

STATE OF MICHIGAN
IN THE COURT OF CLAIMS

David Sole,

Case No. 19-

MZ

Plaintiff,

v.

Michigan Economic Development Corporation,
a division of the State of Michigan

Defendant.

Jerome D. Goldberg (P61678)
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**PLAINTIFFS' COMPLAINT FOR VIOLATIONS OF THE
FREEDOM OF INFORMATION ACT, MCL 15.231, ET. SEQ.**

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

PARTIES AND JURISDICTION

1. Plaintiff David Sole is a resident of Wayne County, Michigan.

2. The Defendant Michigan Economic Development Corporation is a Michigan governmental agency 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 in the Michigan Court of Claims pursuant to MCL 600.6419 and MCL 15.240(1)(b).

STATEMENT OF FACTS

4. On November 30, 2018, David Sole delivered by email the following FOIA request to the Michigan Economic Development Corporation:

To the Foia Coordinator, Michigan Economic Development Corporation,
I am requesting any and all documents regarding Michigan Economic Growth Authority tax credits extended to General Motors for any all years the tax credits were issued, including amendments to the credits, value of certificates issued, remaining liability on the certificates including how many years the MEGA tax credits can be claimed, the amount of investment tied to credits, the amount of job growth and/or retention tied to the credits, any alleged basis for not disclosing these credits and legal opinions regarding same, and whether the job growth and or retention goals have been met for each and every credit issued.

Please forward this information to me at:

4829 Haverhill, Detroit, MI 48224, email the information to me at davidsole48@gmail.com, or fax the information to me at 313-393-6007. Please respond to this request via email or first class mail. For any questions, please contact me at 313-680-5508.

5. Mr. Sole on December 20, 2018, Mr. Sole, received the following letter in the form of a partial grant and partial denial of his FOIA request:

Your request for information regarding the MEGA tax Credit Cap is denied in part because the total cap is exempt for disclosure pursuant to FOIA MCL Section 13(1)(d) which exempts records protected from disclosure under another statute. MCL 125.2009(9) of the Michigan Strategic Funds Act grants the Michigan Strategic Fund Board Authority to acknowledge financial or proprietary information submitted by the applicant that is considered by the applicant an acknowledged by the board or a designee of the board as confidential.

6. Sections 15.243(1)(d)(e) and (f) exempt the following records from disclosure under the FOIA:

(d) Records or information specifically described and exempted from disclosure by statute.

(e) A public record or information described in this section that is furnished by the public body originally compiling, preparing, or receiving the record or information to a public officer or public body in connection with the performance of the duties of that public officer or public body, if the considerations originally giving rise to the exempt nature of the public record remain applicable.

(f) Trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy if:

(i) The information is submitted upon a promise of confidentiality by the public body.

(ii) The promise of confidentiality is authorized by the chief administrative officer of the public body or by an elected official at the time the promise is made.

(iii) A description of the information is recorded by the public body within a reasonable time after it has been submitted, maintained in a central place within the public body, and made available to a person upon request. This subdivision does not apply to information submitted as required by law or as a condition of receiving a governmental contract, license, or other benefit.

7. MCL 125.2005(9) states:

A record or portion of a record, material, or other data received, prepared, used, or retained by the fund or any of its centers in connection with an application to or with a project or product assisted by the fund or any of its centers or with an award, grant, loan, or investment that relates to financial or proprietary information submitted by the applicant that is considered by the applicant and acknowledged by the board or a designee of the board as confidential shall not be subject to the disclosure requirements of the freedom of information act, 1976 PA 442, [MCL 15.231 to 15.246](#). The disclosure of a record concerning investment information described in section 88c under the freedom of information act, 1976 PA 442, [MCL 15.231 to 15.246](#), is subject to the limitations provided in section 88c. The board may also meet in closed session pursuant to the open meetings act, 1976 PA 267, [MCL 15.261 to 15.275](#), to make a determination of whether it acknowledges as confidential any financial or proprietary information submitted by the applicant and considered by the applicant as confidential. Unless considered proprietary information, the board shall not acknowledge routine financial information as confidential. If the board determines that information submitted to the fund is financial or proprietary information and is confidential, the board shall release a written statement, subject to disclosure under the freedom of information act, 1976 PA 442, [MCL 15.231 to 15.246](#), that states all of the following:

(a) The name and business location of the person requesting that the information submitted be confidential as financial or proprietary information.

(b) That the information submitted was determined by the board to be confidential as financial or proprietary information.

(c) A broad nonspecific overview of the financial or proprietary information determined to be confidential.

(10) The fund shall not disclose financial or proprietary information not subject to disclosure pursuant to subsection (9) without consent of the applicant submitting the information.

(11) Any document to which the fund is a party evidencing a loan, insurance, mortgage, lease, venture, or other type of agreement the fund is authorized to enter into shall not be considered financial or proprietary information that may be exempt from disclosure under subsection (9).

(12) For purposes of subsections (9), (10), and (11), "financial or proprietary information" means information that has not been publicly disseminated or which is unavailable from other sources, the release of which might cause the applicant significant competitive harm.

8. In the present case, in its response to Plaintiff's FOIA request, and in direct violation of the law, Defendant has not supplied the written statement disclosing what information was considered propriety and exempted from statute, a broad overview of the financial or proprietary information determined to be confidential, and the name and business location of the person requesting that the information submitted be declared confidential. The failure to disclose this statement is in itself a violation of the FOIA.

9. Plaintiff is not requesting what information was submitted by General Motors to the Michigan Economic Development Corporation in connection with its application for MEGA tax credits. In contrast, Plaintiff requesting the amounts and terms of the credits that were issued not by General Motors, but by the MEDC.

10. Third, MCL 125.2005 specifically contemplates release of the information sought by Plaintiff. It states:

§ 125.2009. Activities report; contents; audit; providing and posting information regarding actions under chapter 8C; posting loan or grant documentation and information regarding programs providing financial assistance; "financial assistance" defined.

Sec. 9.

(1) The fund shall transmit to each member of the legislature, the governor, the clerk of the house of representatives, the secretary of the senate, and the senate and house fiscal agencies annually a report of its activities. The report shall be transmitted not later than April 10 of each year for activities in the immediately preceding state fiscal year. The report shall not include information exempt from disclosure under section 5. The report shall include, but is not limited to, all of the following for each program operated under this act:

- (a) A list of entities that received financial assistance.
- (b) The type of project or product being financed.
- (c) The amount and type of financial assistance.
- (d) For each separate form of financial assistance, all of the following:
 - (i) The number of new jobs committed or projected when the financial assistance was applied for.
 - (ii) The number of retained jobs committed or projected when the financial assistance was applied for.
 - (iii) The actual number of new jobs created that are not temporary employees.
 - (iv) The actual number of retained jobs that are not temporary employees.
 - (v) The average annual salary of the new jobs created that are not temporary employees.
 - (vi) The average annual salary of the retained jobs that are not temporary employees.
- (e) The duration of the financial assistance.
- (f) The amount of financial support other than state resources.
- (g) Money or other revenue or property returned to the fund, including any repayments through a clawback provision in the agreement.
- (h) The status of all loans of the fund.
- (i) A list of all entities that are in bankruptcy, that the fund has received actual notice of, filed by a direct recipient of an active single incentive of at least \$500,000.00. In addition, the fund shall, within 120 days after the fund receives notice, provide a report of the notice of bankruptcy on its website and shall forward the report to each of the following:
 - (i) The senate majority leader and the senate minority leader.
 - (ii) The speaker of the house and the house minority leader.
 - (iii) The members of the house commerce committee.
 - (iv) The members of the house appropriations subcommittee on general government.
 - (v) The members of the senate economic development committee.
 - (vi) The members of the senate appropriations subcommittee on general government.
- (j) A summary of the approximate administrative costs used to administer the programs and activities authorized under this act.
- (k) Any other information as required in this section. . . .
- (16) The report described in subsection (1) must also include, but is not limited to, all of the following for all written agreements related to the good jobs for Michigan program created under chapter 8D:
 - (a) The name of the authorized business.
 - (b) The number of certified new jobs required to be maintained.
 - (c) The amount and duration of the withholding tax capture revenues.
- (17) As used in this section, "financial assistance" means grants, loans, other economic assistance, and any other incentives or assistance under this act.

11. Under terms of the MEGA tax credits, General Motors is obligated to 34,750 jobs at Michigan facilities including the Detroit Hamtramck Assembly plant and the Warren Transmission, both now slated for closure.

12. Under terms of the MEGA tax credits, General Motors is barred from relocation from the covered plants, which is defined as transferring 33% or more of full time jobs at covered plant. General Motors is violating the terms of the MEGA tax credits by violating this bar on relocations from its Detroit Hamtramck Assembly Plant and its Warren Transmission plant.

13. Under the terms of the MEGA tax credits, General Motors is obligated to repay a rolling 50% of the previous three total credit amount received if it relocates a facility after the fourth year the tax credit went into effect.

14. The public cannot enforce and monitor compliance with the terms of the MEGA tax credits, credits essentially paid for by the taxpayers at large who must cover state expenses in light of GM's forgiveness from having to pay state taxes under terms of the MEGA tax credit.

15. It should be noted that both Ford and Chrysler, other recipients of the MEGA tax credits, disclosed the amount of the MEGA tax credits they received, while only GM's tax credit amount has been withheld in blatant violation of the law.

WHERE:

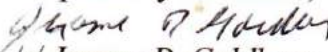
WHEREFORE, Plaintiffs asks that this honorable Court grant an order:

1. Directing the Michigan Economic Development Corporation to cease its violation of the FOIA by complying with Plaintiff's David Sole's request, and disclosing the amount of the Mega Tax Credit, extended to General Motors for any all years the tax credits were issued, including amendments to the credits, value of certificates issued, remaining liability on the certificates including how many years the MEGA tax credits can be claimed, the amount of investment tied to credits, the amount of job growth and/or retention tied to the credits, any alleged basis for not disclosing these credits and legal

opinions regarding same, and whether the job growth and or retention goals have been met for each and every credit issued.

2. Ordering such further relief as is just and equitable, including awarding of attorney fees and costs, as well as punitive damages because the Michgian Economic Development Corporatio has arbitrarily and capriciously violated this Act by its refusal to disclose this information;
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

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January 10, 2019