper and electronic format, with metadata intact, by Friday, April 28, 2023.

We ask that the Board honor its pledge to cooperate with the Department fully through the conclusion of its investigation, including releasing any documents, unredacted, that the Attorney General's office may request as a result of new questions raised after viewing the newly released documents, and that the University will respond quickly and fully to this Department within three days of each question or correspondence so as not to prolong the matter more than necessary. We ask that the Board release any additional documents requested, without redaction, within one week of the request. A resolution and comprehensive conclusion are the priorities and benefit all those associated with the Nassar matter.

In addition, no member of the Board, the University administration nor any of its employees, past or present, will be in contact through any form of communication with any individual perceived to be a Nassar victim.

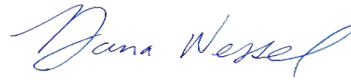
Finally, please be advised that this is the first of what we anticipate could be additional requests for information. You are advised that all information that might be relevant to this Department's investigation must be preserved. If relevant information is lost or destroyed, the Department will determine whether criminal or

MSU Secretary
Page 3
April 14, 2023

civil action should be taken related to the destruction of relevant evidence. A final report with findings will be released to the University Board at the same time it is released to the media.

Please do not hesitate to contact Fadwa Hammoud, Chief Deputy Attorney General, at the Department of the Attorney General at 517-373-1110 if you should have any questions or concerns. I thank you in advance for your cooperation in this matter.

Sincerely,

A handwritten signature in blue ink that reads "Dana Nessel". The signature is written in a cursive, flowing style.

Dana Nessel
Attorney General

Exhibit 3

From: [Azzam Elder](#)
To: FOIA@MSU.EDU
Subject: FOIA
Date: Tuesday, April 25, 2023 10:32:00 PM

Dear MSU FOIA Coordinator,

This is a request under the Michigan Freedom of Information Act (MCLA § 15.231 et. seq.). I write to request all communications (emails, texts, or written documents) between:

Parties to search:

1. Michigan State University Trustees, MSU administrators/staff, and each other
2. MSU Trustees, MSU administrators/staff and Survivors of Larry Nassar, and/or Survivors advocates
3. MSU Trustees, MSU administrators/staff and the Attorney General's office (AG).

Please search from all communications beginning

-
Time Period:

February 1, 2023 through April 26, 2023,

Relating to the following subjects or words contained in the communications:

Agenda
Published Agenda
AG demand
AG
Written demand from the AG
Releasing privileged documents
Privileged documents
Vote
Voting
Votes
Meet
Decision made
support
approve

agreement
majority

The purpose of searching these words is to uncover any communications relating to the Board of Trustees making decisions to avoid releasing privileged documents, or avoid putting on the agenda whether or not to release privileged documents or the “Nassar” documents.

The Michigan Freedom of Information Act requires a response to this request within five days. If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Thank you for considering my request.

Sincerely,

| Azzam Elder, Esq
| Attorney

Elder Brinkman Law

| Office: 313-879-0355
| Email: aelder@elderbrinkmanlaw.com

| www.elderbrinkmanlaw.com

Confidentiality Notice: This e-mail message, including attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. It is intended for use by the person(s) to whom it is addressed. Any unauthorized use, review, dissemination, forwarding, copying or printing is strictly prohibited. If you received this e-mail in error, please contact the sender immediately.

MICHIGAN STATE UNIVERSITY

DATE: May 3, 2023

TO: Azzam Elder, Esq., Attorney, Elder Brinkman Law – aelder@elderbrinkmanlaw.com

FROM: Rebecca Nelson, Director and Freedom of Information Act (FOIA) Officer
Michigan State University FOIA Office *Rebecca Nelson*

SUBJECT: FOIA Fee & Deposit Notice -- First Tier Processing Re: MSU BOT University Account Emails

This is written with regard to the broad and expansive FOIA request that you emailed to this Office on April 25, 2023, for “all communications (emails, texts, or written documents) between: Parties to search: 1. Michigan State University Trustees, MSU administrators/staff, and each other 2. MSU Trustees, MSU administrators/staff and Survivors of Larry Nassar, and/or Survivors advocates 3. MSU Trustees, MSU administrators/staff and the Attorney General’s office (AG). Please search from all communications beginning Time Period: February 1, 2023 through April 26, 2023, Relating to the following subjects or words contained in the communications:

Agenda Published Agenda AG demand AG Written demand from the AG
Releasing privileged documents Privileged documents Vote Voting Votes
Meet Decision made support approve agreement majority

The purpose of searching these words is to uncover any communications relating to the Board of Trustees making decisions to avoid releasing privileged documents, or avoid putting on the agenda whether or not to release privileged documents or the ‘Nassar’ documents.”



FREEDOM OF INFORMATION ACT OFFICE

Michigan State
University

408 West Circle Drive
Room 1 Olds Hall
East Lansing, MI 48824
517-353-3929
Fax: 517-353-1794
foia@msu.edu
<http://foia.msu.edu>

Based upon our preliminary inquiries, we anticipate that significant labor will be involved in processing your request for emails¹ alone, from Michigan State University (MSU) Board of Trustees (BOT) University email accounts² alone, containing any of the keywords/key phrases you have listed. The following estimate is made with regard to first tier processing for the aforesaid emails only, that is searching for and gathering MSU BOT University email account email records responsive to your request. We estimate that upwards of eight (8) hours will be required, incurring fees likely to exceed \$270.00. Fees will not be waived since failure to charge same would result in unreasonably high costs to the University. Moreover, fees for all search efforts will be charged to you regardless of the extent to which responsive email records are found to exist. An itemization of this estimate accompanies this letter. This serves as an approximation only and does not guarantee or limit the final, total fees which may be incurred and assessed. In light of the labor involved, and pursuant to Section 4(2) of the Michigan Freedom of Information Act (MIFOIA), we require that you remit a deposit prior to our performing first tier processing of your request with regard to MSU BOT University email account email records alone. The foregoing estimate does not include the labor that would be involved in reviewing responsive MSU BOT University email account email records to determine if information exempt from public disclosure under the MIFOIA must be separated from that which is not exempt. Once responsive email records are identified, an estimate of review and separation labor and fees likely to be incurred would be provided to you, along with notification of any additional deposit required to proceed. If you choose to remit a first tier deposit, we anticipate advising you with regard to responsive MSU BOT University email account email records and review processing required on or before four (4) weeks from the date the deposit is received.

Ehhibit 4

Page 2 of 2

FOIA Fee & Deposit Notice -- First Tier Processing
Re: MSU BOT University Email Account Email Records
To: Azzam Elder, Esq., Elder Brinkman Law
May 3, 2023

If you wish to pursue the first tier search described above, and pay the fees incurred regardless of the extent to which responsive MSU BOT University email account email records are found to exist, please send a check made payable to "Michigan State University" in the amount of \$135.00 to the Freedom of Information Act Office, 408 West Circle Drive, Room 1 Olds Hall, or notify us in writing if you wish to modify or withdraw your request. The University will not undertake first tier processing of your request with regard to MSU BOT University email account email records until the required deposit is received by our Office. Further, Section 4(14) of the MIFOIA requires that the deposit be received no later than Tuesday, June 20, 2023, or your request with regard to MSU BOT University email account email records will be considered abandoned, and processing of it no longer required. Should you have any questions regarding fees, please contact us. Pursuant to Section 4(4) of the MIFOIA, the University's procedures and guidelines for processing MIFOIA requests can be found at <http://foia.msu.edu>.

Attachment
MSUF026723

¹Significant labor is expected to be involved in searching for MSU BOT records other than MSU BOT University email account email records alone. If you wish to pursue MSU Board of Trustee records other than MSU BOT University email account email records containing any of the keywords/key phrases you list alone, please confirm so in writing, and we will advise you with regard to estimated fees, and the fee deposit required to proceed with that additional processing of your request.

²Pursuant to your specifying that you seek Trustee emails, the fee and deposit notice above pertains to searching MSU BOT University email accounts alone. That said, your request also lists "Parties to search" as "MSU administrators/staff", "Survivors of Larry Nassar, and/or Survivors advocates", and the "Attorney General's office (AG)". Absent a list of individual MSU administrators/staff email accounts you wish searched, processing your request would potentially require the search of unlimited email accounts, possibly involving hundreds of hours of labor, and incurring commensurate fees, which would be assessed to you under the provisions of the MIFOIA regardless of the extent to which responsive records were found to exist. Fees would not be waived since failure to charge same would result in unreasonably high costs to the University. In light of the foregoing, we write to ask if you can specify names of individual MSU administrators/staff whose email accounts you wish searched, thereby enabling us to provide you with an estimate of fees likely to be incurred in processing that request, and notice of any deposit required to proceed.

Ehhibit 4

MSU FOIA FEE ESTIMATE ITEMIZATION FORM -- 05/03/23 -- Elder FOIA Request MSUF026723 -- FIRST TIER PROCESSING MSU BOT U EMAIL ACCOUNT EMAIL RECORDS ONLY (search & gather)					
<i>Category of Costs/Description</i>	<i>Hourly Wage</i>	<i>Benefits % Multiplier Used</i>	<i>Hourly Wage with Benefits</i>	<i>Estimated Time (Hours)</i>	<i>Amount</i>
4 (1) (a) Searching for, locating and examining responsive records <i>[Shall not charge more than the hourly wage of lowest-paid employee capable of searching for, locating and examining the public records in the particular instance regardless of whether that person is available or who actually performs the labor; labor costs shall be estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down.]</i>	\$24.76	40%	\$34.66	8	\$277.28
4 (1) (b) Review directly associated with the separating and deleting of exempt from nonexempt information <i>[For services performed by an employee of the public body, the public body shall not charge more than the hourly wage of its lowest-paid employee capable of separating and deleting exempt information from nonexempt information in the particular instance as provided in section 14, regardless of whether that person is available or who actually performs the labor. If a public body does not employ a person capable of separating and deleting exempt information from nonexempt information as determined by the public body's FOIA coordinator, it may treat necessary contracted labor costs used for the separating and deleting of exempt information from nonexempt information in the same manner as employee labor costs if it clearly notes the name of the contracted person or firm on this itemization. Total labor costs calculated under this subdivision for contracted labor costs shall not exceed an amount equal to 6 times the state minimum hourly wage rate. Labor costs under this subdivision shall be estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down.]</i>	Second tier review labor to be determined post first tier search and gather processing.				
4 (1) (c) Nonpaper physical media costs <i>[The actual and most reasonably economical cost of the computer discs, computer tapes, or other digital or similar media. The requestor may stipulate that public records be provided on nonpaper physical media, electronically mailed, or otherwise electronically provided in lieu of paper copies. This subdivision does not apply if public body lacks the technological capability necessary to provide records on the particular nonpaper physical media stipulated in the particular instance.]</i>					
4 (1) (d) Cost of paper copies <i>[Actual total incremental cost of necessary duplication or publication, not including labor. The cost of paper copies shall be calculated as a total cost per sheet of paper, itemized to show both cost per sheet and number of sheets provided. The fee shall not exceed 10 cents per sheet of paper for copies of public records made on 8-1/2- by 11-inch paper or 8-1/2- by 14-inch paper. A public body shall utilize the most economical means available, including double-sided printing, if cost saving and available.]</i>					
4 (1) (e) Duplication or publication, including making paper copies, making digital copies, or transferring digital public records to be given to the requestor on nonpaper physical media or through the internet or other electronic means as stipulated by the requestor <i>[Shall not charge more than the hourly wage of lowest-paid employee capable of necessary duplication or publication in the particular instance, regardless of whether that person is available or who actually performs the labor.; labor costs under this subdivision shall be estimated and charged in time increments of the public body's choosing, with all partial time increments rounded down.]</i>					
4 (1) (f) Cost of mailing <i>[Actual cost of mailing, for sending the public records in a reasonably economical and justifiable manner; shall not charge more for expedited shipping or insurance unless stipulated by requestor, but may charge for the least expensive form of postal delivery confirmation when mailing public records.]</i>					
ESTIMATE TOTAL					\$277.28
FEE DEPOSIT REQUIRED					\$135.00
<p><i>When calculating labor costs under (1) (a), (b) or (e), fee components shall be itemized in a manner that expresses both the hourly wage and the number of hours charged. The public body may also add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits if it clearly notes the percentage multiplier used. Subject to the 50% limitation, the public body shall not charge more than the actual cost of fringe benefits, and overtime wages shall not be used in calculating the cost of fringe benefits. Overtime wages shall not be included in the calculation of labor costs unless overtime is specifically stipulated by the requestor and clearly noted in this detailed itemization.</i></p>					

Exhibit 5

From: Azzam Elder
Sent: Wednesday, May 3, 2023 4:04 PM
To: 'FOIA' <foia@msu.edu>
Cc: Scott Dayne <sdayne@elderbrinkmanlaw.com>
Subject: RE: Your FOIA Request to MSU

Dear FOIA Decision Maker,

In response to your letter requesting a deposit of \$135, please expect a check to be mailed over night tomorrow for the full amount (8 hours of work) \$277.28. It should not take you 4 weeks to do this search and produce the documents. I prefer not to file suit but I will if there are unreasonable delays. The Open Meetings Act violation requires suit to be filed within 60 days of the violation. Searching emails and sending copies electronically is not that complicated, if I do not receive the documents by May 23, 2023 I will have not choice but to file suit. Please keep me posted on your timeline.

Thank you,

| **Azzam Elder, Esq**
| **Attorney**

Elder Brinkman Law

Exhibit 6

From: Azzam Elder

Sent: Thursday, May 4, 2023 10:18 AM

To: 'FOIA' <foia@msu.edu>

Cc: Scott Dayne <sdayne@elderbrinkmanlaw.com>

Subject: RE: Your FOIA Request to MSU--search all emails for MSU business including private

Dear FOIA Coordinator,

Just to be clear. I am also requesting you give each Trustee my FOIA request to review and then search any Trustee private emails/or non MSU emails they use relating to any MSU business that was done relating to the subjects and topics I outlined in my previous emails. As you are aware the use of private emails for MSU business does not allow the circumvention of FOIA. If you have any questions please call me asap.

Thank you,

| Azzam Elder, Esq

| Attorney

Elder Brinkman Law

| Office: 313-879-0355

| Email: aelder@elderbrinkmanlaw.com

| www.elderbrinkmanlaw.com

From: Azzam Elder
Sent: Wednesday, May 24, 2023 12:18 PM
To: FOIA <foia@msu.edu>
Cc: Scott Dayne <sdayne@elderbrinkmanlaw.com>
Subject: RE: Your FOIA Request to MSU--search all emails for MSU business including private

Dear FOIA Coordinator,

I sent you a check for the costs and its now past the deadline under FOIA. Can I please get an update on why my request is taking so long.

Thank you,

| Azzam Elder, Esq
| Attorney

Elder Brinkman Law

| Office: 313-879-0355
| Email: aelder@elderbrinkmanlaw.com

MICHIGAN STATE UNIVERSITY

DATE: May 25, 2023

TO: Azzam Elder, Esq., Attorney, Elder Brinkman Law – aelder@elderbrinkmanlaw.com

FROM: Rebecca Nelson, Director and Freedom of Information Act (FOIA) Officer
Michigan State University FOIA Office *Rebecca Nelson*

SUBJECT: FOIA Response – Reply to Your May 24, 2023, Email

This is written in reply to your May 24, 2023, email in which you state, “I sent you a check for the costs and its now past the deadline under FOIA. Can I please get an update on why my request is taking so long.”

Please be assured that the processing of your request is underway as expeditiously as possible, in accordance with the Michigan Freedom of Information Act (MIFOIA) provisions detailed as follows. Section 5(1) of the MIFOIA provides that a request made by electronic mail is not received by a public body’s FOIA coordinator until 1 business day after the electronic transmission is made, which made your Tuesday, April 25, 2023, email FOIA request transmission received by this Office on Wednesday, April 26th. Section 5(2) provides that within 5 business days after receiving a request, a public body shall make one of a variety of responses. Section 4(8) provides that in either its initial response or subsequent response, a public body may require a good-faith deposit from the person requesting information before providing the public records to the requester if the entire fee estimate or charge authorized under that Section exceeds \$50.00. That Section also provides that the response must 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 requester.

On May 3, 2023, within five (5) business days after the April 26, 2023, receipt of your April 25, 2023, email FOIA request transmission, this Office responded to you via email with a FOIA first tier fee and deposit notice including an estimate of fees likely to be incurred in searching for and gathering records responsive to your request. In that notice we advised that a fee deposit was required to proceed with the searching for and gathering of responsive records, and provided a best efforts estimate, should that deposit be paid, that on or before four (4) weeks from the receipt of that deposit, the searching for and gathering of records was expected to be completed, and that this Office would then notify you whether an additional fee deposit would be required for the review of the responsive records, to determine if information exempt from public disclosure under the MIFOIA must be separated from that which is not exempt. The first tier/search and gathering fee deposit required was \$135.00; on May 5, 2023, this Office received your check #4623 in the amount of \$277.28. Per our best efforts estimate, we anticipate notifying you on or before four (4) weeks from the date we received your deposit, that being on or before June 5, 2023, whether reviewing records gathered responsive to your request to determine if information exempt from public disclosure must be separated from that which is not exempt will require an additional fee deposit.

Finally, while searching for records responsive to your request is still underway, this also serves to make clear that your request is granted¹ with regard to information that is not exempt under the MIFOIA, and as previously stated, an update with regard to the processing of your request will be made to you on or before June 5, 2023.

MSUF026723

¹The MIFOIA provides that when a public body denies all or a portion of a request, the requester may do one of the following: (1) submit an appeal of the determination to the head of the public body; or (2) commence a civil action in the court of claims to compel the public body’s disclosure of the records. If you wish to seek judicial review of any denial, you must do so within 180 days of the date of this letter. If the court of claims orders disclosure of all or a portion of the public record(s) to which you have been denied access, you may receive attorneys’ fees and, in certain circumstances, damages under the MIFOIA. Should you choose to file an appeal with the University regarding this response to your request, you must submit a written communication to this Office expressly stating that it is an “appeal” of this response. In your appeal, please state what records you believe should have been disclosed to you. You must also state the reasons you believe any denial of your MIFOIA request should be reversed. This Office will arrange for the processing and review of your appeal. Pursuant to Section 4(4) of the MIFOIA, the University’s procedures and guidelines for processing MIFOIA requests can be found at <http://foia.msu.edu>.



FREEDOM OF INFORMATION ACT OFFICE

Michigan State
University

408 West Circle Drive
Room 1 Olds Hall
East Lansing, MI 48824
517-353-3929
Fax: 517-353-1794
foia@msu.edu
<http://foia.msu.edu>

MICHIGAN STATE UNIVERSITY

DATE: June 5, 2023

TO: Azzam Elder, Esq., Attorney, Elder Brinkman Law – aelder@elderbrinkmanlaw.com

FROM: Rebecca Nelson, Director and Freedom of Information Act (FOIA) Officer
Michigan State University FOIA Office *Rebecca Nelson*

SUBJECT: FOIA 2nd Tier/Final Processing Fee & Deposit Notice

On April 25, 2023, you emailed a FOIA request to this Office. On May 3rd, we sent to you a first tier fee and deposit notice advising that in order to search for and gather Michigan State University (MSU) Board of Trustees University account emails responsive to your request, a fee deposit was required. On May 5th, we received your check for more than twice the fee deposit required to undertake first tier processing. First tier processing of your request, that is the searching for and gathering of MSU Board of Trustees University account emails responsive to your request, has been accomplished, and an itemization of the associated costs and an invoice for your records are attached.

Per our May 3rd notice, this also serves to advise you that significant labor will be involved in reviewing the records gathered to determine if information exempt from public disclosure under the Michigan Freedom of Information Act (MIFOIA), must be separated from that which is not exempt. We estimate that upwards of twelve (12) hours will be involved in that second tier/final processing, incurring fees likely to exceed \$400.00. Fees will not be waived since failure to charge same would result in unreasonably high costs to the University. An itemization of this estimate accompanies this letter. This serves as an estimate only and does not guarantee or limit the final, total fees which may be incurred and assessed. In light of the labor involved, and pursuant to Section 4(2) of the MIFOIA, we require that you remit a deposit prior to our performing second tier/final processing of your request. If you wish to pursue the second tier/final processing of your request as described above, and pay the fees incurred, **we are able to accept the overpayment you remitted in your first tier fee deposit check as a good-faith fee deposit for second tier/final processing**¹.

In light of this, second tier/final processing of your request is underway, and we anticipate responding to you with records on or before five (5) weeks from today, that being Tuesday, July 11, 2023. A bill for the balance of second tier processing fees owed will be included with that final response.

Should you not wish to proceed with second tier processing of your request, which is expected to incur fees additional to those you have already remitted as reflected in the attached fee estimate, or if you have any questions regarding fees, please contact us. Pursuant to Section 4(4) of the MIFOIA, the University's procedures and guidelines for processing MIFOIA requests can be found at <http://foia.msu.edu>.

Attachments
MSUF026723

¹Based upon our initial estimate, a good-faith fee deposit of \$135.00 was required for the first tier processing of your request. You remitted \$277.28. As reflected in the attached first tier processing final fee itemization form and invoice, less labor than originally anticipated was required to complete first tier processing of your request. Those labor fees total \$121.31, which, taken from your \$277.28 remittance, leave a positive balance of \$155.97, which we are able to accept as a good-faith fee deposit for the second tier/final processing of your FOIA request as described above.



FREEDOM OF
INFORMATION ACT
OFFICE

Michigan State
University

408 West Circle Drive
Room 1 Olds Hall
East Lansing, MI 48824
517-353-3929
Fax: 517-353-1794
foia@msu.edu
<http://foia.msu.edu>

Exhibit 9

MSU FOIA FEE ESTIMATE ITEMIZATION FORM -- June 5, 2023 -- Elder FOIA Request MSUF026723 -- SECOND TIER PROCESSING (review and separation)					
<i>Category of Costs/Description</i>	<i>Hourly Wage</i>	<i>Benefits % Multiplier Used</i>	<i>Hourly Wage with Benefits</i>	<i>Estimated Time (Hours)</i>	<i>Amount</i>
SEE FIRST TIER PROCESSING FEES					
4 (1) (a) Searching for, locating and examining responsive records[<i>Shall not charge more than the hourly wage of lowest-paid employee capable of searching for, locating and examining the public records in the particular instance regardless of whether that person is available or who actually performs the labor; labor costs shall be estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down.</i>]					
4 (1) (b) Review directly associated with the separating and deleting of exempt from nonexempt information [<i>For services performed by an employee of the public body, the public body shall not charge more than the hourly wage of its lowest-paid employee capable of separating and deleting exempt information from nonexempt information in the particular instance as provided in section 14, regardless of whether that person is available or who actually performs the labor. If a public body does not employ a person capable of separating and deleting exempt information from nonexempt information as determined by the public body's FOIA coordinator, it may treat necessary contracted labor costs used for the separating and deleting of exempt information from nonexempt information in the same manner as employee labor costs if it clearly notes the name of the contracted person or firm on this itemization. Total labor costs calculated under this subdivision for contracted labor costs shall not exceed an amount equal to 6 times the state minimum hourly wage rate. Labor costs under this subdivision shall be estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down.</i>]	\$22.93	40%	\$32.10	12.75	\$409.28
4 (1) (c) Nonpaper physical media costs [<i>The actual and most reasonably economical cost of the computer discs, computer tapes, or other digital or similar media. The requestor may stipulate that public records be provided on nonpaper physical media, electronically mailed, or otherwise electronically provided in lieu of paper copies. This subdivision does not apply if public body lacks the technological capability necessary to provide records on the particular nonpaper physical media stipulated in the particular instance.</i>]					
4 (1) (d) Cost of paper copies [<i>Actual total incremental cost of necessary duplication or publication, not including labor. The cost of paper copies shall be calculated as a total cost per sheet of paper, itemized to show both cost per sheet and number of sheets provided. The fee shall not exceed 10 cents per sheet of paper for copies of public records made on 8-1/2- by 11-inch paper or 8-1/2- by 14-inch paper. A public body shall utilize the most economical means available, including double-sided printing, if cost saving and available.</i>]					
4 (1) (e) Duplication or publication, including making paper copies, making digital copies, or transferring digital public records to be given to the requestor on nonpaper physical media or through the internet or other electronic means as stipulated by the requestor[<i>Shall not charge more than the hourly wage of lowest-paid employee capable of necessary duplication or publication in the particular instance, regardless of whether that person is available or who actually performs the labor.; labor costs under this subdivision shall be estimated and charged in time increments of the public body's choosing, with all partial time increments rounded down.</i>]					
4 (1) (f) Cost of mailing [<i>Actual cost of mailing, for sending the public records in a reasonably economical and justifiable manner; shall not charge more for expedited shipping or insurance unless stipulated by requestor, but may charge for the least expensive form of postal delivery confirmation when mailing public records.</i>]					
ESTIMATE TOTAL					\$409.28
2ND TIER REQUIRED FEE DEPOSIT PROVIDED BY 05/05/2023 1ST TIER FEE DEPOSIT OVERPAYMENT					\$155.97
<i>When calculating labor costs under (1) (a), (b) or (e), fee components shall be itemized in a manner that expresses both the hourly wage and the number of hours charged. The public body may also add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits if it clearly notes the percentage multiplier used. Subject to the 50% limitation, the public body shall not charge more than the actual cost of fringe benefits, and overtime wages shall not be used in calculating the cost of fringe benefits. Overtime wages shall not be included in the calculation of labor costs unless overtime is specifically stipulated by the requestor and clearly noted in this detailed itemization.</i>					

Exhibit 9

MICHIGAN STATE UNIVERSITY

FREEDOM OF INFORMATION ACT OFFICE
408 WEST CIRCLE DRIVE
ROOM 1 OLDS HALL
EAST LANSING, MI 48824

(517) 353-3929/TELEPHONE
(517) 353-1794/FAX

INVOICE 1.MSUF026723 – FIRST TIER FINAL FEES

Invoice Date:
June 5, 2023

FOIA Received Dates:
request emailed to FOIA Office: April 25, 2023
first tier fee deposit overpayment received: May 5, 2023

BILL TO:

Azzam Elder, Esq.
Attorney
Elder Brinkman Law
aelder@elderbrinkmanlaw.com

FIRST TIER PROCESSING FEES FOR FOIA REQUEST:

MSU Trustees University account emails

DESCRIPTION	AMOUNT
<u>Fee Itemization</u>	
<u>LABOR</u> 3.5 hours @ \$34.66	\$ 121.31
<u>FIRST TIER PROCESSING FEE DEPOSIT OVERPAYMENT RECEIVED BY MSU FOIA OFFICE 05/05/2023</u>	- \$ 277.28
<i>Subtotal</i>	- \$ 155.97
<u>BALANCE OF OVERPAYMENT PROVIDES FOR SECOND TIER FEE DEPOSIT</u>	- \$ 155.97
<p><i>Make Check Payable to Michigan State University Federal I.D. 38-6005-984-W (Send payment to the address listed in the upper left corner of this invoice.) RETURN ONE COPY OF THIS INVOICE WITH YOUR PAYMENT</i></p>	
FIRST TIER PROCESSING BALANCE OWED	\$ 0.00

Exhibit 9

Michigan State University FOIA FINAL COSTS ITEMIZATION FORM -- June 5, 2023 -- Elder MSUF026723 FOIA Request FIRST TIER ONLY					
<i>Category of Costs/Description</i>	<i>Hourly Wage</i>	<i>Benefits % Multiplier Used*</i>	<i>Hourly Wage with Benefits</i>	<i>Time (Hours)</i>	<i>Amount</i>
4 (1) (a) Searching for, locating and examining responsive records <ul style="list-style-type: none"> Charged at hourly wage of lowest-paid employee capable of searching for, locating and examining the public record, regardless of whether that person is available or who performs the labor Estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down 	\$24.76	40%	\$34.66	3.5	\$121.31
4 (1) (b) Review directly associated with the separating and deleting of exempt from nonexempt information <ul style="list-style-type: none"> Charged at hourly wage of lowest-paid employee capable of separating and deleting exempt from nonexempt information, regardless of whether that person is available or who actually performs the labor If Public Body does not employ a person capable of separating exempt from nonexempt information, may treat contracted labor costs in the same manner as employee costs Contracted labor costs must clearly note the name of contracted person or firm on this itemization, and shall not exceed an amount equal to 6 times the state minimum hourly wage rate Labor costs under this subdivision estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down <p>previously redacted the public record in question, and the public record is still in the Public Body's possession</p>					
4 (1) (c) Nonpaper physical media costs <ul style="list-style-type: none"> Actual and most reasonably economical cost of computer discs, computer tapes, or other digital or similar media Requestor may stipulate that records be provided on nonpaper physical media, electronically mailed, or otherwise electronically provided in lieu of paper copies Does not apply if Public Body lacks the technological capability necessary to provide records on the particular nonpaper physical media stipulated 					
4 (1) (d) Cost of paper copies (not including labor) <ul style="list-style-type: none"> Calculated as total cost per sheet of paper, itemized to show cost per sheet and number of sheets provided Shall not exceed 10 cents per sheet of paper for copies of public records made on 8-1/2- by 11-inch paper or 8-1/2- by 14 inch paper Shall utilize most economical means available, including double-sided printing, if cost saving and available 					
4 (1) (e) Duplication or publication <ul style="list-style-type: none"> Includes making paper copies, making digital copies, or transferring digital public records to be given to requestor on nonpaper media or electronically Charged at hourly wage of lowest-paid employee capable of necessary duplication or publication, regardless of whether that person is available or who performs the labor Estimated and charged in time increments of the Public Body's choosing, with all partial time increments rounded down 					
4 (1) (f) Cost of mailing <ul style="list-style-type: none"> Actual cost of mailing, for sending records in a reasonably economical and justifiable manner Shall not charge more for expedited shipping or insurance unless stipulated by requestor, may charge for least expensive form of postal delivery confirmation 					
FIRST TIER ONLY -- TOTAL FINAL COSTS					\$121.31
LESS OVERPAYMENT DEPOSIT RECEIVED					\$277.28
POSITIVE BALANCE REMAINING PROVIDES FOR 2ND TIER FEE DEPOSIT					\$155.97
FIRST TIER BALANCE DUE					\$0.00
<p><i>*The Public Body may add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits if it clearly notes the percentage multiplier used. The Public Body shall not charge more than the actual cost of fringe benefits, and overtime wages shall not be used in calculating the cost of fringe benefits. Overtime wages shall not be included in the calculation of labor costs unless overtime is specifically stipulated by the requestor and clearly noted in this detailed itemization.</i></p>					

Exhibit 10

From: Azzam Elder
Sent: Thursday, June 15, 2023 11:12 AM
To: quinnbri@msu.edu
Subject: URGENT--LAWSUIT TO BE FILED TOMORROW AGAINST MSU

Hello Mr. Quinn,

I just left you a voicemail. I represent Posse, Parents of Sister Survivors, and Valerie Von Frank. I sent a FOIA seeking public record and email documents between the MSU board of trustees and employees regarding making a decision in April behind closed doors not to put on the agenda a vote to release information relating to the Larry Nasser investigation.

You can see my foia request which has more detail. On June, 5, 2023, the MSU FOIA coordinator sent me a letter informing me that MSU needs an additional 5 weeks to complete the search for the emails and public records. This is unreasonable and in violation of the FOIA statute. More importantly, I believe MSU is intending to try and run the clock on the statute of limitations under the Open Meetings Act.

I have no choice but to file a suit tomorrow unless we come to an agreement on tolling the statute of limitations for the Open Meetings Act. Hence, I am sending you this curtesy email offering you the opportunity to toll the SOL for the Open Meetings Act so I don't have to file suit tomorrow. Please respond to this email, and feel free to contact me on my cell phone 313-287-9888.

Thank you,

Azzam Elder, Esq.

Exhibit 11

From: Watza, Elizabeth <watzaeli@msu.edu>
Sent: Thursday, June 15, 2023 1:57 PM
To: Azzam Elder <aelder@elderbrinkmanlaw.com>
Cc: Quinn, Brian <quinnbri@msu.edu>
Subject: RE: RE: URGENT--LAWSUIT TO BE FILED TOMORROW AGAINST MSU

Hi Azzam,

Your email this morning to Brian Quinn stated as follows:

I just left you a voicemail. I represent Posse, Parents of Sister Survivors, and Valerie Von Frank. I sent a FOIA seeking public record and email documents between the MSU board of trustees and employees regarding making a decision in April behind closed doors not to put on the agenda a vote to release information relating to the Larry Nasser investigation. You can see my foia request which has more detail. On June, 5, 2023, the MSU FOIA coordinator sent me a letter informing me that MSU needs an additional 5 weeks to complete the search for the emails and public records. This is unreasonable and in violation of the FOIA statute. More importantly, I believe MSU is intending to try and run the clock on the statute of limitations under the Open Meetings Act. I have no choice but to file suit tomorrow unless we come to an agreement on tolling the statute of limitations for the Open Meetings Act. Hence, I am sending you this curtesy email offering you the opportunity to toll the SOL for the Open Meetings Act so I don't have to file suit tomorrow. Please respond to this email, and feel free to contact me on my cell phone 313-287-9888.

Per our phone conversation this afternoon, we agreed that you may file a lawsuit pursuant to the OMA/FOIA for the allegations above anytime on or before July 31, 2023.

Thank You,

Elizabeth M. Watza
Assistant General Counsel
Michigan State University
Office of the General Counsel
517.353.4934
watzaeli@msu.edu

From: Watza, Elizabeth
Sent: Thursday, June 15, 2023 1:02 PM
To: aelder@elderbrinkmanlaw.com
Subject: RE: URGENT--LAWSUIT TO BE FILED TOMORROW AGAINST MSU

Good Afternoon,

I just tried returning your call/email to Brian Quinn. Please call me back at 517.353.4934.

Thank You,

Elizabeth M. Watza
Assistant General Counsel
Michigan State University
Office of the General Counsel
517.353.4934
watzaeli@msu.edu

Exhibit 12

FOIA PRODUCED DOCUMENTS BY MSU PLEASE USE
DROPBOX LINK IN COMPLAINT PARAGRAPH 82

Exhibit 13

From: Azzam Elder
Sent: Sunday, July 9, 2023 7:58 AM
To: FOIA <foia@msu.edu>
Subject: RE: Your FOIA Request to MSU

Dear FOIA Coordinator, Attorneys Quinn, and Watza;

I have reviewed the FOIA response you sent me on July 6, 2023, and its non-responsive to my FOIA request. The documents produced show emails dated only through February 18, 2023. The MSU FOIA response provides irrelevant information none of which reveal decisions/votes made by the MSU Trustees during the time period of my FOIA request. Please note my FOIA request was for Trustee emails/communications through April 26, 2023. Communications on voting decisions among the Trustees between April 14-April 21, 2023 is crucial to my FOIA request. Please provide me with this information.

If you choose not to do so, I will file suit and subpoena every Trustee compelling them to testify about emails they have regarding making closed door votes. This will support the fact that MSU with its current leadership lacks transparency and does not follow laws which give the public and the Larry Nasser victims the right to know what MSU Trustees are voting on behind closed doors.

I respectfully request that you ensure that you have done a thorough, and complete search of my FOIA request as soon as possible.

| **Azzam Elder, Esq**

| **Attorney**

Elder Brinkman Law

| **Office:** 313-879-0355

| **Email:** aelder@elderbrinkmanlaw.com

| www.elderbrinkmanlaw.com

MICHIGAN STATE
UNIVERSITY

DATE: July 10, 2023

TO: Azzam Elder, Esq., Attorney, Elder Brinkman Law – aelder@elderbrinkmanlaw.com

FROM: Rebecca Nelson, Director and Freedom of Information Act (FOIA) Officer
Michigan State University FOIA Office *Rebecca Nelson*

SUBJECT: FOIA Response Follow-up



**FREEDOM OF
INFORMATION ACT
OFFICE**

**Michigan State
University**

408 West Circle Drive
Room 1 Olds Hall
East Lansing, MI 48824
517-353-3929
Fax: 517-353-1794
foia@msu.edu
<http://foia.msu.edu>

Thank you for your July 9, 2023, email in which you express concerns regarding the comprehensiveness of our July 6, 2023, response to your April 25, 2023, FOIA request. In light of your concerns, the search for Michigan State University Board of Trustees University account emails responsive to your request is being made again to ensure that all records responsive to your request are provided. No additional fees will be assessed for this redoubled processing of your request, which will be undertaken as expeditiously as possible.

Pursuant to Section 4(4) of the Michigan Freedom of Information Act (MIFOIA), the University's procedures and guidelines for processing MIFOIA requests can be found at <http://foia.msu.edu>.

MSUF026723 follow-up

MICHIGAN STATE
UNIVERSITY

DATE: July 21, 2023

TO: Azzam Elder, Esq., Attorney, Elder Brinkman Law – aelder@elderbrinkmanlaw.com

FROM: Rebecca Nelson, Director and Freedom of Information Act (FOIA) Officer
Michigan State University FOIA Office *Rebecca Nelson*

SUBJECT: FOIA Response Follow-up – Processing Status Update

We write with an update regarding the processing of your April 25, 2023, FOIA request.

Since our July 10th FOIA follow-up response to you, a redoubled electronic search for emails falling within the timeframe set out in your April 25th request, containing keywords you specified, has been accomplished, yielding emails additional to those provided to you on July 6th. We are reviewing those records, informed by the clarifications provided in your July 9th email to us, to identify emails you seek, and to determine if information exempt from public disclosure under the Michigan Freedom of Information Act (MIFOIA), must be separated from that which is not exempt. At this time, we anticipate responding to you with regard to this processing on or before Friday, August 4, 2023.

Pursuant to Section 4(4) of the MIFOIA, the University's procedures and guidelines for processing MIFOIA requests can be found at <http://foia.msu.edu>.

MSUF026723 follow-up



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