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LaFaive, Michael D.

From: LaFaive, Michael D.
Sent: Tuesday, February 23, 2021 3:46 PM
To: 'burtonm8@michigan.org'
Subject: Mackinac Center Letter to Mark Burton

February 23, 2021

Mr. Mark A. Burton
President and CEO
Michigan Economic Development Corporation
300 N Washington Square
Lansing, MI 48913

Dear Mr. Burton:

My name is Michael LaFaive, and I am writing to ask for your help regarding the rejection of certain documents related to my Pure Michigan-specific FOIA request, which includes the failure of the Michigan Economic Development Corporation to follow proper case law related to such requests. I would be happy to discuss the matters below by phone if that would resolve this matter sooner.

By way of background, I sent a Freedom of Information Act request to the Michigan Economic Development Corporation on November 6, 2020. I was looking for documents that were generally related to the Pure Michigan program. I did not receive a number of them and I believe there is a violation.

Specifically, the MEDC failed to explain in its response to me precisely why part of my request was denied, which I find concerning given that my request specifically asked for denials to state: **"with specificity the legal and factual basis for withholding [information], as well as the nature of the information being withheld."** Our original FOIA request contained this language, in bold, and yet after a nearly three-month wait for less than 70 pages of documents, the MEDC's response to my FOIA failed to specify what was rejected or why. Here is a quote from my November 6 FOIA request to your agency:

As to any portion of the documents that you withhold, *please state with specificity the legal and factual basis for withholding such portion, as well as the nature of the information being withheld.* If non-exempt material can be separated from exempt material, the Department is responsible for doing so. *Herald Co, Inc v Ann Arbor Public Schools*, 224 Mich App 266, 275 (1997). This includes identifying those records that are being withheld, or the nature of any information being withheld. *Id.* Specific citations to the precise portions of FOIA justifying an exemption are also required. MCL 15.235(5)(a)-(c); *Peterson v Charter Township of Shelby*, 2018 WL 2024578 (Mich Ct App). Further, if no responsive documents exist for a particular portion of this request, please clearly identify which portions of this request have been denied for that reason.

After comparing my original request to the MEDC's official response I have identified the following items that were apparently denied.

- The most recent "Sole Source Justification" document involving D.K. Shifflet and Associates and the MEDC/MSF.

D.K. Shifflet & Associates was a no-bid contractor of the MEDC and provided economic data in the past. I have subsequently learned that this contractor is no longer providing such services, but that should not preclude the MEDC from sending the most recent document. As I am in possession of a previous "Sole Source Justification" type document, I know that such a document exists. At this point, however, I am more interested in such documents as might be related to the firm(s) hired to provide similar or the same services after D.K. Shifflet.

- Expenditure data for the 2019 and (if available) 2020 data provided by D.K. Shifflet for the MEDC.

I understand why this was not made available to me, as D.K. Shifflet no longer provides such information. On both items above, and on any licensing agreement, however, I would like this information for the contractor that replaced D.K. Shifflet in providing data used by the MEDC/Travel Michigan/SMARInsights in its analysis of tourism in Michigan. I have not yet learned the name of the new contractor(s), and the MEDC didn't volunteer this information in its partial denial of February 1. At this time, I would respectfully request that these documents be supplied to me for the contractor, if any, that was hired to replace D.K. Shifflet.

I received no documents associated with either of the following bullet points and no explanation as to why.

- Any Requests for Proposals issued by the MEDC/MSF for the purpose of locating and choosing a vendor to perform the Pure Michigan campaign insights research most recently performed by Strategic Marketing and Research Insights, whose agreement will be in effect after December 31, 2020. In the alternative, any e-mails indicating why a new RFP or contract for such services have not been let.
- Any single document that would identify a winning vendor for the RFP referenced immediately above. An example of such a document would be a "Request to Award Contract" memo, such as the one previously written by Lauren Branneman and sent to the MSF on September 26, 2017.

It is certainly possible that the existing contract for Strategic Marketing and Research Insights was extended and somehow didn't fall under my RFP or "Request to Award Contract" type of communication. I was, however, offered no explanation by the MEDC with respect to these requests. Had MEDC officials done so, I could have easily clarified in without the need to subject the Corporation to a subsequent FOIA.

Could I please trouble you to ask the proper MEDC officials to provide me with any contract or contract extension for the contractor who is performing the same role still or previously performed by SMARInsights?

As with the aforementioned bullet points, I received no explanation for why I did not receive requested records relating to the following portions of my request:

- Any estimate of the "percentage of State taxes generated for every dollar spent" provided to Strategic Marketing and Research Insights by Travel Michigan/MEDC/MSF for its most recent (2020) report. Previously, this information could be found in a 2017 Michigan Office of the Auditor General letter to two lawmakers explaining that it is the MEDC that makes this information available to its contractor (then, Longwoods International).
- The responses received by Strategic Marketing and Research Insights in the course of its research for the MEDC/MSF for their most recent (2020) report "2019 Pure Michigan Advertising Effectiveness" study for questions Q4 and Q6-Q19.
- The input assumption worksheets used by Tourism Economics and any related "direct, indirect and induced impacts" output produced directly from its modeling effort for the MEDC/MSF Strategic Marketing and Research Insights report "2019 Michigan Ad Effectiveness Study," and/or its "Economic Impact of Advertising-Generated Tourism in Michigan – 2018" report.

With respect to the bullet immediately above, I also added: just “the input worksheets and related output. However, if Tourism Economics has not provided you with the above referenced worksheets/direct output, I would like to politely request that the MEDC ask Tourism Economics for these items for the state and Mackinac Center’s behalf.”

It is my hope that you will be able to assist me in obtaining this information. While I realize that the law does not compel the state to create any documents for me or necessarily ask a contractor to do so, I believe it is in the interest of government transparency that this information be made available. As such, I would very much appreciate it if MEDC could arrange for me access to such documents. The input assumption worksheet alone would be useful.

As you may be aware, it has been the Mackinac Center’s long-running desire to obtain an understanding of how the state generates its return-on-investment claims. The information I have requested will help provide not only the Center, but also the citizens of Michigan, with a deeper understanding of precisely how Pure Michigan’s ROI claims are generated.

Mr. Burton, my original request took nearly three months to process. It is my hope that — with your prompt attention — I can at least receive specific explanations as to why I was denied certain information so that I will be able to submit another formal request with more precise language. That said, I would more than welcome the disclosure of records from MEDC without the need to burden its staff with a second request, and I am more than happy to resolve this matter informally if it would lead to prompt disclosure.

I’m happy to help clarify this letter, or any portion of my request via a phone call or even a personal visit with you or a designee. Thank you in advance for considering my request.

Sincerely,

Michael LaFaive
Senior Director of Fiscal Policy
Mackinac Center for Public Policy