

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

CAPITAL AREA FRIENDS OF THE ENVIRONMENT,

Plaintiff,

Case No. 25-_____-AW

v.

Hon.

LANSING BOARD OF WATER & LIGHT,

Defendant.

Oday Salim (P 80897)

University of Michigan Law School—Environmental Law & Sustainability Clinic

Attorney for Plaintiff

701 South State Street, Jeffries Hall 3018

Ann Arbor, MI 48109

osalim@umich.edu

734-763-7087

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

COMPLAINT FOR VIOLATIONS OF THE FREEDOM OF INFORMATION ACT

Plaintiff CAPITAL AREA FRIENDS OF THE ENVIRONMENT (“CAFE”) by and through their attorney, ODAY SALIM, and for their Complaint for Violations of the Freedom of Information Act, MCL 15.231, *et. seq.*, states as follows:

PARTIES AND JURISDICTION

1. Plaintiff Capital Area Friends of the Environment (“CAFE”) is a grassroots 501(c)(3) nonprofit organization located in the Lansing area dedicated to creating a sustainable and just environment in the capital region. CAFE is interested in learning more about the

services, infrastructure, and planning of the municipal utility which serves the capital region, the Lansing Board of Water & Light (“BWL”), to continue CAFE’s valuable work of informing the public about the utility’s operations. CAFE believes that it is crucial that ratepayers know whether the BWL – Michigan’s largest public utility – is transparent and provides electricity at a reasonable rate so as to not needlessly burden ratepayers, which requires ratepayers being informed of the specifics of contracts the utility has entered into. CAFE also believes that the specifics of contracts may help inform the public about other decisions the utility has made such as a decision announced in July 2023 to expand electricity generation investments by \$750 million.¹ Disclosures relating to the Ultium battery plant are particularly important to ratepayers because the plant is expected to require an amount of electricity equal to one-fifth of BWL’s current generation capacity.²

2. Defendant BWL is a “public body” as defined in the Freedom of Information Act (“FOIA”), MCL 15.232(h)(iii). BWL is a municipal utility that provides electric, water, and steam service in the greater Lansing area.

3. Jurisdiction and venue are proper in Ingham County Circuit Court pursuant to MCL 15.240(1)(b).

STATEMENT OF FACTS

4. On February 27, 2025, CAFE submitted a public records request to BWL which included a request for documents signed by an authorized agent and saved after January 1, 2022 containing the terms “Agreement” and “Ultium Cells LLC.” (See Exhibit A).

¹ <https://www.lansingstatejournal.com/story/news/local/2023/07/19/lansing-board-water-light-electricity-solar-wind/70428637007/>.

² <https://www.lansingstatejournal.com/story/news/local/2024/04/30/bwl-gas-power-plant-lansing-delta-township/73497580007/>.

5. BWL responded on March 7, 2025, requesting a good faith deposit under MCL 15.234(8) prior to processing the request. (See Exhibit B). CAFE paid the deposit on March 24, 2025.

6. On April 7, 2025, BWL issued records responsive to CAFE's request but withheld a record identified as "Attachment A" within the document entitled "Agreement – Rec Date 4-3-2024 – Ultium Cells LLC." (See Exhibit C).

7. This withheld record was described as "Long Term Industrial Load Electric Service Agreement," and, upon information and belief, includes the electric service agreement between BWL and Ultium Cells LLC ("Ultium Service Agreement").

8. BWL asserted a statutory exemption under MCL 15.243(1)(d) and MCL 460.10y(9) as the reason for redacting the entirety of the Ultium Service Agreement from the records disclosed.

9. On May 20, 2025, CAFE appealed the denial of its request for the Ultium Service Agreement. (See Exhibit D). The appeal noted, in relevant part:

Exhibit A within the document entitled "Agreement – Rec Date 4-3-2024 – Ultium Cells LLC" has been excluded. BWL has cited to MCL 460.10y(9) to justify this records redaction. We assume that in doing so BWL is asserting that this Exhibit (described as a "Long Term Industrial Load Electric Service Agreement") contains "specific pricing or other confidential or proprietary information." However, this cannot be true to the extent redacted by BWL because BWL has previously made statements to the press specifying certain rate costs of the agreement. Moreover, even if this agreement did contain confidential or proprietary information, MCL 460.10y(9) is clear that "[u]pon a showing of good cause, [] the commission may order disclosure subject to appropriate confidentiality provisions." As CAFE described in their initial FOIA request, the organization "is interested in learning more about BWL's services, infrastructure and planning so that we can continue our valuable work of informing the public about the

utility's operations." It is crucial that ratepayers know whether their municipal utility is providing electricity at a competitive rate so as not to needlessly burden ratepayers, and that requires ratepayers being informed of the specifics of contracts BWL has entered into. BWL's denial of the provision of the "Long Term Industrial Load Electric Service Agreement" to CAFE undermines CAFE's statutory right to "full and complete information regarding the affairs of government" and ability to "be informed so that [CAFE and Lansing voters] may fully participate in the democratic process" under the Michigan Freedom of Information Act.

10. CAFE's appeal inadvertently referred to "Exhibit A" when CAFE meant to refer to "Attachment A" which contained the Long Term Industrial Load Electric Service Agreement. In addition, the appeal inadvertently omitted, as demonstrated below, that under MCL 460.10y(9), either a court or the Michigan Public Service Commission may order disclosure of information.

11. On June 2, 2025, BWL denied CAFE's appeal, stating, "MCL 460.10y(9) provides that the document entitled 'Agreement – Rec Date 4-3-2024 – Ultium Cells LLC' is exempt from public disclosure requirements. Finally, MCL 460.10y(9) does not otherwise authorize the BWL to disclose the content of the document in the manner stated in your appeal." (See Exhibit E).

12. On information and belief, BWL appears to have been denying disclosure of Attachment A to the document entitled "Agreement – Rec Date 4-3-2024 – Ultium Cells LLC" because the utility disclosed the document entitled "Agreement – Rec Date 4-3-2024 – Ultium Cells LLC." However, BWL withheld Attachment A from disclosure. The denial of appeal was thus responsive to CAFE's appeal seeking Attachment A described in "Agreement – Rec Date 4-3-2024 – Ultium Cells LLC" as "Long Term Industrial Load Electric Service Agreement."

COUNT I

VIOLATION OF THE FREEDOM OF INFORMATION ACT

13. Plaintiff incorporates by reference Paragraphs 1 through 12 as if fully set forth herein.

14. The statutory exemption to public disclosure claimed under MCL 15.240(d) pursuant to MCL 460.10y(9) provides as follows:

Contracts or other records pertaining to the sale of electricity by a municipally owned utility that are in the possession of a public body and that contain specific pricing or other confidential or proprietary information may be exempted from public disclosure requirements by the governing body of a municipally owned utility. Upon a showing of good cause, a court or the commission may order disclosure subject to appropriate confidentiality provisions.

15. The Michigan Supreme Court established the following six rules for evaluating exemptions claimed under FOIA, the first five of which are relevant here.

1. The burden of proof is on the party claiming exemption from disclosure.
2. Exemptions must be interpreted narrowly.
3. The public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying.
4. Detailed affidavits describing the matters withheld must be supplied by the agency.
5. Justification of exemption must be more than “conclusory”, *i.e.*, simple repetition of statutory language. A bill of particulars is in order.
6. The mere showing of a direct relationship between the records sought and an investigation is inadequate.

Evening News Association v. Troy, 417 Mich. 481, 503 (1983) (cleaned up).

16. The Michigan Supreme Court also held that Michigan trial courts should base their determinations on claimed FOIA exemptions on one or more of the following three procedural steps.

1. The court should receive a complete particularized justification as set forth in the six rules above. . . . [O]r 2. the court should conduct a hearing in camera based on de novo review to determine whether complete particularized justification pursuant to the six rules exists. . . . [O]r 3. the court can consider “allowing plaintiff’s counsel to have access to the contested documents in camera under special agreement ‘whenever possible.’”

Id., 515-516 (cleaned up). Both steps 1 and 2 may be necessary in order for the court to verify whether the document in fact contains confidential or proprietary material.

17. BWL has not met its burden to claim an exemption from disclosure.

18. In response to the FOIA request and CAFE’s appeal of the partial denial, BWL merely stated in conclusory terms that the claimed exemption applies.

19. BWL has only provided the name of the withheld document and a conclusory statement claiming a statutory exemption to disclosure. This does not satisfy the further requirement to provide a detailed affidavit describing the withheld material.

WHEREFORE, Plaintiff CAFE requests that this Court grant an order:

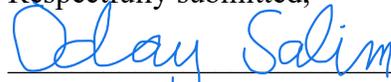
A. Directing BWL to remedy its violation of FOIA by complying with CAFE’s request, disclosing the Ultium Service Agreement in full, subject to any confidentiality provisions the Court deems appropriate.

B. Assigning this matter for hearing and trial or for argument at the earliest practicable date and expediting this matter pursuant to MCL 15.240(5).

C. Ordering such further relief as is just and equitable, including awarding damages and attorneys’ fees, costs, and disbursements as provided for by statute.

Dated: August 1, 2025

Respectfully submitted,



Oday Salim (P 80897)

University of Michigan Law School

Environmental Law & Sustainability Clinic

Attorney for Plaintiff

701 South State Street, Jeffries Hall 3018

Ann Arbor, MI 48109

osalim@umich.edu

734-763-7087

EXHIBIT A



P.O. Box 13007
Lansing, MI 48901
www.lbwl.com

Freedom of Information Act Request Form

You may download this form, fill out and email the completed form to FOIARequests@lbwl.com or you may mail this form to the address listed above, **Attn: FOIA Coordinator**

Pursuant to the State of Michigan Freedom of Information Act, **MCL 15.231-15.246**, I am requesting the following documents:

If the requested documents are available, and not subject to any exemption by applicable law, please select your preference for access to records:

- Examine Original** (BWL FOIA Coordinator will arrange a time/date with you)
- Receive Copy**
 - I prefer to receive a copy by email (be sure your email is listed legibly below)
 - I prefer to receive a copy by USPS (you may be charged for postage depending on the number of documents requested)

Email address where I wish to receive a copy of the document: _____

Address where I wish to receive a copy of the documents: Name: _____
Street: _____ Apt. _____
City: _____ Zip Code: _____

For Lansing Board of Water and Light Use Only		
Date Received:	FOIA Log Request Number:	Comments:
Personal Information contained on this form is collected pursuant to the Freedom of Information Act and will be used only for the purposes of responding to your FOIA request. Questions about this collection should be directed to the Freedom of Information Act Coordinator to FOIARequests@lbwl.com .		

Dear Lansing Board of Water and Light FOIA Coordinator:

This is a request for public records pursuant to the Michigan Freedom of Information Act ("Michigan FOIA"). The request is being submitted to the Lansing Board of Water and Light ("BWL") by Capital Area Friends of the Environment ("CAFE"), a 501(c)(3) Lansing-based nonprofit focusing on environmental issues.

Context:

CAFE is a grassroots organization located in the Lansing area dedicated to creating a sustainable and just environment in the capital region. CAFE is interested in learning more about BWL's services, infrastructure and planning so that we can continue our valuable work of informing the public about the utility's operations.

In an effort to respect BWL's workload, CAFE has attempted to draft our request so as to make the search for responsive records as efficient as possible. To that end CAFE has assumed that BWL has the technical capabilities to search documents electronically using keywords. If this is not within BWL's technical capabilities, please let us know and CAFE will modify our request.

Conditions, preferences and other notes:

With respect to the public records requested below:

- CAFE would like all public records to be produced electronically.
- When calculating fee charges, please ensure BWL's detailed itemization includes the title of the lowest-paid employee capable of doing the work being charged. If no work is being charged to a category, please make that explicit. MCL 15.234(1); *See Forner v. Dep't of Licensing & Regulatory Affairs*, No. 336742, 2017 Mich. App. LEXIS 1155 (Ct. App. July. 18, 2017).
- In the event that BWL applies a "fringe benefit multiplier," please include the calculation used to determine the actual cost of fringe benefits. 15.234(2).
- For clarity we have placed some keywords for our records request in quotation marks. When conducting these electronic searches please do not include the quotation marks themselves.
- For records request number 3, please do not spend more than 30 minutes searching for a responsive document.

Definitions:

- Documents refers to materials saved electronically in any of the following file formats:
 - PDF, including PDF/A formats (generally, but not exclusively, saved as .pdf)
 - Word, including Word processing formats (generally, but not exclusively, saved as .doc or .docx)

- Signed by refers to a document executed by an electronic signature or a wet ink signature and then subsequently saved in a digital format.
- Authorized agent refers to any of the following individuals:
 - Dick Peffley
 - Heather Shawa
 - Dave Bolan
 - David J. Price
 - Semone James
 - Beth Graham
 - DeShon Leek
 - Sandra Zerkle
 - Anthony H. Mullen
 - Dale Schrader
 - Tracy Thomas
 - M. Denise Griffin
 - LaVella J. Todd
- An example refers to a single digital file.

Records Request:

1. All documents signed by an authorized agent and saved after January 1, 2022 containing the term “Contract” AND at least one of the following phrases:
 - a. Erickson Station
 - b. Erickson Power Station
 - c. Delta Energy Park
 - d. General Motors
 - e. LG Energy Solution
 - f. Ultium Cells LLC
 - g. Delta Township
 - h. Belle River
 - i. Michigan Public Power Agency
 - j. MPPA
 - k. Reciprocating Internal Combustion Engine(s)
 - l. RICE
 - m. R.I.C.E.
2. All documents signed by an authorized agent and saved after January 1, 2022 containing the term “Agreement” AND at least one of the following phrases:
 - a. Erickson Station
 - b. Erickson Power Station
 - c. Delta Energy Park
 - d. General Motors
 - e. LG Energy Solution
 - f. Ultium Cells LLC
 - g. Delta Township
 - h. Belle River

- i. Michigan Public Power Agency
 - j. MPPA
 - k. Reciprocating Internal Combustion Engine
 - l. RICE
 - m. R.I.C.E.
3. An example of a wholesale agreement made by the Board of Water and Light after January 1, 2022 for the sale of electricity.

Waiver or fee reduction:

As previously stated, CAFE is a 501(c)(3) nonprofit that focuses on educating, organizing, and collaborating with residents in the Lansing area around energy and environmental issues. Consistent with MCL 15.234(f)(2), CAFE requests a waiver or reduction of any fee associated with responding to this request because searching for, or furnishing copies of, these records “can be considered as primarily benefiting the general public.” CAFE’s board members and professional contacts have expertise on electricity issues and experience educating the public in the greater Lansing area about environmental issues. After reviewing the records requested, CAFE plans to share the records themselves, and CAFE’s analysis, with the larger community so as to better inform the public about the impact of BWL’s planning and decision-making on Lansing ratepayers. Advancing public knowledge regarding BWL will facilitate greater public participation in the ratemaking process. CAFE will not use the information requested for commercial purposes. CAFE therefore requests a waiver or reduced fee under MCL 15.234(2).

If you require clarification, or have any questions, please contact our legal representative at:

Oday Salim, Director
University of Michigan Law School – Environmental Law & Sustainability Clinic
osalim@umich.edu
734-763-7087

Sincerely,



Heather F. Douglas

EXHIBIT B



March 7, 2025

Sent via email to heather@517cafe.org

Re: Freedom of Information Act Request - 6449

Dear Ms. Douglas:

The Lansing Board of Water & Light (BWL) is writing in response to your Freedom of Information Act (FOIA) request transmitted via electronic mail, dated February 27, 2025, and therefore, pursuant to MCL 15.235(1), deemed received February 28, 2025 (one business day after the electronic transmission). You requested the following information:

1. All documents signed by an authorized agent and saved after January 1, 2022 containing the term “Contract” AND at least one of the following phrases:

- a. Erickson Station**
- b. Erickson Power Station**
- c. Delta Energy Park**
- d. General Motors**
- e. LG Energy Solution**
- f. Ultium Cells LLC**
- g. Delta Township**
- h. Belle River**
- i. Michigan Public Power Agency**
- j. MPPA**
- k. Reciprocating Internal Combustion Engine(s)**
- l. RICE**
- m. R.I.C.E.**

2. All documents signed by an authorized agent and saved after January 1, 2022 containing the term “Agreement” AND at least one of the following phrases:

- a. Erickson Station**
- b. Erickson Power Station**
- c. Delta Energy Park**
- d. General Motors**
- e. LG Energy Solution**
- f. Ultium Cells LLC**
- g. Delta Township**
- h. Belle River**
- i. Michigan Public Power Agency**
- j. MPPA**
- k. Reciprocating Internal Combustion Engine**
- l. RICE**
- m. R.I.C.E.**

3. An example of a wholesale agreement made by the Board of Water and Light after January 1, 2022 for the sale of electricity.



Due to the scope of the request and volume of documentation that will require search, review and copying, the BWL estimates at this time that the total fee as calculated under FOIA to respond to your request will be **\$364.17**. Section 4(8) of the FOIA authorizes the BWL to require, at the time a request is made, a good-faith deposit of not more than one-half (1/2) of the total estimated fee, if the total fee is estimated to exceed \$50.00. Please remit a check or money order in the amount of **\$182.09** made payable to the BWL as payment of the good-faith deposit.

Your request to reduce or waive the fees is denied. MCL 15.234(2) provides that a public body may charge a fee for a public records search, inspection, provision of copies, mailing costs, and other associated costs, which are outlined in the BWL's FOIA Procedures (Section 4). Although subsection 2 also allows for waiver or reduction of a fee when the furnishing of records would primarily benefit the general public, your request does not support such a finding.

The BWL will begin to process your request upon receipt of a good faith deposit of **\$182.09**. The BWL will have the documents available, subject to any applicable exceptions, within the response period permitted under FOIA. Further, given the volume and anticipated research involved, the BWL exercises its 10-business day extension as permitted by MCL 15.235(d).

A copy of this request will be kept on file for no less than one (1) year. In accordance with MCL 15.234(4) please find BWL's FOIA Procedures and Guidelines and the Written Public Summary of FOIA Procedures and Guidelines on the BWL's website at <http://www.lbwl.com/About-the-BWL/FOIA-Requests/>.

Very truly yours,

A handwritten signature in blue ink that reads "Marie A. Mireles".

Marie A. Mireles
Interim Assistant Freedom of Information Act Coordinator

EXHIBIT C



April 7, 2025

Sent via email to heather@517cafe.org

Re: Freedom of Information Act Request - 6449

Dear Ms. Douglas:

The Lansing Board of Water & Light (BWL) is writing in response to your Freedom of Information Act (FOIA) request transmitted via electronic mail, dated February 27, 2025, and therefore, pursuant to MCL 15.235(1), deemed received February 28, 2025 (one business day after the electronic transmission). You requested the following information:

1. All documents signed by an authorized agent and saved after January 1, 2022 containing the term "Contract" AND at least one of the following phrases:

- a. Erickson Station**
- b. Erickson Power Station**
- c. Delta Energy Park**
- d. General Motors**
- e. LG Energy Solution**
- f. Ultium Cells LLC**
- g. Delta Township**
- h. Belle River**
- i. Michigan Public Power Agency**
- j. MPPA**
- k. Reciprocating Internal Combustion Engine(s)**
- l. RICE**
- m. R.I.C.E.**

2. All documents signed by an authorized agent and saved after January 1, 2022 containing the term "Agreement" AND at least one of the following phrases:

- a. Erickson Station**
- b. Erickson Power Station**
- c. Delta Energy Park**
- d. General Motors**
- e. LG Energy Solution**
- f. Ultium Cells LLC**
- g. Delta Township**
- h. Belle River**
- i. Michigan Public Power Agency**
- j. MPPA**
- k. Reciprocating Internal Combustion Engine**
- l. RICE**
- m. R.I.C.E.**



3. An example of a wholesale agreement made by the Board of Water and Light after January 1, 2022 for the sale of electricity.

- 1.a. – Your request is granted. Enclosed, please find responsive documents.
 - 1.b. – Your request is granted. Enclosed, please find responsive documents.
 - 1.c. – Your request is granted. Enclosed, please find responsive documents.
 - 1.d. – Your request is granted in part and denied in part and responsive records are enclosed. Your request is denied as to information exempt per MCL 15.243(1)(d) and MCL 460.10y(9).
 - 1.e. – Your request is denied as responsive public documents do not exist pursuant to MCL 15.235(5)(b). This response constitutes a certification that the public record(s) requested do not exist.
 - 1.f. – Your request is granted in part and denied in part and responsive records are enclosed. Your request is denied as to information exempt per MCL 15.243(1)(d) and MCL 460.10y(9).
 - 1.g. – Your request is granted. Enclosed, please find responsive documents.
 - 1.h. – Your request is granted. Enclosed, please find responsive documents.
 - 1.i. – Your request is granted. Enclosed, please find responsive documents.
 - 1.j. – Your request is granted. Enclosed, please find responsive documents.
 - 1.k. – Your request is denied as responsive public documents do not exist pursuant to MCL 15.235(5)(b). This response constitutes a certification that the public record(s) requested do not exist.
 - 1.l. – Your request is denied as responsive public documents do not exist pursuant to MCL 15.235(5)(b). This response constitutes a certification that the public record(s) requested do not exist.
 - 1.m. - Your request is denied as responsive public documents do not exist pursuant to MCL 15.235(5)(b). This response constitutes a certification that the public record(s) requested do not exist.
-
- 2.a. – Your request is granted. Enclosed, please find responsive documents.
 - 2.b. – Your request is granted. Enclosed, please find responsive documents.
 - 2.c. – Your request is granted. Enclosed, please find responsive documents.
 - 2.d. – Your request is granted in part and denied in part and responsive records are enclosed. Your request is denied as to information exempt per MCL 15.243(1)(d) and MCL 460.10y(9).
 - 2.e. – Your request is denied as responsive public documents do not exist pursuant to MCL 15.235(5)(b). This response constitutes a certification that the public record(s) requested do not exist.
 - 2.f. – Your request is granted in part and denied in part and responsive records are enclosed. Your request is denied as to information exempt per MCL 15.243(1)(d) and MCL 460.10y(9).
 - 2.g. – Your request is granted. Enclosed, please find responsive documents.
 - 2.h. – Your request is granted. Enclosed, please find responsive documents.
 - 2.i. – Your request is granted. Enclosed, please find responsive documents.
 - 2.j. – Your request is granted. Enclosed, please find responsive documents.
 - 2.k. – Your request is denied as responsive public documents do not exist pursuant to MCL 15.235(5)(b). This response constitutes a certification that the public record(s) requested do not exist.
 - 2.l. – Your request is denied as responsive public documents do not exist pursuant to MCL 15.235(5)(b). This response constitutes a certification that the public record(s) requested do not exist.
 - 2.m. - Your request is denied as responsive public documents do not exist pursuant to MCL 15.235(5)(b). This response constitutes a certification that the public record(s) requested do not exist.



3. – Your request is denied as responsive public documents do not exist pursuant to MCL 15.235(5)(b). This response constitutes a certification that the public record(s) requested do not exist.

Under the FOIA, if a request for a public record is denied for any reason, the public body must provide written notice of denial and include a full explanation of the requesting person's right to:

- 1) submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the disclosure denial,
- 2) seek judicial review in circuit court within 180 days of the denial of the request under Section 10 of the FOIA,
- 3) receive attorneys' fees and damages as provided in Section 10 of the FOIA if, after judicial review, the circuit court determines that the public body has not complied with Section 5 of the FOIA and orders disclosure of all or a portion of the public record,
- 4) receive \$1000 in punitive damages if the court determines under Section 10 of the FOIA that the public body acted arbitrarily or capriciously in refusing to provide a public record.

This letter also serves as that written notice. The cost associated with responding to your request is \$394.12 less the good-faith deposit received in the amount of \$182.09 for a remaining balance of \$212.03. An invoice is forthcoming.

A copy of this request will be kept on file for no less than one (1) year. In accordance with MCL 15.234(4) please find BWL's FOIA Procedures and Guidelines and the Written Public Summary of FOIA Procedures and Guidelines on the BWLs website at <http://www.lbwl.com/About-the-BWL/FOIA-Requests/>.

Very truly yours,

/s/Holly Elie

Holly Elie
Assistant Freedom of Information Act Coordinator

EXHIBIT D



MICHIGAN LAW

UNIVERSITY OF MICHIGAN

Environmental Law & Sustainability Clinic

May 20, 2025

David Price, Board Chair
Mark Matus, FOIA Coordinator
Lansing Board of Water & Light
Sent to: Mark.Matus@lbwl.com

Re: APPEALS of denial of request and of fees charged related to Request No. 6649

Dear Chair Price and FOIA Coordinator:

Pursuant to MCL 15.240 and 15.240a, and regarding the records request numbered 6649, Capital Area Friends of the Environment (CAFE) submits an appeal of the cost determination and of the denial in part of certain records requests.

Background:

CAFE is a grassroots organization located in the Lansing area dedicated to creating a sustainable and just environment in the capital region. CAFE is interested in learning more about BWL's services, infrastructure and planning so that we can continue our valuable work of informing the public about the utility's operations. Pursuant to that goal CAFE submitted a records request to the Lansing Board of Water and Light (BWL) on February 27, 2025 (attached as Exhibit 1). Our request was received by BWL on February 28, 2025.

On March 7, 2025 CAFE received a response from BWL comprised of a letter and an initial Detailed Cost Itemization worksheet ("Initial Cost Worksheet", attached as Exhibit 2). CAFE believes there were errors in the Cost Worksheet that undermine the purposes laid out in the Michigan Freedom of Information Act.¹ Seeking to have these issues resolved quickly and with as little disruption to BWL as possible, CAFE reached out to BWL's General Counsel through its attorneys with an email outlining CAFE's concerns. Mr. Matus responded to CAFE's concerns a week after BWL actually issued their final determination but did not address CAFE's concerns. On March 24, 2025 CAFE submitted its good faith deposit of \$182.09 in order to receive its records CAFE received its records on April 7, 2025. CAFE received an updated Cost Worksheet ("Final Cost Worksheet", attached as Exhibit 3) reflecting BWL's actual cost of production and a written notice of what records we had received (attached as exhibit 4). CAFE paid BWL the remainder of its deposit, \$212.03, on April 16, 2025.

¹ MCL 15.231(2); *Sole v. Mich. Econ. Dev. Corp.*, 509 Mich. 406, 413 (2022).

CAFE now submits an appeal under MCL 15.240(1)(a) and MCL 15.240a(1)(a) challenging BWL's initial Cost Worksheet, BWL's actual Cost Worksheet, and BWL's denial in part of records request number 6449.

Fee Appeal Under MCL 15.240a(1)(a)

Cost Worksheet

Under MCL 15.234(4) public entities are required to provide a “detailed itemization” to requestors which “must clearly list and explain the allowable charges.” In *Forner v. Department of Licensing & Regulatory Affairs*, the Michigan Court of Appeals interpreted this provision to require that public entities provide more than “sparse information” justifying allowable expenses.² Under the section entitled “Labor Costs to Locate Records Not on City Website,” BWL failed to provide the titles of the employees performing the labor charged. Because MCL 15.234(1)(a) does not permit a public entity to “charge more than the hourly wage of its 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” the title of the employee performing the work being charged is necessary in order for CAFE to assess the validity of the charged fee.

In the Initial Cost Worksheet, BWL failed to estimate any redaction costs even though the nature of the records requested would have required some amount of review for confidential information. Additionally, BWL included the cost of a USB drive even though CAFE had asked that all records be mailed electronically.

In both the Initial Cost Worksheet and Final Cost Worksheet, BWL failed to provide any information as to:

- Whether all or a portion of the information is available on the City's website as demanded by MCL 15.234(5);
- A justification for why the nature of the request of the particular interest will result in unreasonably high costs to the city under MCL 15.234(3).
- Whether there would be labor costs for copying or duplicating records pursuant to MCL 15.234(1)(e);

² No. 336742, 2017 Mich. App. LEXIS 1155 (Ct. App. July. 18, 2017) (attached as Exhibit 5).

- Whether there would be copying or duplication costs pursuant to MCL 15.234(1)(e).
- Whether there would be mailing costs pursuant to MCL 15.234(1)(e).

CAFE challenges the structure of the estimated cost worksheet on the grounds that non-compliant cost estimations are counter to the pro-disclosure purposes of the Michigan Freedom of Information Act.³ BWL's non-compliant cost worksheet estimates chill the exercise of requestors' statutory rights because they deprive requestors of true and accurate estimations as to cost, the source of said cost, and ultimately erode the trust between requestors and the public body.

CAFE intends to continue to request information from BWL in pursuit of its organizational goals. As such, CAFE requests that BWL update its internal policies and practices to require the FOIA Coordinator, or deputized respondents, to completely fill out all fields within the Detailed Cost Itemization worksheet, including the titles of any employees performing labor under those categories.

Fees Charged

Pursuant to MCL 15.234(3), "A fee [] shall not be charged for the cost of search, examination, review, and the deletion and separation of exempt from nonexempt information [] unless failure to charge a fee would result in unreasonably high costs to the public body because of the nature of the request in the particular instance, and the public body specifically identifies the nature of these unreasonably high costs."⁴ BWL did not provide any explanation for why CAFE's request constituted an unreasonably high cost in its Cost Worksheet, instead leaving that section of the worksheet empty. As a result, CAFE should not have been charged a fee to receive its records.

³ MCL 15.231(2); *see, e.g., Swickard v. Wayne Co. Med. Examiner*, 438 Mich. 536, 544 (1991).

⁴ *See also*, LANSING BOARD OF WATER & LIGHT, FOIA PROCEDURES AND GUIDELINE, https://www.lbw.com/sites/default/files/documents/FOIA_Policy_and_Procedure_2_.pdf ("A fee will not be charged for the labor cost of search, examination, review and the deletion and separation of exempt from nonexempt information unless failure to charge a fee would result in unreasonably high costs to the BWL because of the nature of the request in the particular instance, and the BWL specifically identifies the nature of the unreasonably high costs.")

Even if BWL was entitled to charge CAFE fees, MCL 15.234(1)(a) does not permit a public entity to “charge more than the hourly wage of its 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.” However, in both its Initial and Final Cost Worksheets BWL charged CAFE for the search labor of 3 different employees of varying pay rates. Because of the way CAFE structured its FOIA request, only one person was needed to search for the requested records and so CAFE should only have been charged at the rate of the lowest employee capable of doing the work and was overcharged.

Additionally, in CAFE’s initial request, CAFE asked that “in the event that BWL applies a ‘fringe benefit multiplier,’ please include the calculation used to determine the actual cost of fringe benefits.” In neither the original cost worksheet nor in the records provided did BWL include the calculation used to determine the actual cost of fringe benefits for the employees whose labor was charged. As such, we assume that BWL does not have a justification for applying a 50% fringe benefit multiplier and so that charge is inappropriate.

CAFE requests that to address our Fee Appeal, BWL refund CAFE’s \$394.12, or in the alternative:

- Ascribe all labor costs to the lowest paid employee capable of doing such work and remove the fringe benefit multiplier applied to labor costs. CAFE believes this would change the labor costs for locating records to 183.54 and the labor costs for separating exempt from non-exempt material to \$63.70.
 - If BWL can justify their 50% fringe benefit multiplier, CAFE believes that ascribing all labor costs to the lowest paid employee capable of doing such work would change the labor costs for locating records to \$275.31.
- Refund CAFE for the amount overcharged.

Records Denial Appeal Under MCL 15.240(1)(a)

In CAFE’s initial request, CAFE asked that “in the event that BWL applies a ‘fringe benefit multiplier,’ please include the calculation used to determine the actual cost of fringe benefits.” In neither the original cost worksheet nor in the records provided did BWL include the calculation used to determine the actual cost of fringe benefits for the employees whose labor was charged, additionally BWL did not provide

any explanation for why this information was not provided as required under MCL 15.235(5)(a)-(b).

Additionally, CAFE requested “[a]n example of a wholesale agreement made by the Board of Water and Light after January 1, 2022 for the sale of electricity. In our directions we noted that “an example” merely meant “a single digital file.” In BWL’s response it denied our request, asserting that such records do not exist. However, BWL’s 2024 Official Statement confirms that BWL does engage in wholesale sales of electricity.⁵ CAFE finds it highly unlikely that BWL does not have a single digital file of a wholesale agreement made by the Board of Water and Light after January 1, 2022 for the sale of electricity and believes this record was incorrectly denied.

Finally, Exhibit A within the document entitled “Agreement - Rec Date 4-3-2024 - Ultium Cells LLC” has been excluded. BWL has cited to MCL 460.10y(9) to justify this records redaction. We assume that in doing so BWL is asserting that this Exhibit (described as a “Long Term Industrial Load Electric Service Agreement”) contains “specific pricing or other confidential or proprietary information.” However, this cannot be true to the extent redacted by BWL because BWL has previously made statements to the press specifying certain rate costs of the agreement.⁶ Moreover, even if this agreement did contain confidential or proprietary information, MCL 460.10y(9) is clear that “[u]pon a showing of good cause, [] the commission may order disclosure subject to appropriate confidentiality provisions.” As CAFE described in their initial FOIA request, the organization “is interested in learning more about BWL’s services, infrastructure and planning so that we can continue our valuable work of informing the public about the utility’s operations.” It is crucial that ratepayers know whether their municipal utility is providing electricity at a competitive rate so as not to needlessly burden ratepayers, and that requires ratepayers being informed of the specifics of

⁵ <https://www.lbw.com/sites/default/files/documents/2024A%20Official%20Statement.pdf>

⁶ Kalea Hall and Breana Noble, Michigan has a new discount electric rate for auto projects. Here's how it stacks up, Detroit News, (Jun. 16, 2022), <https://www.detroit-news.com/story/business/autos/2022/06/17/michigans-economic-development-electricity-rates-compare/7545354001/>; Chad Livengood, Here's what GM will pay for power at its new Lansing EV battery plant, (May 17, 2022), <https://www.craisdetroit.com/economic-development/heres-what-gm-will-pay-power-its-new-lansing-ev-battery-plant>.

Board Chair & FOIA Coordinator, Lansing Board of Water & Light
Appeals re Records Request No. 6649
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contracts BWL has entered into. BWL's denial of the provision of the "Long Term Industrial Load Electric Service Agreement" to CAFE undermines CAFE's statutory right to "full and complete information regarding the affairs of government" and ability to "be informed so that [CAFE and Lansing voters] may fully participate in the democratic process" under the Michigan Freedom of Information Act.⁷

CAFE requests that to address our Records Denial Appeal, BWL:

- Provide the actual cost of fringe benefits applied in calculating the labor costs for CAFE's request.
- Provide a single digital file of a wholesale agreement made by the Board of Water and Light after January 1, 2022 for the sale of electricity.
- Provide Exhibit A within the document entitled "Agreement - Rec Date 4-3-2024 - Ultium Cells LLC" or, in the alternative, disclose the content of the document subject to appropriate confidentiality provisions.

* * *

If you require clarification or have any questions, please contact me anytime.

Sincerely,

for CAPITAL AREA FRIENDS OF THE ENVIRONMENT



Oday Salim (P80897)
Director

University of Michigan Law School—Environmental Law & Sustainability Clinic
701 South State Street, Jeffries Hall 3018
Ann Arbor, MI 48109
osalim@umich.edu
734-763-7087

⁷ MCL 15.231(2), BWL FOIA Procedures and Guidelines, Preamble.

EXHIBIT E

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

From: **David Price** <scubadav824@gmail.com>

Date: Mon, Jun 2, 2025 at 2:50 PM

Subject: Appeals of Records Request No. 6649, by Capital Area Friends of the Environment

To: <osalim@umich.edu>

Cc: Mark Matus <Mark.Matus@lbwl.com>, Jason Hawkins <Jason.Hawkins@lbwl.com>

Mr. Salim,

For the reasons that follow, your May 20, 2025 appeal relating to FOIA request #6449 is denied.

With respect to the fees charged relating to this FOIA request, the Lansing Board of Water & Light (BWL) complied with the requirements of the Freedom of Information Act (FOIA). The BWL's publicly available FOIA Procedures and Guidelines provide several factors that are used to determine an unreasonably high cost to the BWL, including the amount of time required to search for and examine records and whether the records sought are from

more than one BWL department. In both Exhibit 2 and Exhibit 3 to your appeal, and in an April 14, 2025 email from the BWL's General Counsel, you were informed that employees from multiple BWL departments were needed to search for and examine the records requested. The BWL therefore did provide an explanation as to the nature of the unreasonably high costs that warranted the charging of a fee, as required by MCL 15.243(3). Further, the FOIA does not require a public body to list the titles of employees who search for or examine public records in response to a FOIA request and a failure to do so cannot serve as a basis for granting your appeal. Finally, both Exhibit 2 and Exhibit 3 to your appeal clearly note the percentage multiplier used to partially cover the cost of fringe benefits, as required by MCL 15.234(2). Your request for a calculation of the actual cost of fringe benefits to justify applying a 50% fringe benefit multiplier is not required by the FOIA, and therefore cannot serve as a basis for granting your appeal. Under MCL 15.240a(2)(c), this response is a determination that the fee(s) assessed are specifically supported by MCL 15.234, and is a certification that the statements in this determination are accurate and that the fee(s) assessed comply with the BWL's publicly available FOIA Procedures and Guidelines and with MCL 15.234.

With respect to the records identified in your appeal that were denied under this FOIA request, those denials are upheld. As stated in the April 7, 2025 FOIA response, your request for an example of a wholesale agreement made by the BWL after January 1, 2022 for the sale of electricity was denied because responsive public records do not exist. And, as stated in the April 7, 2025 FOIA response, MCL 460.10y(9) provides that the document entitled "Agreement – Rec Date 4-3-2024 – Ultium Cells LLC" is exempt from public disclosure requirements. Finally, MCL 460.10y(9) does not otherwise authorize the BWL to disclose the content of the document in the manner stated in your appeal.

The remainder of the relief requested in your appeal is not provided for in MCL 15.240 or 15.240a, and is therefore denied.

David J. Price, Board Chair

Lansing Board of Water & Light