

STATE OF MICHIGAN
WAYNE COUNTY CIRCUIT COURT

David Sole,

Case No.

Plaintiff,

v.

City of Detroit,

Defendant.

13-002121-CZ

FILED IN MY OFFICE
WAYNE COUNTY CLERK
2/12/2013 2:24:38 PM
CATHY M. GARRETT

Jerome D. Goldberg (P61678)
Jerome D. Goldberg, PLLC
Attorney for Plaintiffs
2921 East Jefferson, Suite 205
Detroit, MI 48207
(313) 393-6001

**PLAINTIFFS' COMPLAINT FOR VIOLATIONS OF
THE FREEDOM OF INFORMATION ACT, MCL 15.231, ET. SEQ.**

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

/s/ Jerome D. Goldberg
Jerome D. Goldberg (P61678)

NOW COMES Plaintiff David Sole, by and through his attorneys, Jerome D. Goldberg, PLLC, and for his Complaint for Violations of the Freedom of Information Act, MCL 15.231, et. seq., states as follows:

PARTIES AND JURISDICTION

1. David Sole is a resident of the City of Detroit, Wayne County, Michigan.
2. The Defendant City of Detroit is a Michigan municipal corporation and is a "public body" within the meaning of the Freedom of Information Act ("FOIA"), MCL 15.232(d)(iii).

3. Jurisdiction and venue are proper pursuant to MCL 15.240(4).

STATEMENT OF FACTS

4. On January 2, 2013, Plaintiff David Sole sent a Freedom of Information Request to the City of Detroit. Mr. Sole requested:

All contracts and agreement between the City of Detroit and all its departments and divisions and any banks or brokerage houses relating to the purchase of bonds, interest rate swaps, pension obligation certificates, hedge fund derivatives, termination or default agreements, or other forms of debt for the past 10 years.

Exhibit 1, attached, FOIA request.

5. Mr. Sole also requested:

In addition to copies of the contracts, all letters, emails, memos, notes or other material (written or transmitted electronically) relating to the negotiations for and the purchase of these bonds or other debt instruments. This should also include everything, but not restricted to, involving any and all bond swaps. Also included should be all communications provided to Governor Snyder's Financial Stability Review Board during 2012 in their work to determine the financial status of the City of Detroit.

See Exhibit 1.

6. To simplify the City's ability to respond to the FOIA request, Mr. Sole provided a specific, though non-exclusive, list of items encompassed by the FOIA request, including source materials referencing their existence.

See Exhibit 1.

7. On January 24, 2013, Defendant City of Detroit acknowledged that it received Plaintiff's FOIA request on January 7, 2012 (the City clearly meant 2013). The City of Detroit's Notice of Receipt stated that the request would be processed immediately.

See Exhibit 2.

8. The City of Detroit has still not produced the documents requested in Mr. Sole's Freedom of Information Request received by Defendant City of Detroit on January 7, 2013.

COUNT 1 – VIOLATION OF THE FOIA BY THE CITY OF DETROIT

9. The allegations of paragraphs 1 through 8 are repeated as if fully set forth herein.

10. Pursuant to Section 3 of the FOIA, the City of Detroit has a duty to respond within the statutory period, five days, to any request for public records by notifying the requester whether such documents are in its possession and, if so, whether the public body claims that there is any exemption from disclosure. The City is allowed to extend the period for responding to the FOIA request by ten (10) days if it so specifies in its initial response. MCL 15.233.

11. Pursuant to Section 3 of the FOIA, the City of Detroit has a further duty to provide copies or access to all documents that are not subject to an exemption under FOIA. MCL 15.233.

12. By failing to even acknowledge Plaintiff's FOIA request until seventeen days after it received the request, and never properly responding to Plaintiff's FOIA request, the City of Detroit has breached Section 3 of FOIA. MCL 15.233.

13. The records requested by Plaintiff are public records not subject to any of the exemptions listed in MCL 15.243.

WHEREFORE, the Plaintiffs ask that this honorable Court grant an order:

- (1) Directing the City of Detroit to produce for inspection and copying all documents in their possession described in Plaintiff's January 2, 2013 FOIA request;
- (2) Ordering such further relief as is just and equitable, including awarding of attorney fees and costs, as well as punitive damages because Defendant City of Detroit has arbitrarily and capriciously violated this Act by its refusal or delay in disclosing or providing copies of the public records; and

- (3) Assigning this matter for hearing and trial or for argument at the earliest practicable date and expediting this matter in every way pursuant to MCL 15.240(5).

Respectfully submitted,

/s/ Jerome D. Goldberg
Jerome D. Goldberg (P 61678)
Jerome D. Goldberg, PLLC
Attorney for Plaintiffs
2921 East Jefferson, Suite 205
Detroit, MI 48207
(31) 393-6001

Dated: February 12, 2013

EXHIBIT 1

13-002121-CZ

FILED IN MY OFFICE
WAYNE COUNTY CLERK
2/12/2013 2:24:38 PM
CATHY M. GARRETT

4829 Haverhill
Detroit, MI 48224
January 2, 2013

City of Detroit Law Department
FOIA Section
2 Woodward, Ste. 500
Coleman A. Young Municipal Center
Detroit, Michigan 48226-3535



By Personal Delivery

Re: Freedom of Information Request

Dear Sir or Madam:

I hereby request, under the Freedom of Information Act, all contracts and agreements between the City of Detroit and all its departments and divisions and any banks or brokerage houses relating to the purchase of bonds, interest rate swaps, pension obligation certificates, hedge fund derivatives, termination or default agreements, or other forms of debt for the past 10 years. I also request, in addition to copies of the contracts, all letters, emails, memos, notes or other material (written or transmitted electronically) relating to the negotiations for and the purchase of these bonds or other debt instruments. This should also include everything, but not restricted to, involving any and all bond swaps. Also included should be all communications provided to Governor Snyder's Financial Stability Review Board during 2012 in their work to determine the financial status of the City of Detroit. This FOIA request **includes, but is not limited to, all the items listed below**. Source documents attached.

Please contact me at the above address or call 313-680-5508 relative to delivery of these documents. I am also prepared to come into the law department to review and/or pick up the documents when they are available in accordance with the Freedom of Information Act.

Sincerely,

David Sole

- \$6.4 B outstanding bonded debt as of Dec. 2011 (includes \$5.2 B DWSD) [referenced in Citizens Research Council of Michigan, Legacy Costs and Indebtedness of the City of Detroit, Dec. 2011, Report 373, hereafter referred to as CRC, page 1]
- \$600 M of "other future obligations" [CRC, page 1]
- \$1.5 B outstanding pension obligation certificates [CRC, page 1]
- \$4.1 B other unfunded costs associated with personnel

- \$481 M unfunded actuarial accrued liability – General Retirement System [CRC, page 1]
- \$134 M unfunded actuarial accrued liability – Police and Fire Pension System [CRC, page 1]
- \$640 M in pension funding certificates in 2005 [CRC, page 3]
- \$1.6 B variable rate pension certificates of participation (COPS) to fund General Retirement and Police/Fire from 2005 and 2006 [CRC, pp. 8 and 10]
- Information on 8 swap agreements to establish a fixed rate on the certificates- including termination event if rating on COPS was withdrawn or downgraded. [CRC, page 11]
- Information on 2009 Detroit being informed about termination event – collateral agreement included casino revenues [CRC, page 11]
- Repayment of \$2.9 B [CRC, page 11]
- Ratings by Moody’s, Fitch Ratings and Standard & Poors [CRC, page 16]
- 2010 sale by Detroit of \$249.8 M limited tax bonds payable from state aid to fund the deficit [CRC, page 6]
- 12-16-10 issue by Detroit of \$100 M of unlimited tax general obligation bonds for capital projects. [CRC, page 21]
- Use by Detroit of Sec. 108 funds from U.S. government for revitalization projects, pledging \$89.5 M of future Block Grant funds to repay. [CRC, page 22]
- Other loans amounting to \$37.9 M (p.22 CRC); Other commitments for future construction = \$78.2 M (p.22 CRC); \$130.3 M for future operating leases for equipment. All totaling \$618.5 M. [CRC, page 22]
- March 2010, \$249.8 M of limited tax fiscal stabilization bonds [CRC, page 22]
- From 2005 to 2010 \$600 M debt to reduce deficit [Report of the Detroit Financial Review Team, March 26, 2012 report to Snyder, hereafter referred to as Review Team, page 3]
- \$1.136 B interest rate swaps “hedging derivatives” over life of debt in addition to principal and interest [Review Team, page 5]
- \$1.44 B in 2005 for pension obligation certificates [Review Team, page 6]
- March 20 and 22, 2012 downgrade of City debt by Fitch and Moody’s [Review Team, page 10]
- 2010 Detroit paid \$107.1 M annual payment and \$303.8 M in termination fees [www.SEIU.org, Sampling of Interest Rate Swap Deals Across the Country]

- June 2012 DWSD bond sale of \$659.8 M from which \$300 M paid to banks [News from Bloomberg, Detroit DWSD Debt Shows Wall Street Never Loses on Bad Swaps, Sept. 13, 2012, hereafter referred to as Bloomberg]
- June 2012 payment of \$314 M to end some swap agreements Dec. 2012 bond sale of \$222 M to end other bond swaps [Bloomberg]
- June 18, 2012 Detroit party to swap to terminate Loop Financial products [Bloomberg]
- \$1.5 B for fiscal year ending 6-30-05 for Pension Obligation Certificates [Bloomberg]
- \$100 M in general obligation bonds in 2011 for Public Safety Headquarters and other projects [Bloomberg]

EXHIBIT 2



CITY OF DETROIT
LAW DEPARTMENT

COLEMAN A. YOUNG MUNICIPAL CENTER
2 WOODWARD AVENUE, SUITE 500
DETROIT, MICHIGAN 48226-3535
PHONE 313•224•4550
FAX 313•224•5505
WWW.DETROITMI.GOV

NOTICE OF RECEIPT OF FREEDOM OF INFORMATION ACT (FOIA) REQUEST

DATE: January 24, 2013

TO: Mr. David Sole
4829 Haverhill
Detroit, MI 48224

Your FOIA request is dated: January 2, 2012

Your FOIA request was received on: January 7, 2012

If sent by fax/email, your request was consider received on:

Your FOIA request is for records pertaining to:

Purchase bonds, interest rate swaps, pension obligation certificates, hedge fund derivatives, termination or default agreements and other forms of debt for the past 10 years

From the following City of Detroit Department(s):

- | | | | |
|-------------------------------------|---|--------------------------|--------------------------|
| <input type="checkbox"/> | Buildings, Safety Engineering and Environmental | <input type="checkbox"/> | Assessor |
| <input type="checkbox"/> | Health and Wellness Promotion | <input type="checkbox"/> | Water and Sewerage |
| <input checked="" type="checkbox"/> | Finance | <input type="checkbox"/> | Public Works |
| <input type="checkbox"/> | Detroit Police Department | <input type="checkbox"/> | Public Lighting |
| <input type="checkbox"/> | Detroit Fire Department | <input type="checkbox"/> | Planning and Development |
| <input type="checkbox"/> | EMS/Fire Department | <input type="checkbox"/> | Dept of Transportation |
| <input type="checkbox"/> | Municipal Parking | <input type="checkbox"/> | City Clerk |
| <input type="checkbox"/> | Mayor's Office | | |

Your request will be processed immediately.

Your request has been assigned to: Ellen Ha, Senior
Assistant Corporation Counsel
Governmental Affairs Section
City of Detroit Law Department
(313) 237-5067