

1 Charles Blackwell, Pro Se
2 2976 Cortland
3 Detroit, MI, 48206
4 313-739-3597
5 Cblack618@gmail.com

6 STATE OF MICHIGAN
7 COUNTY OF WAYNE
8 3RD CIRCUIT COURT

9 CHARLES BLACKWELL,
10 PLAINTIFF, PRO SE

Case Type:CZ

11 vs.

12 CITY OF DEARBORN HEIGHTS,
13 DEFENDANT, MUNICIPAL CORPORATION

14 AND

15 DENISE MALINOWSKI-MAXWELL
16 DEFENDANT, IN HER OFFICIAL CAPACITY AS A
17 CITY COUNCIL MEMBER AND HEAD OF THE CITY
18 COUNCIL AS THE CHAIR OF THE COUNCIL

Defendant

19 COMPLAINT

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

22 INTRODUCTION

23 This matter involves a municipal government and their duly elected City Council
24 members using personal email address accounts to conduct the affairs of the government and
25 shielding such public records from the public eye. Such mechanism erects a roadblock for
26 citizens who utilizes the Michigan Freedom of Information Act (“FOIA”) and prevents them

1 from the ability to truthfully obtain full and complete information about the affairs of the
2 government and the official acts of those who represent them as public officials. The plaintiff,
3 Charles Blackwell, is a local open government advocate who routinely uses the Freedom of
4 Information Act to obtain relevant documents from state and local governments across Metro
5 Detroit to promote accountability and transparency in government.
6

7 Dearborn Heights Mayor Daniel Paletko and the City Council has been in a contentious
8 legal battle and power struggle since February of 2019 when a reported \$1.4 million became
9 missing from the city's Public, Educational, and Government programming fees, or PEG fund.
10 The City Council has wanted to hire an independent law firm to conduct a forensic audit of that
11 PEG fund to search for any irregularities. The Mayor has obstructed attempts by City Council to
12 hire a law firm by refusing to sign the retainer agreement and failing to abide by subpoena's
13 issued by the City Council.
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15

16 Plaintiff filed a FOIA request on September 19th, 2020 with the City of Dearborn Heights
17 to obtain emails from Defendant and chairwoman Denise Malinowski-Maxwell regarding the
18 important and contentious topics of Dearborn Heights Corporation Counsel Gary Miotke, Mayor
19 Daniel Paletko, and the PEG audit issue. Despite requesting emails sent and received of an
20 almost two-week timeframe between September 1st and September 15th of important Dearborn
21 Heights political topics, chairwoman Malinowski-Maxwell only provided one email to the
22 plaintiff from her personal email account address. However, additional emails provided
23 voluntarily by Mayor Daniel Paletko shows additional emails which would be responsive to the
24 plaintiff FOIA request being sent and received from Malinowski-Maxwell personal email
25 account during the requested time period. The emails provided by the Mayor contradicts and
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1 shows Malinowski-Maxwell has not provided all responsive emails to the plaintiff and is
2 intentionally concealing additional emails from the plaintiff which are public records. Plaintiff
3 has pleaded with the Defendant through their Mayor and full City Council to simply comply with
4 the FOIA act and reminded them such judicial action to have to compel further wrongfully
5 withheld emails would unfairly cause taxpayers money and waste judicial resources. (See
6 **Attached Exhibit A: Email to Defendant**)

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8
9 **THE PARTIES**

- 10 1. Plaintiff, Charles Blackwell (“Blackwell”) is a resident of Wayne County, Michigan.
11 2. Plaintiff is a lawful “person” as defined in the (“FOIA”) law pursuant to MCL 15.232(g)
12 and has the right to obtain documents under the Michigan Freedom of Information Act.
13 3. Defendant, the City of Dearborn Heights (“Dearborn Heights”), is a municipality located
14 in Wayne County, Michigan and therefore is a public body within the meaning of MCL
15 15.232(h)(iii).
16 4. Defendant, Denise Malinowski-Maxwell (“Malinowski-Maxwell”), is a duly elected City
17 Council member for the City of Dearborn Heights and resident of Dearborn Heights.
18 5. Defendant Malinowski-Maxwell is sued in her official capacity as an elected City
19 Council member and the chair of the City Council.
20
21

22 **JURISDICTION**

- 23 6. Venue is proper pursuant to MCL 15.240(1)(b).
24 7. Since the defendant City of Dearborn Heights is in Wayne County, venue is appropriate
25 in Wayne County Circuit Court.
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1 8. This action should be assigned for hearing and trial or for argument at the earliest
2 practicable date and expedited in every way. (See generally MCL 15.240(5)).
3

4 **STATEMENT OF FACTS**

5 9. Denise Malinowski-Maxwell is the chairwoman of the City Council for the City of
6 Dearborn Heights.

7
8 10. Malinowski-Maxwell does not have nor uses a municipal provided email address to
9 conduct public policy or the affairs of the Defendant.

10 11. Denise Malinowski-Maxwell has listed a personal email address
11 “denisemalinowskimaxwell@gmail.com” on the Defendant website in which she utilizes for
12 government business and affairs.
13

14 12. Emails whether used from a municipal or personal email address account is considered a
15 public record as long as it is “a writing prepared, owned, used, in the possession of, or retained
16 by a public body in the performance of an official function, from the time it is created.”¹
17

18 13. Gary Miotke was appointed to the position of Corporation Counsel by Mayor Daniel
19 Paletko.
20

21 14. At the September 8th, 2020 City Council meeting the City Council passed *resolution 20-*
22 *312* by a 4-3 vote in which the resolution called for Dearborn Heights Mayor Paletko to
23 cooperate with council members or be investigated for misconduct and removed from office over
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¹ MCL 15.232(i)

1 his handling of the longstanding financial audit involving the Public, Educational, and
2 Government programming fees, or PEG fund.

3
4 15. Chairwoman Malinowski-Maxwell also contended during this meeting that Gary Miotke
5 has not legally been the city's attorney for months and that he is "impersonating an appointed
6 official" since he wasn't reappointed after his contract ended approximately in April of 2020.

7
8 16. On September 19th, 2020 the plaintiff emailed and faxed a FOIA request to the
9 Defendant, City of Dearborn Heights, on September 19th, 2020 essentially seeking all emails
10 sent and received by chairwoman Malinowski-Maxwell between the time frame of September
11 1st, 2020 to September 15th, 2020 regarding the topics of Corporation Counsel Gary Miotke,
12 Mayor Daniel Paletko, or the PEG audit issue. (**See Attached Exhibit B: Original FOIA**
13 **Request**)
14

15 17. On September 29th, 2020 FOIA Coordinator Kristina Laslo provided to the Plaintiff only
16 one email that she said was provided by chairwoman Malinowski-Maxwell in response to the
17 plaintiff FOIA request. This was a September 9th, 2020 email sent by Mayor Daniel Paletko to
18 chairwoman Malinowski-Maxwell and other City Council members. (**See Attached Exhibit C:**
19 **Email Provided by Malinowski-Maxwell**).
20

21 18. On September 30th, 2020 FOIA Coordinator Kristina Laslo provided two voluntarily
22 emails from Mayor Daniel Paletko municipal email address account to the Plaintiff in which it
23 shows Councilwoman Malinowski-Maxwell sending an lengthy email to Gary Miotke on
24 September 8th discussing his status as Corporation Council, contract for his law firm services
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1 and interpretation of the City Charter. These emails were not subject to a FOIA request.

2 **(Attached Exhibit C: Emails Provided by Mayor Paletko).**

3
4 19. The emails provided by FOIA Coordinator Kristina Laslo from Mayor Paletko municipal
5 email account directly contradicts Councilwoman Malinowski-Maxwell assertions that she only
6 possesses one email that is responsive to the Plaintiff FOIA request.

7
8 20. Chairwoman Malinowski-Maxwell only produced to the plaintiff a September 9th, 2020
9 email that she received from Mayor Paletko. However, emails provided by Mayor Paletko shows
10 Malinowksi-Maxwell sending an email to Gary Miotke on September 8th, 2020. Which means
11 Councilwoman Malinowksi-Maxwell has not been truthful and produced all emails from her
12 personal email address account that are responsive to the Plaintiff FOIA request.

13
14 **COUNT 1**

15 **CLAIM FOR VIOLATION OF FOIA (MCL 15.231 et. seq)**

16 21. Plaintiff incorporates herein by reference each of the preceding paragraphs.

17
18 22. Plaintiff September 19th, 2020 request to the City of Dearborn Heights constituted a
19 “written request” within the meaning of MCL 15.232(m)

20
21 23. The records requested by the Plaintiff are a part of the “public record” under MCL
22 15.232(i) because the emails from Councilwoman Malinowski-Maxwell personal email
23 address is owned and used in the performance of her official role and function as a City
24 Council member.

25
26 24. The Defendant’s, City of Dearborn Heights and Denise Malinowski-Maxwell has failed
27 to produce all the requested email responsive to his September 19th FOIA request.

1 25. Upon the belief and knowledge of the Plaintiff, the Defendant's by City of Dearborn
2 Heights and through Councilwoman Denise Malinowski-Maxwell, has other emails in
3 their possession which are public records that are responsive the Plaintiff request in
4 which they are either concealing, hiding, or have deleted in violation of the FOIA act.
5

6 26. Because this suit was necessary to compel Defendant's disclosure of the requested public
7 records, Plaintiff is entitled to "reasonable fees, costs, and disbursements", pursuant to
8 MCL 15.240(6).
9

10 27. Defendant's has arbitrarily and capriciously violated the FOIA act by intentionally
11 concealing and failing to produce emails responsive to the Plaintiff FOIA request. As
12 such, Plaintiff is entitled to punitive damages of \$1,000 in addition to actual and
13 compensatory damages pursuant to MCL 15.240(7).
14

15 28. Defendant has willfully and intentionally failed to comply with the ("FOIA") law and
16 therefore should be subject to a civil fine of between \$2,500 and \$7,500 as allowed under
17 MCL 15.240b
18

19 **RELIEF SOUGHT**

20 **WHEREFORE**, Plaintiff, Charles Blackwell, respectfully requests this
21 Honorable Court to enter a judgment against Defendant, City of Dearborn Heights, ordering:
22

23 A. Assign this action for hearing at the earliest practicable date and expedite it in
24 every way in accordance with MCL 15.240(5).
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1 **B.** Schedule an In-Camera Review of all of Defendant Malinowski-Maxwell
2 emails from between September 1st to September 15th to ensure all responsive emails are
3 produced.
4

5 **C.** An order that the defendant arbitrarily and capriciously violated the Freedom
6 of Information Act by concealing emails, and awarding Plaintiff \$1,000 in punitive damages for
7 Defendant's failure to comply with the Freedom of Information Act, plus costs, and
8 disbursements in this action as provided by law.

9 **D.** Assess the Defendant a civil fine of between \$2,500 and \$7,500 for failure to
10 comply with the act under MCL 15.240b E. That such additional relief be granted to the Plaintiff
11 as may be deemed just and proper
12

13 /s/Charles Blackwell
14 2976 Cortland
15 Detroit, MI, 48206
16 313-739-3597
17 Cblack618@gmail.com
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EXHIBIT A



Charles Blackwell <cblack618@gmail.com>

Dearborn Heights: Final Attempt

Charles Blackwell <cblack618@gmail.com>

Sat, Oct 3, 2020 at 7:49 PM

To: Thomas Wencel <tgwencel@gmail.com>, denisemalinowskimaxwell@gmail.com, Dave Abdallah <davecitycouncil@gmail.com>, Lisa Hicks-clayton <hicksclayton4dhcitycouncil@yahoo.com>, RAY Muscat <rmuscatdhcc@gmail.com>, dpaletko@ci.dearborn-heights.mi.us, billbazzicitycouncil@gmail.com, Krissy Kramarz <kkramarz@ci.dearborn-heights.mi.us>, foia@ci.dearborn-heights.mi.us, Gary Miotke <gmiotke@miotkelawoffice.com>, mayor@ci.dearborn-heights.mi.us, lsenia@ci.dearborn-heights.mi.us
Bcc: Jim Fett <jim@fettlaw.com>

Hello:

I have emailed you all at least three times regarding my FOIA request for Denise Malinowski-Maxwell emails from between September 1st to September 15 regarding the topics of Corporation Counsel Gary Miotke, Mayor Paletko or the PEG Issue.

Denise only provided one email. This was an email sent to her from Mayor Paletko on September 9th. However, I have emails from Mayor Paletko showing Denise emailing Gary and other people on September 8th.

So I have proof that Denise did not turn over all the emails I have requested. She is concealing further emails that I requested which are public records.

I am asking that you have Denise provide all the emails I have requested. These are public records that I have the right to access and obtain.

I am desperately trying to avoid having this matter end up in Court. This is not my intention. There is no reason Taxpayers nor I should have to incur legal fees and cost for elected officials refusing to produce public records.

So again, can you please have Denise produce all the requested emails. I have asked at least three times.

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Exhibit B

Charles Blackwell
2976 Cortland
Detroit MI 48206
313 739 3597
cblack618@gmail.com

September 19th, 2020

FOIA Request

This letter is a Michigan Freedom of Information Act Request. I am requesting documents from the City of Dearborn Heights.

I am requesting email from Councilwoman Denise Malinowski-Maxwell. Employees, elected officials, and agents emails are public records and subject to disclosure under the FOIA act.

Councilwoman Malinowski-Maxwell uses the email address denisemalinowskimaxwell@gmail.com to conduct business on the City behalf and in furtherance of her official performance as a public official.

I am seeking email sent and received by Councilwoman Malinowski-Maxwell starting from September 1st to September 15th in regards to the topics of (Mayor Paletko, Gary Miotke, and PEG/Audit)

These are the specific topic emails I am seeking.

These emails are subject to disclosure and you have the obligation of contacting Councilwoman Malinowski-Maxwell DIRECTLY to obtain them.

Please email me the response letter and the requested information to my email address.

You have 5 business days to respond

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Exhibit C



Charles Blackwell <cblack618@gmail.com>

foia request

Krissy Laslo <kkramarz@ci.dearborn-heights.mi.us>
To: Charles Blackwell <cblack618@gmail.com>

Tue, Sep 29, 2020 at 10:28 AM

Dear Mr. Blackwell:

The City of Dearborn Heights is in receipt of your request dated September 29, 2020.

You requested the following.

"...email (sic) sent and received by Councilwoman Malinowski-Maxwell starting from September 1st to September 15th in regards to the topics of (Mayor Paletko, Gary Miotke, and PEG/Audit)"

Below is the email that has been provided from Council Chair.

If you have any further questions or concerns, please contact me at kkramarz@ci.dearborn-heights.mi.us or foia@ci.dearborn-heights.mi.us.

Sincerely,

Krystina Laslo

FOIA Coordinator

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

From: Denise Maxwell <denisemalinowskimaxwell@gmail.com>
Date: Thu, Sep 10, 2020 at 11:57 AM
Subject: Fwd: last night's meeting. FYI. Denise
To: matthew.schenk@sbdetroit.com <matthew.schenk@sbdetroit.com>

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

From: **Paletko, Daniel** <dpaletko@ci.dearborn-heights.mi.us>

Date: Wed, Sep 9, 2020 at 11:00 AM

Subject: last night's meeting

To: Council Chairwoman Malinowski Maxwell <denisemalinowskimaxwell@gmail.com>, Muscat Ray <rmuscatdhcc@gmail.com>, Bill Bazzi <billbazzicitycouncil@gmail.com>, Bob Constan <rkconstan@comcast.net>, Dave Abdallah <davecitycouncil@gmail.com>, Lisa Hicks-Clayton <hicksclayton4dhccitycouncil@yahoo.com>, Councilman Wencel <tomwenceldhcc@gmail.com>

September 9, 2020

Hon. City Council

City of Dearborn Heights

Dear Council Members:

I think that we can all agree that last night's meeting was a horrible example of working together. We need to have some sort of communication outside of letters drafted by attorneys and figure out an end-game. If the goal is to go over every invoice/record for every department for the last five years, then a compromise will not happen. However, if the City Council can articulate what it is that the collective body is looking for, then, as I have continually stated, I can provide those records to you.

I am vehement about having some sort of city control over this process and giving all powers to your attorney and his accountant has serious potential of a financial black hole with dollars that the city cannot afford. Your body needs to have continued study sessions to accept the documents requested and deliberate on the cost-benefit analysis of each fund that you are investigating.

I can assure you that there is no "missing money" or malfeasance, however, the majority of you simply will not listen to me. Therefore, you need to ask yourself what you think my administration has failed to do and what you will find. For example, if you believe that PEG funds were used to pay for salaries in the cable department, then you are right! I have budgeted those salaries in the cable department against PEG fees and your body has approved the budget each year. Records will only show this. Subsequently, the auditors have audited this and have even included it in their report long before I became mayor. In addition, if you feel that some employee is getting extra compensation over what was approved by council, then please ask for that employee's records. Throwing a net to capture all employees, using other employees' time to copy and redact records and then paying both your attorney and accountant to review these documents when you are only concerned about a handful of employees is not fiscally responsible. I hope that your body will soon have a study session and take my suggestions seriously to speed up this process and finally put it to rest.

When deliberating over the city attorney, your body can throw this right back to me by simply voting yes or no to Gary Miotke's appointment. "Assumptions" have no place in city government when a simple vote of your body can "move this along". Upon your vote, I will act accordingly by either continuing Gary's tenure as Corporation Counsel or submitting another name to your body. I must state that I still maintain my powers as outlined in the Charter and will not create a contract with Gary or any other firm. It is in my powers that the city attorney serves and I retain the right to remove the city attorney and/or approve assistant corporation counsels.

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Exhibit D



Charles Blackwell <cblack618@gmail.com>

foia

Krissy Laslo <kkramarz@ci.dearborn-heights.mi.us>
To: Charles Blackwell <cblack618@gmail.com>
Cc: Dpaletko@ci.dearborn-heights.mi.us

Wed, Sep 30, 2020 at 11:51 AM

I have attached two further emails that are responsive to your request. These emails are from the Mayor's email account. The Mayor does not have any additional, responsive emails sent from the City Council Chair during this time period.

As I have previously stated, the email that I originally provided you was the only email that was provided to me by the City Council Chair in response to your request.

If you have any further questions, please contact me at foia@ci.dearborn-heights.mi.us.

Krystina Laslo

FOIA Coordinator

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

From: Denise Maxwell <denisemalinowskimaxwell@gmail.com>
To: Gary Miotke <gmiotke@miotkelawoffice.com>
Cc: "Beckerleg, Derk" <dbeckerleg@secrestwardle.com>, Councilman Abdallah <davecitycouncil@gmail.com>, Councilman Bazzi <billbazzicitycouncil@gmail.com>, Councilman Constan <rkconstan@comcast.net>, Councilman Muscat <rmuscatdhcc@gmail.com>, Councilman Wencel <tomwenceldhcc@gmail.com>, Councilwoman Hicks-Clayton <hicksclayton4dhcitycouncil@yahoo.com>, <Dpaletko@ci.dearborn-heights.mi.us>, "Flamont, Dana" <dflamont@ci.dearborn-heights.mi.us>, Krissy Kramarz <kkramarz@ci.dearborn-heights.mi.us>, Matthew Schenk <matthew.schenk@sbdetroit.com>, "Roberts, Mark" <mroberts@secrestwardle.com>, <lsonia@ci.dearborn-heights.mi.us>
Bcc:
Date: Tue, 8 Sep 2020 10:18:55 -0400
Subject: Re: FW: Motion

Thank you for the information Mr. Miotke. This helps identify what we have been paying to your firm while you served as Corporation Counsel. Your statement that there is no term is irrelevant to your status as our former Corporation Counsel. The Charter clearly indicates that there is no holdover status. You may also want to review Section 20-33(b) of the City Code.

Further, while your email references that it would apply to Assistant Corporation Counsels, the underlying engagements are not referenced. Nor is the list of firms supposedly covered by such an engagement. Even more to the point, and pursuant to the Charter, Assistant Corporation Counsels are "appointed" by Corporation Counsel subject to the Mayor's approval and subject to compensation levels set by the Council. Appointment is different than "retaining" the services of

outside counsel by contract such as the language utilized in section 5.13(j). That also requires that there be a specific term and duration for such engagements.

Respectfully,

Denise Malinowski Maxwell

City Council Chair Dearborn Heights

On Tue, Sep 8, 2020 at 8:38 AM Gary Miotke <gmiotke@miotkelawoffice.com> wrote:

City Council Members:

Please see the attached Motion #19-067 and the back-up for same. This motion was adopted on February 26, 2019. It approved my request for an increase in the "compensation for Corporation Counsel and all firms acting as Assistant Corporation Counsels." It increased the hourly compensation by \$5.00 per hour and was the first increase in compensation since 2015.

Notably, there is no limitation in this motion for the period during which services would be compensated based on the fee schedule it adopted. This fee schedule has thus been in force since the adoption of this motion and remains in force to this day.

Further, this motion shows that the City Council authorized "Corporation Counsel and all firms acting as Assistant Corporation Counsels" to perform services based on this fee schedule. Contrary to what you have been informed, no further "contract" or "agreement" was or is required.

Based on the foregoing, please add all of the attorney invoices onto the City Council agenda and approve payment accordingly.

Very truly yours,

GARY T. MIOTKE

Dearborn Heights Corporation Counsel

6828 Park Avenue

Allen Park, MI 48101

Phone: (313) 388-4809

Fax: (313) 388-8428

Email: gmiotke@miotkelawoffice.com

[Confidentiality Statement](#)

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This communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of avoiding penalties under the tax laws of the United States, or promoting, marketing or recommending to another party any transaction or matter addressed in this communication (and any attachment).

From: Lynne [mailto:lsenia@ci.dearborn-heights.mi.us]
Sent: Thursday, September 03, 2020 9:57 AM
To: Corporation Counsel Miotke
Subject: Motion

As requested, please see the attached.

Lynne Senia

City Clerk

City of Dearborn Heights

6045 Fenton

Dearborn Heights, MI 48127

313-791-3430

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

From: Denise Maxwell <denisemalinowskimaxwell@gmail.com>
To: Bill Bazzi <Bill.Bazzi@yahoo.com>, Dan Paletko <dpaletko@ci.dearborn-heights.mi.us>, Dave Abdallah <davecitycouncil@gmail.com>, Denise Maxwell <denisemalinowskimaxwell@gmail.com>, Lisa Hicks-Clayton <hicksclayton4dhcitycouncil@yahoo.com>, RAY Muscat <rmuscatdhcc@gmail.com>, Robert Constan <rkconstan@comcast.net>, Tom Wencel <tgwencel@gmail.com>, "mayor@ci.dearborn-heights.mi.us" <mayor@ci.dearborn-heights.mi.us>
Cc:
Bcc:
Date: Wed, 2 Sep 2020 23:29:48 -0400
Subject: Re: Plante Moran and legal fee invoice
Dear Mayor,


Please see attached letter.

Thank you,

Denise Malinowski Maxwell

City Council Chair

3 attachments

 **Re: FW: Motion.eml**
17K

 **Mayor Paletko letter regarding legal services invoices 9-2-2020.pdf**
53K

 **Re: Plante Moran and legal fee invoice.eml**
76K