



*Via email only*

October 20, 2023

Commissioner Milinda Ysasi, Chair  
Commissioner Nathaniel Moody  
Commissioner Drew Robbins  
Committee on FOIA Appeals

***Re: Nathan Biller, FOIA Appeal  
FOIA #PR-2023-536***

**GRAND RAPIDS RESPONSE TO APPEAL OF FOIA REQUEST PR-2023-536**

**A. Procedural History:**

On Sunday, September 24, 2023, at 2:44 p.m.<sup>1</sup> the City Attorney's Office received Nathan Biller's (the "Requestor") online FOIA request to the City for the following:

The Assessor's Office publishes an annual Assessment Roll Report with a summary of current assessment roles. I would like to request the details supporting this summary in a csv/Excel file if possible. As of 2023, they reported 63,836 real property parcels, so at a minimum I'd like to see 63,836 records that include the property parcel number, the property class (commercial, industrial, residential, exempt), the SEV, and taxable values. If other fields are available, please include those as well. Ideally, the property address, owner name, lot frontage, lot depth, total acres, zoning code, ECF Neighborhood classification, and land value would also be present, but if they're not available, just the base detail will be helpful. Here's a link to the summary report if that's helpful: <https://www.grandrapidsmi.gov/Government/Departments/Assessors-Office>

On October 2, 2023, the City Attorney's Office responded to the Requestor, denying his request in its entirety. Specifically, the City Attorney's Office stated that such records are already made available from the Assessor's Office upon payment of a fee, as established by the City's approved fee schedule.

That same day, the Requestor responded electronically, stating:

---

<sup>1</sup> Having been electronically received on a Sunday, this FOIA request is legally deemed to have been received on Monday, September 25, 2023. MCL 15.235(1).

Thanks for your response. I would like to appeal the denial. To whom do I address the appeal?

The Assessor's Office charges a flat \$650 for the assessment roll, however, both the Michigan State FOIA law and the City of GR's own policies state that the maximum fee cannot be more than "the hourly wage of the lowest-paid City employee capable of doing the work in the specific fee category, regardless of who actually performs work."

I have a friend who works in the assessor's office for another county using the same software and was told that providing the requested assessment roll is as easy as clicking a few buttons, so I would expect to pay for 15 minutes of someone's time versus \$650.

On or about October 6, 2023, the City received the Requestor's formal appeal to this Committee.

**B. Requestor's Appeal:**

The Requestor's appeal before this Committee advances essentially two arguments: (1) that the \$650 fee charged by the Assessor's Office should be reduced; and (2) that it is in the public interest to release this report.

The Requestor's arguments are misplaced. First, Requestor is asking that a new public record be created to fulfill his request, which the Freedom of Information Act does not require.<sup>2</sup> Second, the fee charged by the Assessor's Office is outside of the scope of the Freedom of Information Act, as it is established by the City's omnibus Fee Schedule, which includes costs that can be assessed for generating certain reports or documents; Requestor was not assessed \$650 in his FOIA request.

**C. Argument:**

1. The Purpose of the FOIA:

It is important for this Committee to be ever mindful of the core purpose of Michigan's FOIA: allowing the public's access to information that contributes "significantly to public

---

<sup>2</sup> MCL 15.233(5).

understanding of the operations or activities of the government.”<sup>3</sup> “We must ask ‘whether the requested information would shed light on the governmental agency’s conduct or further the core purposes of FOIA.’”<sup>4</sup> “[E]ach FOIA exemption, by its plain language, advances a separate legislative policy choice.”<sup>5</sup> As a result, both our Legislature and our appellate courts have made it clear that the public is not entitled to access every piece of information in a public record. Instead, the public is entitled to information that contributes to the public’s understanding of government operation.

2. The FOIA Does Not Require a Public Body to Create a New Public Record: If a requestor submits a FOIA request to a public body for a public record or document that does not exist, the FOIA does not require that the public body create a new public record in response to that request.<sup>6</sup> Similarly, “[i]n response to [a] FOIA request, ... the public body is not generally required to make a compilation, summary, or report of information[...].”<sup>7</sup>

3. Requestor’s FOIA Request Requires the Creation of a New Public Record and was Properly Denied: Requestor’s stated request included, in part:

As of 2023, they reported 63,836 real property parcels, so at a minimum I'd like to see 63,836 records that include the property parcel number, the property class (commercial, industrial, residential, exempt), the SEV, and taxable values. If other fields are available, please include those as well. Ideally, the property address, owner name, lot frontage, lot depth, total acres, zoning code, ECF Neighborhood classification, and land value would also be present, but if they're not available, just the base detail will be helpful.

---

<sup>3</sup> *Practical Political Consulting v Secretary of State*, 287 Mich App 434, 462; 789 NW2d 178 (2010) (citation omitted, alterations in original).

<sup>4</sup> *Bitterman v Village of Oakley*, 309 Mich App 53, 64; 868 NW2d 642 (2015), quoting *Rataj v City of Romulus*, 306 Mich App 735, 751; 858 NW2d 116 (2014).

<sup>5</sup> *Michigan Federation of Teachers, et al v University of Michigan*, 481 Mich 657, 680 n 63; 753 NW2d 28 (2008).

<sup>6</sup> MCL 15.233(5).

<sup>7</sup> *Detroit Free Press, Inc v City of Southfield*, 269 Mich App 275, 281; 713 NW2d 28 (2005).

As this Committee is undoubtedly aware, the information the Requestor seeks is fluid. A parcel's property class changes, as does its taxable value, owner information, zoning restrictions, and land value. The City Assessor's Office maintains this information, but it is in a fluid, evolving, working database. What might be accurate information one month might become outdated the next month because of changing circumstances.

What Requestor seeks is a report generated out of this database that represents a snapshot in time, i.e., a new public record. The FOIA does not require a public body to generate a new public record, so this request was properly denied.


The City Attorney's Office's denial of Requestor's FOIA request, while not stating so explicitly, is based upon the FOIA not requiring that a public body create a new public record in response to a FOIA request. To assist the Requestor, the City Attorney's Office informed the Requestor that he is still able to obtain the information he seeks by simply requesting it directly from the Assessor's Office.

4. The Assessed Fee for the Records is Outside the Scope of FOIA and this Appeal: Requestor was quoted a fee of \$650 from the Assessor's Office for the creation and production of the report that he seeks. This quote was not in any way related to the denial of his FOIA request. This Committee should be mindful that this process, and the associated fee, operate wholly outside of the FOIA

and FOIA process. Therefore, this argument over the fee is not properly placed before this Committee and is outside the scope of this appeal.<sup>8</sup>

**D. Conclusion:**

The Requestor's FOIA request seeks the creation of a new public record, which the FOIA does not require of a public body. As a result, his FOIA request was properly denied, and Requestor is not entitled to the relief he seeks.

By:   
Andrew J. Lukas (P 79633)  
Assistant City Attorney  
City of Grand Rapids

Date: October 20, 2023

cc: Nathan Biller  
Philip Strom, Deputy City Attorney

---

<sup>8</sup> For contextual information, the City's omnibus Fee Schedule (available at <https://www.grandrapidsmi.gov/files/assets/public/departments/fiscal-budget/budget-office/fy2023-final-fee-inventory.pdf>) on line 6 states that the Assessor's Office may assess a fee of \$0.01 per parcel for reports generated that contain more than 30,000 parcels. Requestor seeks a report regarding "at a minimum" 63,836 parcels. The undersigned is personally unaware of how many parcels would actually be contained in such a report, but the Assessor's Office is best positioned to provide an accurate quote to Requestor for the fee amount. But per the number of parcels stated by Requestor, a fee of at a minimum \$638.36 is appropriate per the City's Fee Schedule.