

**STATE OF MICHIGAN  
IN THE SUPREME COURT**

HASSAN M. AHMAD,  
Plaintiff/Appellee

v.

Supreme Court Case No.: 160012  
Court of Appeals Case No.: 341299  
Court of Claims Case No.: 17-000170-MZ

THE UNIVERSITY OF MICHIGAN,  
Defendant/Appellant

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**APPELLEE HASSAN M. AHMAD'S ANSWER IN OPPOSITION TO APPELLANT  
UNIVERSITY OF MICHIGAN'S APPLICATION FOR LEAVE TO APPEAL**

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## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	<i>iii</i>
STATEMENT OF JURISDICTION.....	<i>v</i>
STATEMENT OF COUNTER QUESTION(S) PRESENTED.....	<i>vi</i>
INTRODUCTION.....	1
FACTS .....	2
STANDARD OF REVIEW .....	6
ARGUMENT.....	7
I.    A “public record” is defined by a legislatively-provided glossary.....	7
A.    Public policy arguments belong in the Capitol, not the Hall of Justice.....	9
B.    Reviewing Ahmad’s purpose is out of bounds. ....	11
II.   The University cannot contract their way out of FOIA.....	11
CONCLUSION .....	12
RELIEF REQUESTED .....	13

## TABLE OF AUTHORITIES

### CASES

<i>Amberg v City of Dearborn</i> , 497 Mich 28; 859 NW2d 674 (2014).....	6
<i>Averill v Dauterman</i> , 284 Mich App 18; 772 NW2d 797 (2009) .....	7
<i>Beaudrie v Henderson</i> , 465 Mich 124; 631 NW2d 308 (2001).....	7
<i>Cardinal Mooney High School v Michigan High School Athletic Ass’n</i> , 437 Mich 75; 467 NW2d 21 (1991).....	6
<i>Curry v Meijer, Inc</i> , 286 Mich App 586; 780 NW2d 603 (2009) .....	9
<i>Detroit Free Press, Inc v City of Southfield</i> , 269 Mich App 275; 713 NW2d 28 (2005) .....	10
<i>El-Khalil v Oakwood Healthcare Inc</i> , __ Mich __; __ NW2d __; 2019 WL 3023561 (2019).....	13
<i>Federated Publications, Inc v City of Lansing</i> , 467 Mich 98; 649 NW2d 383 (2002).....	6
<i>Heinz v Chicago Road Inv Co</i> , 216 Mich App 289; 549 NW2d 47 (1996) .....	10
<i>Hopkins v Duncan Twp</i> , 294 Mich App 401; 812 NW2d 27 (2011) .....	6
<i>Kestenbaum v MSU</i> , 414 Mich 510; 327 NW2d 783 (1982).....	12
<i>MacKenzie v Wales Twp</i> , 247 Mich App 124, 635 NW 2d 335 (2001) .....	12
<i>Maiden v Rozwood</i> , 461 Mich 109; 597 NW2d 817 (1999).....	6
<i>McAuley v General Motors Corp</i> , 457 Mich 513; 578 NW2d 282 (1998).....	7
<i>Mich Federation of Teachers &amp; Sch Related Personnel v Univ of Mich</i> , 481 Mich 657; 753 NW2d 28 (2008).....	9-10

*Morris & Doherty, PC v Lockwood*,  
259 Mich App 38; 672 NW2d 884 (2003) ..... 11-12

*Oakland Press v Pontiac Stadium Building Authority*,  
173 Mich App 41; 433 NW2d 317 (1988) ..... 10

*People v Schultz*,  
246 Mich App 695; 635 NW2d 491 (2001) ..... 7

*Reetz v Rigg*,  
367 Mich 35; 116 NW2d 323 (1962)..... 12

*State Employees Ass’n v Mich Dep’t of Mgt & Budget*,  
428 Mich 104; 404 NW2d 606 (1987)..... 11

*Sun Valley Foods Co v Ward*,  
460 Mich 230; 596 NW2d 119 (1999)..... 10

*Taylor v Lansing Bd of Water & Light*,  
272 Mich App 200; 725 NW2d 84 (2006) ..... 11

*Teel v Meredith*,  
284 Mich App 660; 774 NW2d 527 (2009) ..... 6

*Tyler v Livonia Pub Schs*,  
459 Mich 382; 590 NW2d 560 (1999)..... 9

**STATUTES**

MCL 15.232..... 1, 7, 8, 9

MCL 15.240..... 6, 10

MCL 15.243..... 8, 10

**COURT RULES**

MCR 2.116 ..... v, 2, 4, 6, 13

MCR 7.303 ..... 6

MCR 7.305 ..... 6

## STATEMENT OF JURISDICTION

Appellee Hassan M. Ahmad concurs with the jurisdictional statement provided by Appellant University of Michigan.

## STATEMENT OF COUNTER QUESTION(S) PRESENTED

- I. For purposes of review under MCR 2.116(C)(8), are documents that are owned, retained, and possessed by a public body for an official purpose within the statutory definition of “public records” under the *Freedom of Information Act*?

Answer: Yes

## INTRODUCTION

This case begins and quickly ends with the statutory definition of “public records” under Michigan’s *Freedom of Information Act*. A “public record” is a defined term, MCL 15.232(e), and the Tanton Papers—a collection of donated documents formerly owned by Dr. John Tanton—are possessed, retained, and owned by the University. In parsing whether the “Tanton Papers” are public records, the Legislature has provided five ways documents are deemed public records. The Tanton Papers are public records when—

1. *prepared* by the University in the performance of an official function;
2. *owned* by the University in the performance of an official function;
3. *used* by the University in the performance of an official function;
4. *in the possession of* the University in the performance of an official function;  
or
5. *retained* by the University in the performance of an official function

MCL 15.232(e); see also *Amberg v City of Dearborn*, 497 Mich 28, 32; 859 NW2d 674 (2014). Appellee Hassan M. Ahmad, an attorney, seeks copies of documents undisputedly<sup>1</sup> deemed public records by at least three of the legislative definitions under MCL 15.232(e)—owned, in possession of, and retained by the University of Michigan’s Bentley Historical Library. The University’s own library database recognizes the Tanton Papers as *owned* by the University. By a clear and well-defined statutory definition, the Tanton Papers are easily public records. This *Application* fails to articulate any basis for overturning the Court of Appeals’ well-reasoned decision at this pre-answer stage of the litigation for that narrow issue. The *Application* should be denied.

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<sup>1</sup> Contrary to the University of Michigan’s assertion, the facts pled in the Verified Complaint, as they arrive to this Court, are deemed true. This also includes the inferred allegation that the University *owns* the Tanton Papers. **Ver Compl, Exhibit 3, p. 2** (“Copyright has been transferred to the University of Michigan”).

## FACTS<sup>2</sup>

On December 15, 2016, Appellee Hassan M. Ahmad, an immigration lawyer, made a *Freedom of Information Act* request for papers located in boxes 15-25 within the University of Michigan's Bentley Historical Library, which had been previously donated by Dr. John Tanton. **Ver Compl, ¶¶4, 8; Ver Compl, Exhibit 1.** While Ahmad knew the records were deemed closed by the University, he submitted the FOIA request because, as he specifically alleges, "the records still qualified as 'public records; within the meaning of Michigan FOIA, that there was no qualifying exemption, and that strong public interest trumped any conceivable privacy interest." **Ver Compl, ¶11.** Ahmad also specifically alleged that "there is no provision in the Michigan FOIA, or elsewhere, that allows a public body to unilaterally shield records due to a private arrangement." **Id., ¶41.**

Dr. John Tanton was a well-known (and perhaps even notorious) public figure, who has founded and directed many organizations which has shaped current U.S. immigration policies. His contentions and proposed policies are also highly controversial. **Id., ¶¶12-17.** According to the Southern Poverty Law Center, Tanton "is the racist architect of the modern anti-immigrant movement." *John Tanton*, SOUTHERN POVERTY LAW CENTER, available at <https://goo.gl/wwE8N8>. He created a network of organizations – the Federation for American Immigration Reform (FAIR), the Center for Immigration Studies (CIS) and NumbersUSA – that have profoundly shaped the immigration debate in the United States. *Id.* The nature of his work's influence on the goings-on of the government caused President Reagan's administration to refer to Tanton as "the most influential

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<sup>2</sup> Because a motion under MCR 2.116(C)(8) only looks to the pleadings and deems all allegations true, a copy of the Verified Complaint (with all exhibit thereon) is attached.

unknown man in America.” Jason DeParle, *The Anti-Immigration Crusader*, NY TIMES, Apr 17, 2011, available at <https://goo.gl/nCFh9u>. This polarizing figure lived in Northern Michigan until his death in July 2019. Francis X. Donnelly, *Mich Man Who Lead Anti-Immigration Fight Nearly Forgotten*, THE DETROIT NEWS, Mar 15, 2017, available at <http://detne.ws/2mHwjVj>; Nicholas Kulish, *Dr. John Tanton, Quiet Catalyst in Anti-Immigration Drive, Dies at 85*, NY TIMES, July 28, 2019, available at <https://nyti.ms/2XNTF1i>.

Typically, fulfillment of such a FOIA request is simple. However, the complication in this case derives from the fact that Dr. Tanton’s papers from 1960 to 2007, stored in 25 boxes, were donated to the University with an alleged<sup>3</sup> contractual restriction dictating that boxes 15 - 25 are to be treated as non-public until April 6, 2035. **Ver Compl, ¶18.** Boxes 1 - 14 are open without restriction. ***John Tanton Papers: 1960-2007, Bentley Historical Library, accessible at <https://goo.gl/aFKeJb>***. The dispute in this case only involves those closed boxes numbered as 15 - 25, referred hereinafter as the “Tanton Papers.” The Tanton Papers are completely owned by the University. ***Id.*** (“Donor(s) have transferred any applicable copyright to the Regents of the University of Michigan...”); **Ver Compl, ¶19** (recounting same); see also **Ver Compl, Exhibit 3, p. 2.**

Initially, the University acknowledged receipt of the FOIA request on December 22, 2016, and requested additional time to respond due to the voluminous nature of the documents requested. **Ver Compl, Exhibit 2.** Around the same time, the University also requested the narrowing of the scope of the FOIA request. **Ver Compl, ¶29.** Ahmad

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<sup>3</sup> A copy of the donor agreement was never entered into the court record given the pre-answer, pre-discovery stage of this litigation.

acquiesced after University officials assured him that his FOIA request would be fulfilled. **Ver Compl, Exhibit 5**; see also **Ver Compl, ¶¶30-31**. After a revised and narrowed request was submitted, the University processed the same as an entirely new FOIA request, again requested more time for processing, and also requested a deposit of more than \$6,000.00 on an estimated cost of over \$12,000.00. **Ver Compl, Exhibit 6, p. 2**. Ahmad paid the total deposit demanded by check, which was cashed in late April 2017. **Ver Compl, Exhibit 6, p. 1**. Shortly thereafter on May 8, 2017, the University denied the FOIA request claiming the Tanton Papers were not “public records.” **Ver Compl, Exhibit 7**. Ahmad immediately filed an administrative appeal. **Ver Compl, Exhibit 8**. Again, the head of the University (via special counsel to the President) affirmed the denial. **Ver Compl, Exhibit 9**.

In June 2017, Ahmad brought suit challenging the denial. He alleged that the University’s “actions unlawfully and unilaterally shield public records from the Michigan FOIA by declaring donated papers sealed pursuant to an unknown, undisclosed charitable gift agreement,” and “[n]o such charitable gift agreement appears on the University’s Bentley Historical Library website.” **Ver Compl, ¶¶39-40**. In short, “there is no provision in the Michigan FOIA, or elsewhere, that allows a public body to unilaterally shield records due to a private arrangement.” **Id., ¶41**.

Without filing any answer, the University filed for summary disposition solely pursuant to MCR 2.116(C)(8). Ahmad opposed. On November 20, 2017, the Court of Claims granted the University’s motion and dismissed the case. **Opinion and Order, dated 11/20/2017**. According to the Court of Claims, “[t]here is no dispute that defendant is a public body or that the materials sought qualify as ‘writings’ under FOIA.” **Id., at 2**.

That is correct. It also correctly concluded that “the fact that a writing is not a public record at the time it is created does not control the outcome with regard to whether it is a ‘public record’ under FOIA.” *Id.* That too is correct. However, concluded the trial court, the Tanton Papers are not public records because documents held by a public body must be “*actively used*” in the performance of an official function to constitute a public record. *Id.*, at 3 (italics in original). That was erroneous; Ahmad appealed.

The Court of Appeals reversed. *Ahmad v Univ of Michigan*, unpublished decision of the Court of Appeals, issued June 20, 2019 (Docket No. 341299). It correctly explained that “the sole issue before us” at this pre-answer, pre-discovery posture of the case “is whether plaintiff alleged facts sufficient to show that the Tanton Papers constitute a public record under the FOIA.” It concluded, having reviewed the Verified Complaint, “there is no doubt that plaintiff adequately alleged that the University had ‘possession of’ or ‘retained’ the documents at issue.” See **Ver Compl, ¶¶2, 11, 19, 25**. The only question is “whether the possession or retention of the Tanton Papers was alleged to have been done “in the performance of an official function.” The panel concluded Ahmad “sufficiently pled” that the University’s Bentley Library was storing and maintaining the Tanton Papers, which is consistent with the stated purposes of the Library’s official functions of collecting, preserving, and making available the Library’s materials. See **Ver Compl, ¶25**. It remanded the case back to the Court of Claims for normal case development including the filing of an answer, the possible raising of applicable exemptions, and developing a full court record for decision, including disclosure of the alleged donor agreement.

The University now seeks leave with this Court to undo the decision of the Court of Appeals. The arguments the University present are scattershot and disjointed, and fail

to address the only actual question that was challenged below. The only question the trial court answered (albeit incorrectly) and the Court of Appeals reviewed and corrected was whether the Tanton Papers were plausibly pled as “public record” sufficient to plead a claim pursuant to MCR 2.116(C)(8). Ahmad expressly did so. **Ver Compl, ¶25**. Having fulfilled that limited role, there is simply no other actually-decided issues for this Court to review. The *Application* should be denied.

### STANDARD OF REVIEW

This Court has discretion whether to grant leave on this *Application* or take other action on the same. MCR 7.303(B)(1); MCR 7.305(H)(1). Questions of law are reviewed de novo. *Cardinal Mooney High School v Michigan High School Athletic Ass’n*, 437 Mich 75, 80; 467 NW2d 21 (1991). FOIA causes an unusual twist for typical case procedures. As the defendant and public body, the University solely bears the burden of proving that the refusal/denial was properly justified under FOIA. MCL 15.240(4); *Federated Publications, Inc v City of Lansing*, 467 Mich 98, 109; 649 NW2d 383 (2002). A requester need not prove anything. If a public body fails to meet its burden, the Court must order disclosure. *Hopkins v Duncan Twp*, 294 Mich App 401, 409; 812 NW2d 27 (2011).

Here, the University brought its motion solely pursuant to MCR 2.116(C)(8). A motion brought under MCR 2.116(C)(8) tests the legal, *not factual*, sufficiency of plaintiff’s claim. MCR 2.116(C)(8); *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). In reviewing the motion, the court accepts as true all well-pleaded allegations and construes them in a light most favorable to the nonmoving party. *Teel v Meredith*, 284 Mich App 660, 662; 774 NW2d 527 (2009). Additionally, this Court also accepts as true all reasonable inferences and conclusions that may be drawn from the factual allegations. *Averill v Dauterman*, 284 Mich App 18, 21; 772 NW2d 797 (2009). The (C)(8) motion may

only be granted if no factual development could possibly justify recovery. *Beaudrie v Henderson*, 465 Mich 124, 129-130; 631 NW2d 308 (2001).

## ARGUMENT

### I. A “public record” is defined by a legislatively-provided glossary.

As noted above, this case is a simple statutory interpretation question. A “public record” is a defined term. “Where a statute supplies its own glossary, courts may not import any other interpretation but must apply the meaning of the terms as expressly defined.” *People v Schultz*, 246 Mich App 695, 703; 635 NW2d 491 (2001); see also *McAuley v General Motors Corp*, 457 Mich 513, 518; 578 NW2d 282 (1998) (citing MCL 8.3a). A “public record” is defined as “a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created.” MCL 15.232(e). A “writing,” in turn, broadly encompasses “handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content.” MCL 15.232(h).

Here, the University argues that the Bentley Library is merely in possession of the Tanton Papers and thusly are not public records. This assertion is contrary to both fact and law. Possession of the Tanton Papers for an official function of collecting, preserving, and making available the Library’s materials renders the documents within the definition and scope of “public records” under FOIA. MCL 15.232(e). Moreover, the University’s own database confirms that the University, and not Dr. Tanton, has ownership over the entire Tanton Papers. **Ver Compl, ¶19** (“Donor(s) have transferred

any applicable copyright to the Regents of the University of Michigan...”). Under either scenario, this makes the documents “public records” pursuant to MCL 15.232(e). And the University fails to identify any “private donor agreement” exception to mandatory disclosure under FOIA. See e.g. MCL 15.243(1).

This Court’s precedent from *Amberg* confirms the proper outcome. In *Amberg*, the city’s police department came into possession of but did not use video surveillance recordings created by third parties as part of a criminal prosecution—an official function. The city claimed the recordings were not public records, despite being a “writing” in possession of and retained by the city, because they were not used for particular official activities. This Court rejected that conclusion. Instead, it explained “what ultimately determines whether records in the possession of a public body are public records within the meaning of FOIA is whether the public body prepared, owned, used, possessed, or retained them in the performance of an official function.” *Amberg, supra*, at 32. By further explanation, this Court explained that even though the records were obtained after issuance of charges, obtaining those records were still undertaken while in the performance of an official function and thus were still public records subject to FOIA disclosure.

The same outcome is warranted here. The papers given to the University by Dr. Tanton are writings that are in possession of and retained by the University. These were obtained as a result of the performance of the University’s official function of collecting, preserving, and making available the Library’s materials, **Ver Compl, ¶25**, and therefore are public records. The notation the Tanton Papers have not been utilized in a particular way—like the video records not being used to issue charges—does not alter the status

of such writings from being “public records.” The plain language of MCL 15.232(e) and *Amberg* precludes the University’s argument in full.

**A. Public policy arguments belong in the Capitol, not the Hall of Justice.**

In a slight of hand to distract from this simple statutory interpretation question, the University argues a slew of reasons why it is a good public policy proposal to keep donated papers private pursuant to a yet-to-be-disclosed donor agreement. However, the University’s arguments “should be raised to their state representative or senator for debate within the halls of our Legislature, not to the Judiciary.” *Curry v Meijer, Inc*, 286 Mich App 586, 587-588; 780 NW2d 603 (2009). “Our role as members of the judiciary is not... to engage in judicial legislation, but is rather to determine the way that was in fact chosen by the Legislature.” *Tyler v Livonia Pub Schs*, 459 Mich 382, 392 fn10; 590 NW2d 560 (1999). “It is the Legislature, not we, who are the people’s representatives and authorized to decide public policy matters such as this.” *Id.* To comply with its will, when constitutionally expressed in the statutes, is our duty.” *Id.*

The University also sounds policy-based alarm bells about future donors not providing their papers to public libraries via secrecy agreements as a result of the Court of Appeals’ decision. This is not true. It is the Legislature who made this decision by not providing an exception. However, the University is presuming that the Legislature actually supports such document secrecy and private donor agreements. FOIA law presumes the opposite. When the Legislature wants to allow a public body to withhold public records, it knows how to create and has created exemptions via Section 13 of the Act. “[E]ach FOIA exemption, by its plain language, advances a separate legislative policy choice.” *Mich Federation of Teachers & Sch Related Personnel v Univ of Mich*, 481 Mich 657, 680 fn63;

753 NW2d 28 (2008). Courts do not create new exemptions and the ones that have been created by the Legislature are “narrowly construed” with “the burden of proving its applicability on the public body asserting it.” *Detroit Free Press, Inc v City of Southfield*, 269 Mich App 275, 281; 713 NW2d 28 (2005). Seemingly here, no exemption was provided by the Legislature.<sup>4</sup> There certainly is no donor gift exemption in today’s current version of FOIA (see MCL 15.243), and the courts have given Dr. Tanton clear notice that contracting with a public entity makes the transaction subject to public scrutiny. *Oakland Press v Pontiac Stadium Building Auth’y*, 173 Mich App 41, 45; 433 NW2d 317 (1988).

The University’s proper remedy here is with the Legislature and for that policy-making branch to decide whether (and to the scope of which) such agreements are in the best interests of the citizenry. Until then, this Court cannot assume the Legislature would do so. E.g. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999) (the plain words of the statute are the best indicators of legislative intent). Additionally, the judiciary is not permitted to pass on the wisdom or fairness of a legislative enactment or, in essence, to enact correcting legislation to rectify a perceived inequity. *Heinz v Chicago Road Inv Co*, 216 Mich App 289, 308-309; 549 NW2d 47 (1996) (NEFF, J, concurring in part and dissenting in part). If the University wants a new exemption, it must petition the Legislature, not this Court.

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<sup>4</sup> Notwithstanding, the Court of Claims noted in its trial level decision that it “need not decide defendant’s conclusory assertion that the records meet the privacy exemption in MCL 15.243(1)(a)” when concluding the Tanton Papers are not public records. On remand, the University can attempt to raise such an unasserted exception for the first time before the Court of Claims.

**B. Reviewing Ahmad’s purpose is out of bounds.**

To get around the clear outcome by using the regular tools of statutory interpretation, the University also asks this Court to question the purpose why Ahmad seeks these records and to question whether he is truly seeking to understand “anything *the University* is doing.” This argument is a non-starter. A public body “should not consider the requester’s identity *or evaluate the purpose for which the information will be used.*” *State Employees Ass’n v Mich Dep’t of Mgt & Budget*, 428 Mich 104, 121; 404 NW2d 606 (1987) (emphasis added). Moreover, the FOIA statute “does not require the requester to reveal why it needs or wants the information.” *Id.* A public body, when responding to a FOIA request, may not refer to the requester’s proposed use of the sought materials when determining whether to produce public records or not. Initial as well as future uses of information requested under FOIA are irrelevant in determining whether the information falls within exemption, as is the identity of the person seeking the information. *Taylor v Lansing Bd of Water & Light*, 272 Mich App 200, 205; 725 NW2d 84 (2006). Instead, a court that determines a public record is not exempt from disclosure shall order the public body to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record. MCL 15.240(4).

**II. The University cannot contract their way out of FOIA.**

Ahmad has pled that the Tanton Papers are public records. **Ver Compl, ¶11**. He also pled the alleged charitable gift agreement between Dr. Tanton and the University has not been publicly disclosed and is void and unenforceable. That issue has never been tested in or reviewed by the trial court. The University has not yet produced the so-called donor agreement and Ahmad has never had the opportunity to challenge whether the secrecy provisions are valid, i.e. not contrary to public policy. See *Morris & Doherty, PC*

*v Lockwood*, 259 Mich App 38, 54; 672 NW2d 884 (2003). Prior binding precedent teaches that public bodies cannot use alternative arrangements or hide-the-ball techniques to turn public records into nonpublic records. See *MacKenzie v Wales Twp*, 247 Mich App 124, 129; 635 NW 2d 335 (2001) (public bodies “may not avoid their obligations under the FOIA by contracting for a clerical service that allows them to more efficiently perform an official function”); *Kestenbaum v MSU*, 414 Mich 510, 539; 327 NW2d 783 (1982) (“a public body may not thwart disclosure under the FOIA by the simple expedient of sending sensitive documents home with its employees”).

But all of this posturing is improper at the case’s current status at the pre-answer stage. At this procedural posture (e.g. essentially no lower court record), allowing public bodies, as a matter of law, to self-contract out of the Legislature’s express requirement disclosure (and to do so without proof of the actual agreement) is wholly inappropriate.

The same also true by the University claiming the ability to contract out of legislative prerogatives and claiming denial of such violates the University’s “core constitutional right of autonomy.” Again, the alleged donor agreement between the University and Dr. Tanton has never been provided to this Court or the lower courts for review. The appropriate time to answer these questions is after discovery and the appropriate place is the Court of Claims in the first instance.

### **CONCLUSION**

The Supreme Court of Michigan is a court of review. *Reetz v Rigg*, 367 Mich 35, 41; 116 NW2d 323 (1962). This case comes to this Court before any answer has been filed, affirmative defenses raised and tested, the donor agreement disclosed and placed in the court record, and before the substantive issues have been raised, framed, and decided by the court of first instance—the Court of Claims. There is little to review. The

University has tried to argue various premature reasons, based on unsupported assumptions and suppositions, why this case should be dismissed solely on the pleadings. However, such arguments have been presented at the wrong time and before the wrong court. This case needs to be properly presented the trial court, developed on a full and proper record, and allow to raise any issues for resolution first before the trial court.

A challenge under MCR 2.116(C)(8) merely questions whether Ahmad had pled a possible claim. This Court has recently warned about the distinction between MCR 2.116(C)(8) and (C)(10) and the University has failed to heed that warning. *El-Khalil v Oakwood Healthcare Inc*, \_\_ Mich \_\_; \_\_ NW2d \_\_; 2019 WL 3023561 (2019). When considering such a motion, a trial court must accept all factual allegations as true, deciding the motion on the pleadings alone. *Id.* That motion can only be granted when a claim so clearly unenforceable that no factual development could possibly justify recovery. *Id.* That simply does not exist here at the current posture of the case and the allegations pled by Ahmad; the University is reaching far beyond the pleadings and the limited question presented by a motion under MCR 2.116(C)(8). The University's *Application* should be denied.

#### **RELIEF REQUESTED**

WHEREFORE, this Court is requested to deny the *Application* and remand this case back to the Court of Claims for normal case disposition and decision.

Date: September 18, 2019

RESPECTFULLY SUBMITTED:

*Philip L Ellison*

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**STATE OF MICHIGAN  
IN THE COURT OF CLAIMS**

HASSAN M. AHMAD, ESQ.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No:
	)	
THE UNIVERSITY OF MICHIGAN,	)	
	)	
Defendant	)	

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**VERIFIED COMPLAINT**

NOW COMES Plaintiff, Hassan M. Ahmad, Esq., *pro se*, and brings this action against Defendant, the University of Michigan, a public body, to compel disclosure of certain records are herein defined. In support of this action, Plaintiff states as follows:

RECITALS

1. This is an action brought under the Michigan Freedom of Information Act (FOIA), MCL §15.231 *et seq.*, to compel disclosure of certain records currently in the possession of Defendant.
2. The records sought are “public records” within the meaning of MCL §15.232(e).
3. There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.

### PARTIES, VENUE, JURISDICTION

4. Plaintiff is an attorney engaged in the full-time practice of law, and is a member in good standing of the bars of Maryland and Virginia. Plaintiff focuses the bulk of his practice on matters of US immigration and naturalization.
5. Defendant University of Michigan is a public body within the meaning of MCL §15.232(d).
6. Venue is proper in this jurisdiction pursuant to MCL §15.240(1)(b).
7. The Court of Claims has original, exclusive jurisdiction over this claim under MCL §600.6419(1)(a).

### FACTS

8. On December 15, 2016 Plaintiff properly filed a FOIA request with Defendant University of Michigan (“the University”) seeking “all documents donated by Dr. John Tanton, Donor #7087, located in Boxes 15 – 25, and any others marked 'closed' at the Bentley Historical Archive (BHA) [sic] at the University of Michigan.” (hereinafter, “the Sealed Tanton Papers”) *See Exhibit 1 (Original FOIA request)*
9. Defendants acknowledged receipt of Plaintiff's FOIA request and assigned it reference number AHM 0633-16.
10. Defendant requested additional time to respond to the FOIA request on December 22, 2017. *See Exhibit 2 (Email Requesting Additional Time)*
11. Plaintiff was aware that his request sought records marked “closed for 25 years from the date of accession, or until April 6, 2035,” but had submitted in the FOIA that the records still qualified as “public records” within the meaning of the Michigan FOIA, that there was no qualifying exemption, and that strong public interest trumped any conceivable privacy interest.
12. Specifically, the documents sought are the writings, correspondence, and research of Dr. John Tanton, the founder of the Federation for American Immigration Reform (FAIR), and a figure

widely regarded as the grandfather of the anti-immigrant movements. The contents of the Tanton Papers are referenced in detail on Defendant's public website. See <http://quod.lib.umich.edu/b/bhlead/umich-bhl-861056> (last accessed June 3, 2017).

13. For decades, FAIR and its sister organizations have played a major role in affecting and shaping US immigration policy, and its personnel have obtained high-ranking and influential positions within the US government.
14. Dr. John Tanton is a conservationist who saw immigration as an environmental threat, and later embraced much harsher positions calling for sharp restrictions on immigration.
15. In 1993, Dr. Tanton stated his preference for the United States to have a "European-American majority, and a clear one at that."
16. The organizations founded and nurtured by Dr. Tanton currently inform the White House and US immigration policy. For example, Section 9(b) of Executive Order 13768 signed by President Trump in January 2017 mandated a weekly report from US Immigration & Customs Enforcement (ICE) listing jails that allegedly failed to honor detainers (requests by ICE to hold over detainees for up to 48 hours until they could be picked up to begin the deportation process.) But at least as early as July of 2015, the Center for Immigration Studies (a thinktank that began as an offshoot of FAIR, and also itself nurtured by Tanton) had urged Congress to mandate local cooperation with ICE detainers, and urging publication of the exact same type of "declined detainer outcome report" later seen in the Executive Order. See Center for Immigration Studies, *Rejecting Detainers, Endangering Communities* (available at [http://cis.org/sites/cis.org/files/vaughan-detainers\\_0.pdf](http://cis.org/sites/cis.org/files/vaughan-detainers_0.pdf) (last accessed June 3, 2017)).
17. Dr. Tanton still sits on the National Board of Advisors of FAIR, even after serving on the Board of Directors of FAIR for 32 years, only stepping down a few days after the *New York Times* published a piece critical of Tanton. See <http://www.fairus.org/about/board-of-directors> (last

accessed June 3, 2017.)

18. Defendant's Bentley Historical Library specifically asked for Dr. Tanton's papers as early as 1989, and on their website list the entirety of the "John Tanton Collection" detailing 25 boxes worth of documents, identifying them by categories such as "Federation for American Immigration Reform," "Immigration Reform Law Institute," "Center for Immigration Studies," and the like. *See Exhibit 3 (BHL Letter from Nov 1989)*
19. On the BHL website detailing access to the Tanton papers, Defendant notes "Donor(s) have transferred any applicable copyright to the Regents of the University of Michigan but the collection may contain third-party materials for which copyright was not transferred. Patrons are responsible for determining the appropriate use or reuse of materials."
20. To the extent that any of the records requested herein may contain non-transferred copyright, Plaintiff's intended use of the Sealed Tanton Papers is non-commercial, in the public interest, and falling squarely within the commentary, criticism, scholarship, and research exceptions detailed in 17 U.S.C. §107.
21. In an interview with the *New York Times* in 2011, Dr. Tanton stated that he donated his papers to Defendant University of Michigan "to show that he and colleagues 'are not the unsavory types sometimes alleged.'" Linda Chavez, former aide to President Reagan, called him "the most influential unknown man in America." *See Exhibit 4 (The Anti-Immigrant Crusader, NY Times, April 17, 2011)*
22. In December 2016, current FAIR President Dan Stein said, "FAIR began working with [Counselor to the President] Kellyanne Conway as far back as 1996, and we have used her for polling virtually every year since then. We take it as a certain amount of personal pride, is that when she became the campaign manager for Donald Trump...she was possessed of intimate professional knowledge of the immigration issue as it related to the voter concerns. And we saw

that influence helping to shape Donald Trump's positions and statements once she came on board.”

23. Kansas Secretary of State Kris Kobach has a long and established career working to restrict immigration. Mr. Kobach was one of the architects of the National Security Entry-Exit Registration System (which required certain nonimmigrant males from majority Muslim countries to undergo special registration), wrote Arizona's law, S.B. 1070, which was largely struck down by the US Supreme Court in *Arizona v. United States*, 132 S. Ct. 2492, 567 US \_\_\_\_, (2012), and more recently was photographed advising then President-Elect Trump on a strategic immigration plan for the first 365 days of the new administration. Mr. Kobach maintains ties to FAIR, serving of counsel to its legal wing, the Immigration Reform Law Institute (IRLI.) The Sealed Tanton Papers include a volume labeled “IRLI.”
24. On May 2, 2017, former FAIR Executive Director Julie Kirchner was named ombudsman of the US Citizenship & Immigration Services. See *DHS Announces New CIS Ombudsman Julie Kirchner*, available at <https://www.dhs.gov/news/2017/05/02/dhs-announces-new-cis-ombudsman-julie-kirchner> (last accessed June 3, 2017).
25. The Tanton papers – including the Sealed Tanton Papers at issue herein – were retained by Defendant in performance of an official function from the time they were created, to-wit: preserving the history of the State of Michigan.
26. As Dr. Tanton's writings form, upon information and belief, the conceptual foundation and strategic plans of the organizations currently informing US immigration policy affecting millions of people in the US and around the world, they are decidedly within the public interest. Moreover, the intensity of the public interest outweighs any conceivable privacy interest in Dr. Tanton or any third party.
- ~~27. Disclosure of records such as the Sealed Tanton Papers will not chill future donation of~~

historical records, as not all such records grow in importance and influence so as to lose their privacy interest to the public.

28. Moreover, there is no law or procedure stopping such potential donors from donating key historical documents to established non-public bodies. For example, another co-founder of FAIR, Dr. Otis Graham, donated his papers to The George Washington University in Washington, D.C., an established private institution.
29. On January 5, 2017 Patricia Sellinger, Defendant's chief FOIA officer, called Plaintiff to inquire whether the scope of the FOIA request might be narrowed in any way, claiming it was "voluminous."
30. During that conversation, Plaintiff specifically asked Ms. Sellinger whether the University would simply deny the FOIA request, given that they were marked closed until April 2035. Ms. Sellinger responded, "We would not be having this conversation if we weren't going to process it."
31. Plaintiff relied in good faith on Defendant's representation that the records would be produced.
32. On the same day, Plaintiff complied with the request in good faith and narrowed the scope of the request by excluding some of the named records as listed on the Bentley Historical Library (BHL) website. **See Exhibit 5 (Email with attached spreadsheet of narrowed FOIA request)**
33. The University treated the narrowed request as an amended FOIA request and, after asking for additional time, responded with a cost estimate on January 27, 2017.
34. Plaintiff obtained the required deposit of \$6,417 and sent the funds to the University, which were received and cashed on April 25, 2017. **See Exhibit 6 (Jan 27 response, check, copy of cancelled check)**
35. On May 8, 2017, the University denied the FOIA request, finding the requested records not to be "public records" within the meaning of the Michigan FOIA because they were marked

closed, and thus not utilized, possessed, or retained in the performance of any official University function. In its denial, the University claimed that this determination was made *subsequent* to receiving the fee deposit. *See Exhibit 7 (FOIA Denial)*

36. On May 15, 2017 Plaintiff filed an appeal with the President of the University of Michigan, pursuant to MCL §15.240(1)(a) indicating that the instant action would be filed after 20 business days or the President's decision upholding the denial of the FOIA request, whichever was sooner. *See Exhibit 8 (Appeal of FOIA Denial)*
37. On May 30, 2017 the President of the University of Michigan upheld the denial of the FOIA for the reasons stated in the denial of May 8. *See Exhibit 9 (Denial of Appeal)*
38. Despite Dr. Tanton's own statements regarding his intent in donating his papers, and the fact that it was Defendant that began requesting Dr. Tanton's papers as far back as 1989, counsel for the President stated that Defendant did not have the right to disseminate the Sealed Tanton Papers due to a "valid charitable gift agreement."
39. Defendant's actions unlawfully and unilaterally shield public records from the Michigan FOIA by declaring donated papers sealed pursuant to an unknown, undisclosed "charitable gift agreement."
40. No such charitable gift agreement appears on Defendant's Bentley Historical Library website.
41. There is no provision in the Michigan FOIA, or elsewhere, that allows a public body to unilaterally shield records due to a private arrangement.
42. Whether a private arrangement existed at any point during the years Dr. Tanton continued to donate his papers does not impact that fact that the entirety of the Tanton papers were retained by a public body in furtherance of an official purpose.
43. On May 8, Plaintiff has filed another FOIA with Defendant seeking copies of "all communications between Dr. John Tanton (Donor #7087), the University of Michigan, and/or

any third parties related in any way to the acquisition of the Tanton papers donated to the Bentley Historical Library.” That request was acknowledged by Defendant, assigned reference number AHM 0239-17, and remains pending.

44. The burden of proof for FOIA exemptions is on Defendant University of Michigan, and this Court may view the public record(s) in camera before reaching a decision pursuant to MCL §15.240(4).
45. The actions of Defendant in denying Plaintiff's FOIA request are arbitrary, capricious, not in accordance with Michigan law, and the stated purpose of the Michigan FOIA in MCL §15.231.
46. There is no exemption under MCL §15.243 that would permit Defendant to deny Plaintiff's FOIA request, and Defendant cannot create a new one.
47. Holding a charitable gift agreement as a shield against FOIA does not mean the records cease to become “public records” within the meaning of the Michigan FOIA, but only creates an exemption that does not exist as a matter of law.

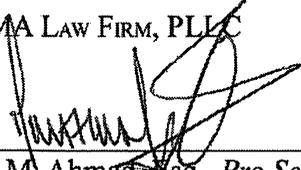
WHEREFORE, the above grounds considered, Plaintiff prays this Honorable Court:

1. To find that the entirety of the documents responsive to FOIA request labeled AHM 0633-16 (the Sealed Tanton Papers) by Defendant to be “public records” within the meaning of the Michigan FOIA, MCL §15.231 *et seq*, and
2. To find that no exemption exists under MCL §15.243 permitting Defendant to Plaintiff's request, and that the strong public interest outweighs any privacy interest or other applicable exemption under the Michigan FOIA, and
3. To issue an Order compelling complete production of the FOIA response no later than 30 days from the date of this Order, and

- 4. To find that Defendant's denial of Plaintiff's FOIA request was arbitrary and capricious, and ordering payment of all penalties and costs available under MCL §15.240(7) or other provision of law, and
- 5. To award any such other and further relief as this Court may deem just or proper.

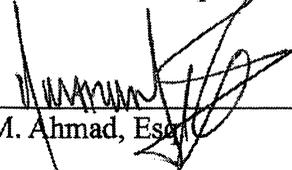
Respectfully Submitted,

THE HMA LAW FIRM, PLLC



Hassan M. Ahmad, Esq., *Pro Se*  
 7926 Jones Branch Dr. Suite 600  
 McLean, VA 22102  
 Tel: 703.964.0245  
 Fax: 703.997.8556  
[hma@hmalegal.com](mailto:hma@hmalegal.com)

Pursuant to MCL §600.6431(1), Plaintiff signs and verifies this Complaint before an officer authorized to administer oaths.

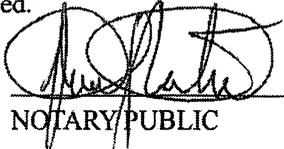
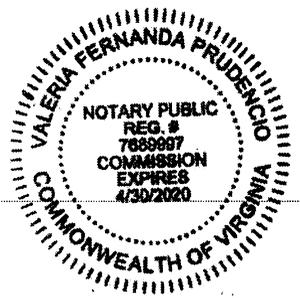


Hassan M. Ahmad, Esq.

COMMONWEALTH OF VIRGINIA            )  
 CITY OF MCLEAN                        )        ss.  
 COUNTY OF FAIRFAX                    )

I HEREBY CERTIFY that on this 5<sup>th</sup> day of June, 2017, before a Notary Public in and for the jurisdiction aforesaid, personally appeared before me, HASSAN M. AHMAD, whose name is subscribed to the foregoing Complaint, who, after being sworn, made oath in due form of law under the penalties of perjury that the matters and facts set forth in the foregoing Agreement are true and correct as therein stated and acknowledged said Agreement to be his voluntary act and deed.

My Commission Expires:  
4/30/2020

  
 NOTARY PUBLIC




# EXHIBIT

# 1



Hassan M. Ahmad  
Sharifa Abbasi  
Humza Kazmi (MD)  
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**Of Counsel**  
Omar Baloch (NC)  
Faisal Gill (CA CO DC NY)

December 14, 2016  
McLean, Virginia, USA

**VIA EMAIL**  
**foia-email@umich.edu.**  
**patsell@umich.edu**

Ms. Patricia Sellinger  
Chief Freedom of Information Officer  
University of Michigan FOIA Office  
2025 Fleming Building  
503 Thompson St  
Ann Arbor, MI 48109  
**foia-email@umich.edu, patsell@umich.edu**

**RE: Michigan Freedom of Information Act Request  
Dr. John Tanton Papers (Donor #7087), Boxes 15 - 25+**

Dear Ms. Sellinger:

Under the Michigan Freedom of Information Act § 15.231 et seq., I am requesting an opportunity to inspect or obtain copies of public records regarding all documents donated by Dr. John Tanton, Donor #7087, located in Boxes 15 – 25, and any others marked “closed” at the Bentley Historical Archive (BHA) at the University of Michigan. These documents qualify as “public records” within the meaning of the Michigan FOIA, §15.232 as they are writings “...in the possession of, or retained by a public body in the performance of an official function, from the time it is created.”

The Michigan Freedom of Information Act requires a response within five business days. If access to the records I am requesting will take longer, please contact me with information about when I might expect copies or the ability to inspect the requested records.

The BHA notes that Boxes 15 – 25 are closed until April 6, 2035. We submit that Dr. John Tanton's papers are in the public interest that outweigh interest in keeping these boxes closed until 2035.

The organizations founded and/or nurtured by Dr. Tanton currently control and/or influence the creation of national US immigration policy. These organizations include FAIR, (the Federation for American Immigration Reform,) its legal arm IRLI (the Immigration Reform Law Institute,) NumbersUSA, CIS (the Center for Immigration Studies,) and U.S. English. In addition to being its founder, Dr. Tanton's name remains on the “Board of Advisors” for FAIR to this day. In a 2011 interview with the *New York Times*, Dr. Tanton himself explained that he donated his papers to the University of Michigan “to show that he *and colleagues* 'are not the unsavory types sometimes alleged.’” (Emphasis added.)

More specifically, the public interest inheres in the connection between Dr. Tanton, these organizations and one such colleague, Mr. Kris Kobach, currently Kansas Secretary of State. It has been widely reported that Mr. Kobach has been advising the Trump administration on immigration policy, as he has done for previous administration. Kobach remains of counsel to IRLI, which bills itself on its own website as "a public-interest legal education and advocacy law firm, and supporting organization of the Federation for American Immigration Reform (FAIR)." Kobach's name has become synonymous with legislation and lawsuits designed to restrict immigration.

Kobach was a chief architect of NSEERS, a registry for certain nonimmigrants from majority-Muslim countries in the wake of 9/11. This program had far-reaching consequences: 84,000 men registered, 14,000 were placed in removal proceedings, 3,000 were detained, but there were no terrorism-related convictions. Kobach advised Attorney General Ashcroft during the "liberal purge" of the Board of Immigration Appeals, when the entire pro-immigrant wing of the nation's highest immigration court was pushed out. He sued multiple times in jurisdictions across the country to try to deny in-state tuition for undocumented immigrants. He defended ordinances sanctioning employment of and renting to undocumented immigrants. He designed Arizona's infamous "show me your papers" law, S.B. 1070, requiring police to attempt to ascertain immigration status and criminalizing the act of not carrying identification. According to his own "strategic plan" leaked by the Topeka Capital-Journal on November 21 shared with President-Elect Trump, Kobach wants to bring back an enhanced or updated version of the failed NSEERS program, reinstitute other failed national programs like 287(g), cut off all Syrian refugee resettlement, and facilitate racial profiling by designating anyone merely arrested for a crime as a priority for deportation. He adopts President-Elect Trump's "extreme vetting" of nonimmigrants, and takes it to mean that people from certain countries will be questioned about such things as support for "Shariah law" and the Constitution.

Moreover, the published titles and content of these papers on the BHA website includes the formation of FAIR, its sister organizations, IRLI, comprehensive meeting minutes, and connection with groups like the Pioneer Fund (which funded eugenics research on the inherent genetic superiority of members of the white race). Upon information and belief, these public writings constitute the architectural foundation of policy that, through Kobach, currently informs the new White House.

Kobach's influence on immigration affects millions of people in the United States, and the standing of the United States globally through its immigration policy. A more public interest is difficult to imagine. As such, it is respectfully submitted that the public interest in the contents of these papers outweighs any interest in keeping the John Tanton papers in Boxes 15 - 25 sealed until 2035. There is no applicable exemption from disclosure under the Michigan FOIA (§15.243) that would compel denial of this request.

If you deny any or all of this request, pursuant to §15.240(4) of the FOIA (which specifically places the burden of proof on the public body to show that the public record is exempt from disclosure,) please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law. The records requested are not sought for commercial use, and the requesters plan to disseminate the information disclosed as a result of this FOIA request to the public. If there are any fees or deposits required for searching or copying these records, please inform me if the cost will exceed \$300.

If you have any questions or need further information, please do not hesitate to contact our office.  
Thank you in advance for your assistance in this matter.

Respectfully Submitted,



---

Hassan Ahmad, Esq.  
7926 Jones Branch Dr., Suite 600  
McLean, VA 22102  
Phone: (703) 964-0245  
Fax: (703) 997-8556  
hma@hmalegal.com



# EXHIBIT 2



Hassan Ahmad <hma@hmalegal.com>

## FOIA AHM 0633-16 Extension

Patricia Sellinger <patzell@umich.edu>  
To: Hassan Ahmad <hma@hmalegal.com>

Thu, Dec 22, 2016 at 12:06 PM

I am writing in regard to your Freedom of Information Act request below dated December 14, 2016, which was received on December 15, 2016.

Due to the large number of requests currently being processed by this office, it will not be possible to respond to your request within the five-day period accorded by the Michigan Freedom of Information Act. However, under Section 5 (2) (d) of the Act, the University is permitted to extend the deadline for not more than 10 business days.

The University will respond to your request on or before January 13, 2017.

Thank you,

Patricia Sellinger

Patricia J. Sellinger  
Chief Freedom of Information Officer  
University of Michigan  
2025 Fleming Administration Building  
Ann Arbor, Michigan 48109-1340  
Phone 734-763-5082  
Fax 734-763-1399  
patzell@umich.edu

On Wed, Dec 14, 2016 at 11:53 AM, Hassan Ahmad <hma@hmalegal.com> wrote:  
Dear Ms. Sellinger:

Attached please find a FOIA request for the John Tanton Papers located in Boxed 15 - 25 in the Bentley Historical Archive at the University of Michigan.

Hassan M. Ahmad, Esq. | THE HMA LAW FIRM  
7926 Jones Branch Dr Suite 600 McLean VA 22102  
T 703.964.0245 | F 703.997.8556 | www.hmalegal.com

Connect with us:



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# EXHIBIT

# 3



Bentley Historical Library • The University of Michigan  
1150 Beal Avenue, Ann Arbor, Michigan 48109-2113, Telephone: (313) 764-3482

Francis X. Blouin, Jr., *Director*  
Kenneth P. Scheffel, *Field Representative*

November 28, 1989

Chevron Conservation Awards Committee

Dear Sirs:

Because of Dr. John Tanton's distinguished career as a conservationist, our library asked him for his papers. The papers reflect his important role in virtually every major contemporary conservation effort in our state and nation. Fortunately, he saved materials on his endeavors. They constitute a valuable historical source which we are delighted to have preserved here.

Sincerely,

*Kenneth P. Scheffel*  
Kenneth P. Scheffel

KPS:kmc

MICHIGAN HISTORICAL COLLECTIONS  
BENTLEY HISTORICAL LIBRARY  
UNIVERSITY OF MICHIGAN

**JOHN TANTON (1934- )**

PAPERS, 1960-1994  
15 linear feet

**ACQUISITION:** The collection was the gift of Dr. Tanton (Donor No. 7087) in 1984. Periodic additions are expected.

**ACCESS:** The collection is open to research.

**PHOTOGRAPHS:** Photographs and slides located in box 8.

**COPYRIGHT:** Copyright has been transferred to the University of Michigan.

**PROCESSED BY:** Chris Leonard, January 1985  
Katherine C. Owen, November 1989.  
Bentley Historical Library staff, 1990-200-.

**Biography**

Dr. John Tanton is an environmental, population control, and immigration reform advocate from Petoskey, Michigan. He was born in Detroit in 1934 and, eleven years later, his family moved to a farm in Huron County. He attended Michigan State College and received his bachelor's degree in 1956. He received his M.D. in 1960 and his M.S. in ophthalmology in 1964, both from the University of Michigan.

Tanton has held leadership positions with many environmental groups and agencies. These include the Sierra Club, Michigan Natural Areas Council, Wilderness and Natural Areas Advisory Board, Pictured Rocks National Lakeshore Advisory Commission, and the Environmental Fund. He has also brought independent legal actions to prevent development of wilderness areas.

Tanton has also been active in population control. He was national president of Zero Population Growth, chairman of the Sierra Club's National Population Committee, and founder of Northern Michigan Planned Parenthood Association.

In 1979, he created the Federation for American Immigration Reform (FAIR), of which he was chairman. FAIR seeks to end illegal immigration and to set a stable ceiling on legal immigration. In 1983, Tanton and Senator S. I. Hayakawa established an organization called U.S. English. It was created to combat bilingualism in the United States.

**Scope and Content Note**

The papers of Dr. John Tanton consist of materials documenting his work as a political and environmental activist from 1960 through the 1990s. The collection is divided into the following series: Personal/Biographical; Population and Immigration Organizations and Issues; Conservation Organizations and Issues; Topical Files and Activities; and Correspondence. The collection also includes papers of John B. Trevor and John B. Trevor, Jr. given to Tanton.

**Personal/Biographical** contains general background material on Tanton and the various organizations in which he has been active. Included are an oral history transcript, newspaper articles, brochures, and Tanton's vita.

**Population and Immigration Organizations and Issues** is the series relating to Tanton's involvement with Northern Michigan Planned Parenthood, with Zero Population Growth, and with the Federation for American Immigration Reform (FAIR).

The **Conservation Organizations and Issues** series brings together various conservation and environmental groups and causes. These include the Pictured Rocks National Lakeshore Advisory Commission, files relating to the preservation of Sturgeon Bay Dunes and Sleeping Bear Dunes, Tanton's association with the Michigan Natural Areas Council, the Wilderness and Natural Areas Advisory Board, and the Mackinac Chapter of the Sierra Club. In addition, there are files pertaining to the Birchwood Suit and Monroe Creek Suit documenting Tanton's involvement with environmentally-related civil suits. Legal documents comprise the bulk of these last files, though there is also included here Tanton's correspondence with attorneys, other environmentalists, and the general public.

The **Topical Files and Activities** series relates primarily to conservation organizations and issues in the period 1956-1983. Included is correspondence, published materials, and other documentation.

The **Correspondence** series dates from 1980 to 1994 and pertains to all of Tanton's organizational involvement.

**Box No. Description**

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**Personal/Biographical**

**Box 1**

Biographical/memoir file (4 folders)  
Personal (includes clippings and vita)  
Miscellaneous letters  
Oral history interview of John Tanton conducted by Otis Graham  
Miscellaneous articles; letters to the editor  
Eulogy written for Wesley Maurer, Sr., 1995  
Mitchell Prize essay: "International Migration as an Obstacle to  
Achieving World Stability" 1975  
Chevron Conservation Award, 1990

**Population and Immigration Organizations and Issues**

Northern Michigan Planned Parenthood, 1965-1971  
Abortion and population control  
Abortion articles  
Adoption  
Board of Directors  
Bylaws  
Clippings  
Congress  
Correspondence (5 folders)  
Department of Natural Resources  
Economics  
Executive Director  
Family planning (Family Enrichment Bureau)  
Health Department  
Marriage enrichment course  
Michigan Planned Parenthood Affiliates' Committee  
Michigan Population Commission  
Michigan Population Council  
Oakley, Deborah (University of Michigan School of Public Health)  
Office of Economic Opportunity (OEO)  
Planned Parenthood-World Population (national)  
Planning and background  
Pledge of social responsibility  
Public affairs - region  
Sterilization  
Voluntary sterilization

**Zero Population Growth, 1974-1979**

**Box 2**

Agenda-Executive Committee  
Board communications  
Budget  
By-laws  
Committees  
Correspondence (3 folders)  
Crime  
Direct Mail  
Dues increase

**Box No. Description**

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**Population and Immigration Organizations and Issues (cont.)**

**Zero Population Growth, 1974-1979 (cont.)**

**Box 2 (cont.)**

Economics  
Equilibrium fund  
Executive Director  
Financial and legal  
Financial statements  
Goals statement  
Grants, in and out  
History  
Immigration project proposal  
International  
Legal opinions/documents  
Members survey  
Michigan  
Minutes and agendas  
Minutes, Board  
Minutes, Executive Committee  
Only child

**Box 3**

People and topics to bring up with them  
Planning  
Population education  
Population policy  
Prophylactics  
Reorganization  
Resolutions and policy statements  
Resources Committee  
Sex selection  
Slogans  
State level projects  
Tax law changes  
Teen pregnancy  
Unemployment/growth  
Welfare  
Writings  
Federation for American Immigration Reform (FAIR)  
Topical files, ca. 1973-1981 (unprocessed)

**Conservation Organizations and Issues**

**Pictured Rocks National Lakeshore Advisory Commission, 1967-1980**

Beaver Basin  
Biographies, Commission members  
Correspondence, 1967-1976 (9 folders)

**Box 4**

Correspondence, 1977-1980 (4 folders)  
Correspondence, Tanton, 1974-1975  
Grand Marais Harbor

**Box No. Description**

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**Conservation Organizations and Issues (cont.)**

Pictured Rocks National Lakeshore Advisory Commission, 1967-1980  
(cont.)

**Box 4 (cont.)**

Miner's Basin  
Minutes, 1968-1979  
Printed  
"An Economic Study," 1963  
"A Proposal," 1966  
"Master Plan," 1968  
"Development Concept," 1970  
"Review of Alternatives," 1980  
"Assessment of Alternatives," 1980  
"Draft General Management Plan," 1981  
Miscellaneous (includes maps and brochures)  
Publicity  
Reports and Legislation

Sturgeon Bay Dunes  
Topical Files, ca. 1976-1983 (unprocessed)

Sleeping Bear Dunes

**Box 5**

Topical Files, ca. 1972-1983 (unprocessed)

Michigan Natural Areas Council, 1960-1973  
Constitutions and reports  
Correspondence  
Membership lists  
Minutes, 1960-1963

Wilderness and Natural Areas Advisory Board, 1972-1975  
Committee composition  
Correspondence  
Criteria development  
Fairlane  
Minutes  
Natural Areas Law

Sierra Club, 1968-1978  
Mackinac Chapter

**Box 6**

Correspondence  
Newsletters and mailings  
Petoskey Area Group  
Population Committee  
Correspondence, 1968-1977 (7 folders)  
Miscellaneous  
Reports and proposals, 1969-1978 (2 folders)  
World Population Year  
Survival Committee

**Box No. Description**

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**Conservation Organizations and Issues (cont.)**

Monroe Creek Suit, 1971-1975

**Box 6 (cont.)**

Basic documents  
Clippings  
Correspondence  
Deeds  
Expenses  
Fundraising  
Gleason's stream survey

**Box 7**

Legal documents (3 folders)  
Miscellaneous

Birchwood Suit, 1972-1978

Clippings  
Correspondence  
Promotional (mostly brochures and newspaper ads for Birchwood)  
Legal Documents (7 folders and loose materials)

**Box 8**

Thorne Smith  
Topical Files, ca. 1983-1984  
Nature Conservancy  
Topical Files, ca. 1974-1983  
Photographs  
Monroe Creek (photos of the creek and wetlands)  
Wilderness and Natural Areas Advisory Board (group portrait)  
Birchwood Farm Estates (aerial photos of development site)  
Bear River  
Chevron Conservation Award (Dr. and Mrs. Tanton, 1990)  
Land use, Michigan (slides)  
Preserve Projects  
Topical Files, A-H, ca. 1980s

**Box 9**

Topical Files, I-Z, ca. 1980s

**Topical Files and Activities, 1956 - 1983 (mainly re conservation)**

Abitibi Paper Company  
Agricultural Land - Michigan  
Americans United for Separation of Church and State  
Bear River Development Commission, 1966-1973  
Newspaper clippings, 1967-1974  
Bear River Watershed, 1964-1967  
Bottle Bill, 1969-1983  
Common Cause  
Conservation organizations  
Consumers Power Company, 1974-1975  
Craig Lake Reconnaissance Committee, 1968-1969  
Electric power  
Energy crisis, 1973

**Box No. Description**

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**Topical Files and Activities, 1956 - 1983 (mainly re conservation)  
(cont.)**

**Box 10**

Environmental Impact Statements - Michigan  
Environmental Impact Statements - other states  
Environmental Protection Act - Michigan  
Escanaba River, Middle Branch Dam - Cleveland Cliffs Iron Company,  
Tilden Project, 1972  
Fort Wilkins Natural History Association  
Grass concrete  
Harbor Springs, 1970-1971  
Hartwick Pines Natural History Association, 1969-1975  
Financial reports, 1969-1979  
Fund raising  
Legal  
Highway rest areas  
Highways  
Interstate land sales  
Land Sales Act 1972  
Land use planning  
League of Conservation Voters, 1970-1974  
Mackinac Shores Association  
Michigan Basin Geological Society  
Michigan Bell Telephone Company  
Michigan Botanical Club  
Michigan Environmental Protection Fund, 1972-1977  
Michigan Land Use, Governor's Special Commission on, 1971-1972 (2  
folders)  
Michigan Land Use Act, 1972-1979 (3 folders)  
Michigan Natural Resources Defense Committee, 1969  
Michigan United Conservation Clubs (MUCC)  
Michigan United Property Owners Association  
Michigan wilderness areas  
Mineral resources  
Miscellaneous, 1976-1977  
Municipal forests  
Names, addresses - miscellaneous  
National Wildlife Federation  
Natural Resources Commission, Department of Natural Resources -  
candidacy, 1971  
Natural Rivers Act  
The Northwoods Call

**Box 11**

Nuclear reactors  
Oil  
Opal Lake Suit, 1970-1974  
Parker Motor Freight Company, 1973  
Parking garages  
Penn-Dixie Cement Corporation - Petoskey Plant, 1956-1974  
Pesticides

**Box No. Description**

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**Topical Files and Activities, 1956 - 1983 (mainly re conservation)  
(cont.)**

**Box 11 (cont.)**

Petoskey (Michigan)  
Petoskey (Michigan) Public Schools - Land Use Committee, 1972-1975  
Planning and Conservation League  
Planning conservation leagues  
Political campaigns, 1973-1974  
Real estate development, 1971-1973  
Recycling, 1971-1976  
Scenic roads  
Sea Grant Program, University of Michigan  
Sewage disposal, 1969-1976  
Sewage disposal - Harbor Springs Area Sewage Disposal Authority,  
1970-1973  
Shorelands Protection Act  
Snowmobiles, 1970-1973  
Soil conservation - Michigan  
Solid waste disposal  
Tax laws  
Three Lakes Association Suit, 1973  
Transportation  
United States Association For the Club of Rome  
VISTIP (cable television)  
Walloon Lake  
West Michigan Environmental Action Council, 1970-1971  
The Wilderness Society, 1958-1971  
Zoning  
    Airport, Emmet County  
    Bear Creek Township, 1970-1972  
    County level  
    Emmet County, 1971-1981  
    Federal level  
    Sanitary codes  
    State level, 1970-1975

**Correspondence**

**Box 12** June 1980 - June 1983 (35 folders)

**Box 13** July 1983 - June 1985 (24 folders)

**Box 14** July 1985 - August 1991 (22 folders)

**Box 15** September 1991-December 1994 (20 folders)



# EXHIBIT

# 4

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April 17, 2011

# The Anti-Immigration Crusader

By JASON DePARLE

WASHINGTON — Three decades ago, a middle-aged doctor sat outside his northern Michigan home and saw a patch of endangered paradise.

A beekeeper and amateur naturalist of prodigious energy, John Tanton had spent two decades planting trees, cleaning creeks and suing developers, but population growth put ever more pressure on the land. Though fertility rates had fallen, he saw a new threat emerging: soaring rates of immigration.

Time and again, Dr. Tanton urged liberal colleagues in groups like Planned Parenthood and the Sierra Club to seek immigration restraints, only to meet blank looks and awkward silences.

"I finally concluded that if anything was going to happen, I would have to do it myself," he said.

Improbably, he did. From the resort town of Petoskey, Mich., Dr. Tanton helped start all three major national groups fighting to reduce immigration, legal and illegal, and molded one of the most powerful grass-roots forces in politics. The immigration-control movement surged to new influence in last fall's elections and now holds near veto power over efforts to legalize any of the 11 million illegal immigrants in the United States.

One group that Dr. Tanton nurtured, Numbers USA, doomed President George W. Bush's legalization plan four years ago by overwhelming Congress with protest calls. Another, the Federation for American Immigration Reform, or FAIR, helped draft the Arizona law last year to give the police new power to identify and detain illegal immigrants.

A third organization, the Center for Immigration Studies, joined the others in December in defeating the Dream Act, which sought to legalize some people brought to the United States illegally as children.

Rarely has one person done so much to structure a major cause, or done it so far from the public eye. Dr. Tanton has raised millions of dollars, groomed protégés and bequeathed institutions, all while running an ophthalmology practice nearly 800 miles from Capitol Hill.

"He is the most influential unknown man in America," said Linda Chavez, a former aide to President Ronald Reagan who once led a Tanton group that promoted English-only laws.

While Dr. Tanton's influence has been extraordinary, so has his evolution — from apostle of centrist restraint to ally of angry populists and a man who increasingly saw immigration through a racial lens.

Mindful that the early-20th-century fight to reduce immigration had been marred by bigotry, Dr. Tanton initially emphasized FAIR's identity as a "centrist group" and made arguments aimed at liberals and minorities. He allowed few local FAIR chapters, warning that a stray demagogue might "go off half-cocked and spoil the whole effort."

When a member of FAIR wrote that Hispanic immigrants should be shot — because they "multiply like a bunch of rats" — a staff member offered to refund his dues. Early supporters included Senator Eugene McCarthy of Minnesota and Warren E. Buffett.

Now FAIR's signature event is an annual gathering of talk radio hosts, where earnest policy pitches share time with the kind of battle cries Dr. Tanton once feared. This year's event mixed discussion of job losses among minorities with calls to use Tomahawk missiles on Tijuana drug lords, while a doubter of President Obama's birth certificate referred to "the undocumented worker" in the White House. Leading allies include Sheriff Joe Arpaio of Maricopa County, whose sweeps of Latino neighborhoods around Phoenix have prompted a federal investigation.

While the whole movement grew more vehement as illegal immigration increased, Dr. Tanton seemed especially open to provocative allies and ideas. He set off a storm of protests two decades ago with a memorandum filled with dark warnings about the "Latin onslaught." Word soon followed that FAIR was taking money from the Pioneer Fund, a foundation that promoted theories of the genetic superiority of whites.

Dr. Tanton, who remains on the FAIR board, denied charges of racial bias and donated his papers to the University of Michigan to show that he and colleagues "are not the unsavory types sometimes alleged." They include hundreds of private letters, some outlining his interest in genetic differences between the races and concerns about the country's changing ethnic mix.

Reeling from their recent defeats, supporters of immigrant rights are mining those files as part of a fierce — critics say unfair — campaign to label him a racist and discredit his broader cause. Some have gone as far as calling FAIR a "hate group."

But accusations of bigotry could alienate moderates the immigrant rights groups need. Allies of Dr. Tanton say their accusers are discrediting themselves with a guilt-by-association campaign that twists his ideas and projects them onto groups where, they say, his influence long ago waned. Still, few of those allies are willing to defend all the views he expresses in his files.

Dr. Tanton, 77, declined interview requests, citing problems from Parkinson's disease. That leaves his files to speak for themselves. Is he an embodiment of his powerful movement or an embarrassment to it?

## **A Pledge of Centrism**

Petoskey, population 6,000, hugs Lake Michigan in a forested area known for sailboats and summer homes. Dr. Tanton has spent most of his adult life there, chopping wood, keeping bees and growing kale. Even as late as 2000, the surrounding county was 94 percent white.

Regretting what he saw as the limits of his rural education, Dr. Tanton compensated with autodidactic zest. He started a Great Books Club, read up on macroeconomics and polished his foreign language skills by subscribing to a German newspaper. The results included a wide-ranging mind and at times a tone deafness. He is a former farm boy who calls colleagues "chaps."

Dr. Tanton founded local chapters of Planned Parenthood and the Sierra Club and became the national president of Zero Population Growth. Unable to interest colleagues in fighting immigration, he formed FAIR in 1979, pledging in his proposal to make it "centrist/liberal in political orientation." The first director, Roger Conner, had made his mark as a liberal environmental advocate.

Otis L. Graham Jr., a founding board member, wrote, "A leading concern for me is to bring into FAIR strong representation from people in groups of liberal, progressive disposition."

Then, as today, there were serious liberal arguments for lower immigration. FAIR hoped to enlist unions concerned about wage erosion, environmentalists concerned about pollution and sprawl, and blacks concerned about competition for housing, jobs and schools.

A few prominent Democrats lent support, including Senator McCarthy. But most liberal groups saw immigrants, even illegal ones, as minorities to be protected, rather than economic rivals. Unions saw potential members; Democrats saw voters.

"We didn't convince anybody," Mr. Graham said in an interview.

Worried that it was losing the war of ideas, FAIR in 1985 spun off a free-standing research group, the Center for Immigration Studies, intended "to make the restriction of immigration a legitimate position for thinking people," as Dr. Tanton put it.

The next year FAIR faced a defining fight over the first major immigration bill in more than 20 years. It created penalties for employers who hired illegal workers but legalized several million people already here. With FAIR sharply split, Dr. Tanton pushed it to support the compromise, but the penalties proved ineffective and the amnesty was marred by fraud.

No one at FAIR would think of compromising on legalization again.

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## **Challenging Taboos**

FAIR was founded on complaints about the immigrants' numbers, not their culture. But Dr. Tanton feared that they were failing to assimilate. He formed a new group, U.S. English, to oppose bilingual

education and demand that government agencies use English alone. By 1988, Dr. Tanton had a high-profile director in Ms. Chavez and ballot measures pending in three states.

Then *The Arizona Republic* revealed the contents of a memorandum he had sent to friends before a brainstorming session. "Will Latin-American migrants bring with them the tradition of the *mordida* (bribe)?" he asked. "As whites see their power and control over their lives declining, will they simply go quietly into the night? Or will there be an explosion?"

Latino fertility rates caused him special alarm: "those with their pants up are going to get caught by those with their pants down!"

Soon followed the news that FAIR had received grants from the Pioneer Fund, whose most famous grantee was William B. Shockley, the Nobel-winning physicist who argued that for genetic reasons, blacks are intellectually inferior to whites.

Ms. Chavez resigned, Mr. Buffett stopped supporting FAIR, and any hope of significant liberal support vanished.

Some colleagues never forgave him.

"The fear was that one ugly person could tar the larger movement, and sadly, ironically, it turned out that person was John Tanton," said Patrick Burns, who was then FAIR's deputy director.

But if anything, Dr. Tanton grew more emboldened to challenge taboos. He increasingly made his case against immigration in racial terms.

"One of my prime concerns," he wrote to a large donor, "is about the decline of folks who look like you and me." He warned a friend that "for European-American society and culture to persist requires a European-American majority, and a clear one at that."

Dr. Tanton acknowledged the shift from his earlier, colorblind arguments, but the "uncomfortable truth," he wrote, was that those arguments had failed. With a million or more immigrants coming each year — perhaps a third illegally — he warned, "The end may be nearer than we think."

He corresponded with Sam G. Dickson, a Georgia lawyer for the Ku Klux Klan, who sits on the board of *The Barnes Review*, a magazine that, among other things, questions "the so-called Holocaust." Dr. Tanton promoted the work of Jared Taylor, whose magazine, *American Renaissance*, warned: "America is an increasingly dangerous and disagreeable place because of growing numbers of blacks and Hispanics." (To Mr. Taylor, Dr. Tanton wrote, "You are saying a lot of things that need to be said.")

Beyond immigration, he revived an old interest in eugenics, another field trailed by a history of racial and class prejudice.

“Do we leave it to individuals to decide that they are the intelligent ones who should have more kids?” he wrote. “And more troublesome, what about the less intelligent, who logically should have less. Who is going to break the bad news to them?”

Still, few friends confronted him.

“My biggest regret is I looked at what he was doing, rolled my eyes and said, ‘That’s John,’ ” said Mr. Conner, the first FAIR director, who praised Dr. Tanton’s great “decency and his generosity on a personal level” and his selfless devotion to his cause. Those qualities are “so profound that the people around him disregarded things that we should have called him on,” he added.

### **Power in the Ballot**

Dr. Tanton argued that the public was incensed by illegal immigration, but that elites ignored “hoi polloi,” who bore such costs as rising crime and overcrowded schools.

FAIR first glimpsed the power of populist action with the passage of Proposition 187, the 1994 ballot initiative in California barring illegal residents from virtually all social services. But victories came slower on Capitol Hill, where immigrant groups stood with business lobbies eager for foreign labor. The anger that shook California was slow to make the Capitol switchboard buzz.

The man who most changed that was Roy Beck, who spent several years as Washington editor of *The Social Contract*, Dr. Tanton’s journal. Mr. Beck formed Numbers USA in 1997 to help pipe the growing populist anger into Congressional offices. Dr. Tanton helped him raise money and housed the group for four years under his umbrella organization, U.S. Inc.

Mr. Beck mobilized a database of supporters with what was then a novel technology, the Internet fax. Prompted by a well-timed alert, his followers could register outrage with a few mouse clicks — or call. They did, in attention-grabbing numbers.

A folksy entrant to a fiery debate, Mr. Beck appeared to share little with the white nationalist element in Dr. Tanton’s broad circle. He calls himself a racial liberal and argues that lower immigration would raise the wages of native-born blacks. He put a picture of Barbara Jordan, a black civil rights leader and politician he considered an ally, on the Numbers USA Web site.

Yet at *The Social Contract*, he was part of a journal that often criticized immigration on racial grounds, and Dr. Tanton once dubbed Mr. Beck his “heir apparent.”

“He’s just like any friend — there are lots of issues I don’t agree with him on,” Mr. Beck said.

Numbers USA showed its force in 2002 when Republican leaders of the House backed a bill that would have allowed some illegal immigrants to remain in the United States while seeking legal status. Numbers USA set the phones on fire, and a majority of Republicans opposed it.

“I had people come up to me on the floor of the House saying, ‘O.K., O.K., call off the dogs’ — meaning Numbers USA,” said former Representative Tom Tancredo, a Colorado Republican who fought the bill.

The big war broke out in 2007, after Mr. Bush proposed a systemic overhaul including a path to citizenship for most illegal immigrants. Supporters said it would free millions of people from fear and exploitation; opponents argued that it would reward lawbreakers and encourage more illegal immigration.

FAIR rallied talk show hosts. The Center for Immigration Studies churned out studies of the bill’s perceived flaws. Numbers USA jammed the Capitol’s phones.

Their success became the stuff of lore. They “lit up the switchboard for weeks,” said Senator Mitch McConnell of Kentucky, the Republican leader, explaining his decision to oppose the bill. “And to every one of them, I say today: ‘Your voice was heard.’ ”

### **Becoming a Target**

For supporters of granting legal status, the vote was a total rout. “Let’s face it, they kicked our butt,” said Frank Sharry, who led a business-immigrant group for the bill. A new network formed of loosely affiliated liberal groups with a more confrontational bent. It seized on two words: John Tanton.

In December 2007, the Southern Poverty Law Center dubbed FAIR a “hate group.” In Chicago, the Center for New Community tracked “Tanton’s empire of fear and prejudice.”

Mr. Sharry’s new group, America’s Voice, placed newspaper advertisements warning Congress not to meet “with extremist groups like FAIR.” Its online video combines pictures of Dr. Tanton and Mr. Beck with images of Klan members and Nazis.

Mr. Sharry acknowledges that he used to warn colleagues that charges of racism would backfire. But he said the 2007 debate convinced him of his opponents’ ill will. “I’ve gone from saying they’re part of the process to seeing them as extremists who want to expel millions of people,” he said. While they started with a liberal gloss, “their juice became culturally conservative Republicans who don’t like brown people.”

Despite such attacks, the groups remain influential. Georgia legislators passed a bill last week much like the Arizona measure that FAIR helped draft. Its main sponsor, State Representative Matt Ramsey, a Republican, asked FAIR to review an early draft and credited Numbers USA with helping to mobilize local supporters.

“That grass-roots program they have is incredibly effective,” he said.

Dan Stein, the president of FAIR, said opponents were suddenly focusing on Dr. Tanton — now in his 32nd year on the board — to silence a policy debate they had lost.

“Is FAIR responsible for everything he said in his private correspondence? No,” he said. “I love John, but he’s had no significant control over FAIR for years.” Citing antidiscrimination language on FAIR’s Web site, he added, “We’ve always said you should not discriminate on the basis of race.”

Mr. Beck said the charges of bigotry were especially unfair and let a reporter hear a tape of his 1970 wedding ceremony, which included a song he wrote pledging to fight “race hate.” He deliberately lives in integrated neighborhoods, he said, and sent his children to integrated schools, including one in a mostly black housing project.

“What kind of racist does that?” he said. “They’ve never accused us of doing anything that’s racist or white nationalist. It’s only that Numbers U.S.A. ‘has ties’ ” to Dr. Tanton.

He added: “Even if there were some mild strain of white nationalism in John, the fact is that the results of everything he is pushing in immigration policy would disproportionately help black and Hispanic Americans.”

The Center for Immigration Studies, where Dr. Tanton played a lesser role, has come closest to criticizing him, writing last year that he had a “tin ear for the sensitivities of immigration.” (A blogger then attacked the center as undermining “the patriotic struggle.”)

Mr. Sharry said the groups’ reluctance to criticize Dr. Tanton showed tacit agreement. But Mr. Conner, the former FAIR director, called it politeness toward a beleaguered friend. “It’s been perfectly clear that people have not been willing to defend John,” he said.

Mr. Burns, his former FAIR colleague, said the groups’ silence was harming an honorable cause. “The immigration reform movement has to say what it is and what it’s not, and it has to say it’s not John Tanton,” he said.

*Kitty Bennett contributed research.*

*This article has been revised to reflect the following correction:*

**Correction: May 1, 2011**

*A picture caption on April 17 with the continuation of an article about John Tanton, who helped start all three major national groups that are fighting to reduce immigration to the United States, misstated the mission of Numbers USA, a group founded by Roy Beck. It seeks to reduce legal and illegal immigration alike, not “to give voice to anger about illegal immigration.”*



# EXHIBIT

# 5



Hassan Ahmad <hma@hmalegal.com>

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## FOIA AHM 0633-16 Extension

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Hassan Ahmad <hma@hmalegal.com>  
To: Patricia Sellinger <patsell@umich.edu>

Thu, Jan 5, 2017 at 5:01 PM

Hello Ms. Sellinger,

Thanks for your time on the phone earlier today. My associate and I went through the boxes online and we narrowed the request down as much as we could.

I'm attaching a spreadsheet which I hope helps. Can we please get a cost estimate?

To confirm - we may (after this is over) expand the request to the rest of the boxes as part of this same FOIA request, but for now this will suffice.

We note also that some of the boxes (in particular 18, 22, and 23) are marked "on loan to donor." Will this pose a problem?

Hassan M. Ahmad, Esq. | THE HMA LAW FIRM  
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[Quoted text hidden]



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**UMichigan FOIA Request Breakdown.xls**  
16K

	Correspondence		
Box 15		September 1991-December 1994 (20 folders)	
Box 16		1995-1997 (20 folders) [Closed until April 6,	
Box 17		1998-2001 (27 folders) [Closed until April 6,	
Box 18		1973-2006 (scattered) (12 folders) [Closed until	
	<b>FAIR</b>		
Box 18		Board of Advisors 1979-1980, 1983-1992, 1998 (4	
Box 18		Board meeting agenda 1979-1985 [Closed until	
Box 18		Board meeting minutes 1978-1989, 1993, 1998-	LTD
Box 18		Reports to the Board 1979-1996 (4 folders)	LTD
Box 18		Summer Summit 1989-1990 (2 folders) [Closed	LTD
Box 19		Summer and Spring Summit 1991-1993 (3 folders)	
Box 19		Laurel Foundation 1978-1983 [Closed until April	
Box 19		C.S. May Family trust 1983-1986, 1989 [Closed	
Box 19		Proposal Book 1985-1986 [Closed until April 6,	
Box 19		Pioneer Fund 1981-1994 (9 folders) [Closed until	
Box 19		Correspondence 1979-1995 (scattered) [Closed	
Box 19		Ideas for topics 1978-1985 (scattered) [Closed until	
Box 19		Topics 1981-1982 [Closed until April 6, 2035]	
Box 19		Brochures 1980s-1990s (2 folders) [Closed until	
Box 19		The Case for a Rational Immigration Policy,	
Box 19		The Chicken Little Media Scam 1987 [Closed until	
Box 19		Fact Sheet 1981, 1986-1987 [Closed until April 6,	
Box 19		Immigration Papers 1980-1985 [Closed until April	
Box 19		Immigration Report 1979/1980-1988/1989 (10	
Box 20		Immigration report 1990-1993, 2001-2004 (6	
Box 20		In the News 1986-1989 (4 folders) [Closed until	
Box 20		Immigration Issues in the News 1991 [Closed until	
Box 20		Information Exchange 1982-1989, 1991 (9 folders)	
Box 20		Press Releases 1984-1991 [Closed until April 6,	
Box 20		Sanctuary Information Packet 1985 [Closed until	
Box 20		Miscellaneous, [ 1984, 1993 [Closed until April 6,	
Box 20		Arizona 1984, 1988 [Closed until April 6, 2035]	
Box 20		California 1981-1991 (5 folders) [Closed until	
Box 20		Illinois 1980-1989 (scattered) [Closed until April 6,	

Box 20		Colorado 1981 [Closed until April 6, 2035]	
Box 20		Connecticut undated [Closed until April 6, 2035]	
Box 20		Florida 1975-1985 (scattered) [Closed until April 6, 2035]	
Box 20		Iowa 1981 [Closed until April 6, 2035]	
Box 20		Mary 1980 [Closed until April 6, 2035]	
Box 20		Massachusetts 1976-1989 (scattered) [Closed until April 6, 2035]	
Box 20		Michigan 1979-1989 (scattered) [Closed until April 6, 2035]	
Box 20		Minnesota 1981, 1992 (2 folders) [Closed until April 6, 2035]	
Box 20		Missouri 1981 [Closed until April 6, 2035]	
Box 20		Nebraska undated [Closed until April 6, 2035]	
Box 20		New Jersey 1981-1982 [Closed until April 6, 2035]	
Box 20		New Mexico 1981 [Closed until April 6, 2035]	
Box 20		New York 1981-1993 (scattered) [Closed until April 6, 2035]	
Box 20		North Carolina undated [Closed until April 6, 2035]	
Box 20		Ohio undated [Closed until April 6, 2035]	
Box 20		Oregon 1983 [Closed until April 6, 2035]	
Box 20		Pennsylvania 1989, 1992 [Closed until April 6, 2035]	
Box 20		Texas 1981-1991 (scattered) [Closed until April 6, 2035]	
Box 20		Europe 1991 [Closed until April 6, 2035]	
	<b>CIS</b>		
Box 20		Correspondence 1985-1989 (5 folders) [Closed until April 6, 2035]	
Box 21		Correspondence 1990-1991 (2 folders) [Closed until April 6, 2035]	
Box 21		Publications 1988-1990 [Closed until April 6, 2035]	
	<b>Ford Foundation</b>		
Box 21		Immigration Research 1985-1990 (4 folders)	
	<b>Gerry Mackie</b>		
Box 21		Correspondence 1986-1990 (15 folders) [Closed until April 6, 2035]	
	<b>WITAN</b>		
Box 22		Meetings 1986-1988 [Closed until April 6, 2035]	LTD
	<b>ILRI</b>		
Box 23		Meetings and reports 1986-1990 (3 folders)	LTD
Box 23		Correspondence 1986-1989 [Closed until April 6, 2035]	
Box 23		Correspondence 1985-1990 (4 folders) [Closed until April 6, 2035]	
Box 23		Publications 1989-1990 [Closed until April 6, 2035]	
Box 23		Media clippings 1986-1987, 1989-1990 (2 folders)	



# EXHIBIT

# 6

THE HMA LAW FIRM PLLC  
PROTECT PERSEVERE PROSPER



Hassan M. Ahmad  
Sharifa Abbasi  
Humza Kazmi (MI)  
7926 Jones Branch Dr. Suite 600  
McLean VA 22102

April 17, 2017  
McLean, VA, USA

VIA PRIORITY MAIL

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Of Counsel  
Omar Baloch (NC)

Margaret Gonzalez  
University of Michigan FOIA Office  
2050 Fleming Administration Bldg  
503 Thompson  
Ann Arbor, MI 48109-1340

RE: AHM 0633-16

Dear Ms. Gonzalez:

Enclosed please find check number 2429 in the amount of \$6,417.00 as the requested deposit to process the above-styled FOIA request. Please do not hesitate to contact me at 703.964.0245 or via email at [hma@hmalegal.com](mailto:hma@hmalegal.com) with any questions.

Respectfully,

THE HMA LAW FIRM, PLLC

Hassan M. Ahmad, Esq.  
7926 Jones Branch Dr. Suite 600  
McLean, VA 22102  
Tel: 703.964.0245  
Fax: 703.997.8556  
[hma@hmalegal.com](mailto:hma@hmalegal.com)

CC: None



FREEDOM OF INFORMATION ACT OFFICE  
UNIVERSITY OF MICHIGAN

January 27, 2017

Hassan M. Ahmad  
The HMA Law Firm  
7926 Jones Branch Dr. Suite 600  
McLean, VA 22102  
[hma@hmalegal.com](mailto:hma@hmalegal.com)

Re: AHM 0633-16

Dear Mr. Ahmad:

I am writing in response to your revised Freedom of Information Act request dated January 5, 2017, which was received on January 6, 2017.

You requested voluminous records from the John Tanton papers archived at the University of Michigan Bentley Historical Library, currently restricted from public access.

Due to the amount of time estimated to copy, examine, and review to separate exempt from nonexempt records within the scope of your request, production of responsive nonexempt records will result in unreasonably high costs for the University. There are approximately 15,000 pages of records that are responsive to your request, which have not been digitized and therefore must be manually copied, examined and reviewed in order to separate exempt from nonexempt material. It is extremely difficult to estimate the time required for this process with such a large number of historical records of various types, and the estimate provided below may need to be revised once we undertake the process and have a better understanding of the records at issue.

The folders that are noted in the Bentley Historical Library finding aid, and in the attachment to your request, as "on loan to donor," are not in the possession of the University, and therefore the records contained in those folders will not be provided.

It is estimated, to the best of our ability at this time, that the cost to respond to your request is \$12,834, as detailed in the attached FOIA fee estimate itemization form. Pursuant to Section 4 (8) of the Michigan Freedom of Information Act, "the public body may require a good-faith deposit from the person requesting information before providing the public records to the requester if the entire fee estimate or charge authorized under this section exceeds \$50.00, based on a good-faith calculation of the total fee... [T]he deposit shall not exceed ½ of the total estimated fee."

If you would like us to proceed with the duplication, examination, review, and deletion and separation of exempt from nonexempt material, send a check for \$6,417 made payable to the

Hassan Ahmad  
January 27, 2017  
Page 2 of 2

University of Michigan, to Margaret Gonzales, 2050 Fleming Administration Bldg., 503 Thompson, Ann Arbor, Michigan 48109-1340.

We estimate that we will complete the response to your request within 18 months from the date of receipt of your deposit. However, we will plan to provide documents on a rolling basis, and we estimate that the first set of records will be provided within six weeks of the date of receipt of your deposit. This time frame estimate is provided pursuant to Section 4 (8) of the Act, and is a nonbinding good faith estimate.

After we have completed the response, we will notify you of the balance due, and will provide the nonexempt records upon receipt of the balance. Please note that if we do not receive the deposit within ninety (90) days, we will consider your request withdrawn.

Please note that within 180 days from the date of this letter, you have the right to appeal the denial of information to the President of the University or seek judicial review in the Michigan court of claims to try to compel disclosure. If you elect to appeal and the President upholds the denial, you may still seek judicial review within the 180-day period.

An appeal to the President must be submitted in writing to: President's Office, c/o Liz Barry, The University of Michigan, 2080 Fleming Administration Building, 503 Thompson Street, Ann Arbor, MI 48109-1340 (or by email to: [presoff@umich.edu](mailto:presoff@umich.edu)). The statement must (1) identify the request and the final determination by the FOIA officer that is being appealed, (2) specifically state the word "appeal," and (3) identify the reason or reasons why the final determination should be reversed.

If you seek judicial review in the Michigan court of claims and prevail, you will be awarded reasonable attorney's fees, costs and disbursements incurred in maintaining the action. If you prevail in part, you may still be awarded complete or partial reimbursement for those expenses. In addition to actual and compensatory damages, you will be awarded punitive damages in the amount of \$1,000.00 if the court finds that the University was arbitrary and capricious in its denial.

A copy of Section 10 of the Michigan FOIA is available for your reference and review online at <http://foia.vpcomm.umich.edu/foia-right-to-appeal/>.

Sincerely,



Patricia J. Sellinger  
Chief Freedom of Information Officer

Enclosure

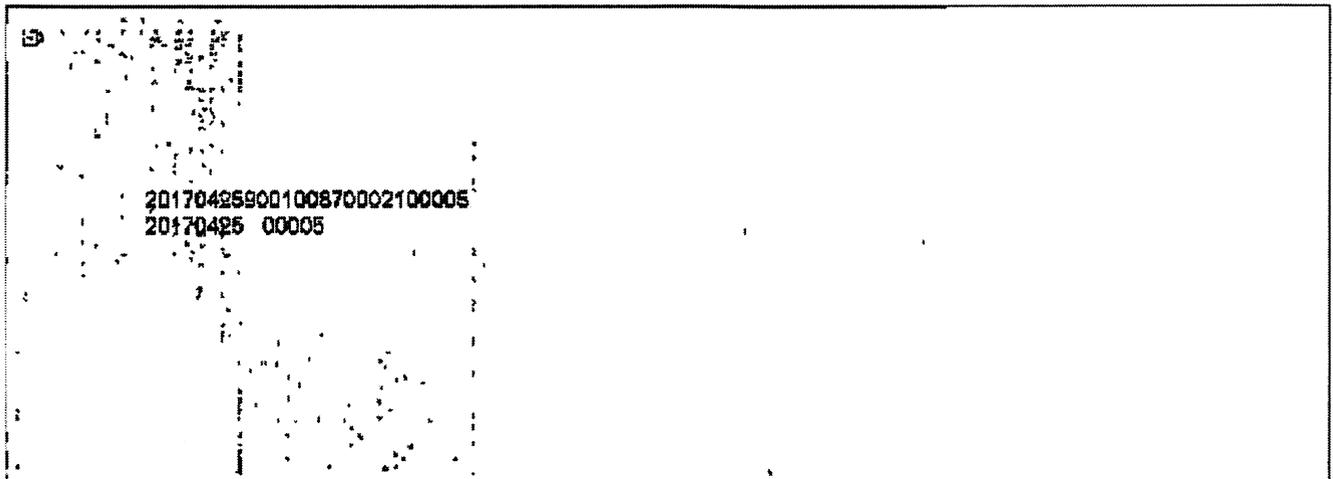
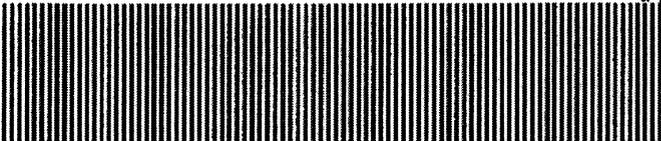
FOIA FEE ESTIMATE ITEMIZATION FORM (Ahmad 0633-16)					
Category of Costs/Description	Hourly Wage	Benefits % Multiplier Used*	Hourly Wage with Benefits	Estimated Time (Hours)	Amount
<p><b>4 (1) (a) Searching for, locating and examining responsive records</b></p> <ul style="list-style-type: none"> <li>Charged at hourly wage of lowest-paid employee capable of searching for, locating and examining the public record, regardless of whether that person is available or who performs the labor</li> <li>Estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down</li> </ul>	\$32.41	33%	\$43.10	15	\$646.50
<p><b>4 (1) (b) Review directly associated with the separating and deleting of exempt from nonexempt information</b></p> <ul style="list-style-type: none"> <li>Charged at hourly wage of lowest-paid employee capable of separating and deleting exempt from nonexempt information, regardless of whether that person is available or who actually performs the labor</li> <li>Labor costs under this subdivision estimated and charged in increments of 15 minutes or more, with all partial time increments rounded down</li> <li>Shall not charge for labor under this section if Public Body knows or has reason to know that it previously redacted the public record in question, and the public record is still in the Public Body's possession</li> </ul>	\$49.03  \$32.41	28%  33%	\$30.00**  \$43.10	123  123	\$6,150.00  \$5,301.00
<p><b>4 (1) (c) Nonpaper physical media costs</b></p> <ul style="list-style-type: none"> <li>Actual and most reasonably economical cost of computer discs, computer tapes, or other digital or similar media</li> <li>Requestor may stipulate that records be provided on nonpaper physical media, electronically mailed, or otherwise electronically provided in lieu of paper copies</li> <li>Does not apply if Public Body lacks the technological capability necessary to provide records on the particular nonpaper physical media stipulated</li> </ul>					
<p><b>4 (1) (d) Cost of paper copies (not including labor)</b></p> <ul style="list-style-type: none"> <li>Calculated as total cost per sheet of paper, itemized to show cost per sheet and number of sheets provided</li> <li>Shall not exceed 10 cents per sheet of paper for copies of public records made on 8-1/2- by 11-inch paper or 8-1/2- by 14 inch paper</li> <li>Shall utilize most economical means available, including double-sided printing, if cost saving and available</li> </ul>					
<p><b>4 (1) (e) Duplication or publication (Labor)</b></p> <ul style="list-style-type: none"> <li>Includes making paper copies, making digital copies, or transferring digital public records to be given to requestor on nonpaper media or electronically</li> <li>Charged at hourly wage of lowest-paid employee capable of necessary duplication or publication, regardless of whether that person is available or who performs the labor</li> <li>Estimated and charged in time increments of the Public Body's choosing, with all partial time increments rounded down</li> </ul>	\$11.98	50%	\$17.97	41	\$736.77
<p><b>4 (1) (f) Cost of mailing</b></p> <ul style="list-style-type: none"> <li>Actual cost of mailing, for sending records in a reasonably economical and justifiable manner</li> <li>Shall not charge more for expedited shipping or insurance unless stipulated by requestor; may charge for least expensive form of postal delivery confirmation</li> </ul>					
<b>ESTIMATE TOTAL</b>					<b>\$12,834.27</b>
<p>*The Public Body may add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits if it clearly notes the percentage multiplier used. The Public Body shall not charge more than the actual cost of fringe benefits, and overtime wages shall not be used in calculating the cost of fringe benefits. Overtime wages shall not be included in the calculation of labor costs unless overtime is specifically stipulated by the requestor and clearly noted in this detailed itemization.</p> <p>**The University caps labor charges at \$50.00 per hour.</p>					

WELLS FARGO

## Check Details

Check Number	2429
Date Posted	04/25/17
Check Amount	\$6,417.00

THE HMA LAW FIRM, PLLC IOLTA TRUST ACCOUNT 1039 STERLING ROAD, STE 204 HERNDON, VA 20170	WELLS FARGO BANK, N.A. www.wellsfargo.com 05-220550	2429
PAY TO THE ORDER OF UNIVERSITY OF MICHIGAN		4/17/2017
SIX THOUSAND FOUR HUNDRED SEVENTEEN & 00/100 -		\$ 6,417 00
MEMO AHM 0633-16		DOLLARS



### \*Note

The account number, signature, and endorsement are removed from the image(s) for security reasons. To obtain a full copy of the image, please call us at 1-800-TO-WELLS (1-800-869-3557), 24 hours, 7 days a week.

Equal Housing Lender



# EXHIBIT

# 7

May 8, 2017

Hassan M. Ahmad  
The HMA Law Firm  
7926 Jones Branch Dr. Suite 600  
McLean, VA 22102  
[hma@hmalegal.com](mailto:hma@hmalegal.com)

Re: AHM 0633-16

Dear Mr. Ahmad:

I am writing in further response to your revised Freedom of Information Act request dated January 5, 2017, which was received on January 6, 2017, and to which we initially responded on January 27, 2017.

You requested voluminous records from the John Tanton papers archived at the University of Michigan Bentley Historical Library, which are currently restricted and closed to research.

Your request is denied. Subsequent to receiving your fee deposit, we have determined that the restricted records are not public records of the University of Michigan pursuant to Section 2 (e) of the Michigan Freedom of Information Act, which defines a "public record" as "a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function..." As indicated on the Bentley Historical Library website, the restricted records are closed to research until April 2035. Thus, they are not utilized, possessed or retained in the performance of any official University function.

We are refunding your deposit in the amount of \$6,417 under separate cover.

Please note that within 180 days from the date of this letter, you have the right to appeal the denial of information to the President of the University or seek judicial review in the Michigan court of claims to try to compel disclosure. If you elect to appeal and the President upholds the denial, you may still seek judicial review within the 180-day period.

An appeal to the President must be submitted in writing to: President's Office, c/o Liz Barry, The University of Michigan, 2080 Fleming Administration Building, 503 Thompson Street, Ann Arbor, MI 48109-1340 (or by email to: [presoff@umich.edu](mailto:presoff@umich.edu)). The statement must (1) identify the request and the final determination by the FOIA officer that is being appealed, (2) specifically state the word "appeal," and (3) identify the reason or reasons why the final determination should be reversed.

Hassan M. Ahmad  
May 8, 2017  
Page 2 of 2

If you seek judicial review in the Michigan court of claims and prevail, you will be awarded reasonable attorney's fees, costs and disbursements incurred in maintaining the action. If you prevail in part, you may still be awarded complete or partial reimbursement for those expenses. In addition to actual and compensatory damages, you will be awarded punitive damages in the amount of \$1,000.00 if the court finds that the University was arbitrary and capricious in its denial.

A copy of Section 10 of the Michigan FOIA is available for your reference and review online at <http://foia.vpcomm.umich.edu/foia-right-to-appeal/>.

Sincerely,

A handwritten signature in black ink, appearing to read "Patricia J. Sellinger". The signature is fluid and cursive, with a large initial "P" and "S".

Patricia J. Sellinger  
Chief Freedom of Information Officer



# EXHIBIT

# 8



Hassan M. Ahmad  
Sharifa Abbasi  
Humza Kazni (MD)  
7926 Jones Branch Dr. Suite 600  
McLean VA 22102

T: 703.964.0245  
F: 703.997.8556

[hma@hmallegal.com](mailto:hma@hmallegal.com)  
[www.hmallegal.com](http://www.hmallegal.com)

**Of Counsel**  
Omar Baloch (NC)

May 16, 2017  
McLean, VA, USA

**VIA EMAIL**  
[presoff@umich.edu](mailto:presoff@umich.edu)

President's Office, c/o Liz Barry  
University of Michigan  
2080 Fleming Administration Bldg.  
503 Thompson St.  
Ann Arbor, MI 48109-1340  
[presoff@umich.edu](mailto:presoff@umich.edu)

**RE: APPEAL OF FOIA DENIAL (AHM 0633-16)**

Dear Mr. Schlissel and Ms. Barry:

Pursuant to §10(1)(a) of the Michigan Freedom of Information Act (FOIA), this is an appeal of a denial of a FOIA request made by the undersigned. Attached to this appeal is a lawsuit that will be filed in the Michigan Court of Claims after 20 business days from today (on or about June 14, 2017) or on the date of your decision to uphold the denial, whichever is sooner.

### **PROCEDURAL HISTORY**

On December 15, 2016 the undersigned properly filed a FOIA request with the University of Michigan ("the University") seeking "all documents donated by Dr. John Tanton, Donor #7087, located in Boxes 15 – 25, and any others marked 'closed' at the Bentley Historical Archive (BHA) [sic] at the University of Michigan." The University requested additional time to respond to the FOIA request on December 22, 2017. The undersigned was aware that the request sought records marked "closed" until April 2035, but argued in the FOIA that the records still qualified as "public records" within the meaning of the Michigan FOIA, that there was no qualifying exemption, and that public interest trumped any conceivable privacy interest.

On January 5, 2017 Patricia Sellinger, chief FOIA officer, called the undersigned to inquire whether the FOIA request might be limited in any way, claiming it was "voluminous." On the same day, the undersigned complied with the request in good faith and narrowed the scope of the request by excluding some of the named records as listed on the Bentley Historical Library (BHL) website.

During that conversation, the undersigned specifically asked Ms. Sellinger whether the University would deny the FOIA request, given that they were marked closed until 2035. She responded, "We would not be having this conversation if we weren't going to process it." The undersigned relied on Ms.

Sellinger's representation that the records would be produced in good faith.

The University treated the narrowed request as a new FOIA request and, after asking for additional time, responded with a cost estimate on January 27, 2017. The undersigned obtained the required deposit of \$6,417 and sent the funds to the University, which were received and cashed on April 25, 2017.

On May 8, 2017, the University denied the FOIA request, finding the requested records not to be "public records" within the meaning of the Michigan FOIA because they were marked closed, and thus not utilized, possessed, or retained in the performance of any official University function. In its denial, the University claimed that this determination was made *subsequent* to receiving the fee deposit.

### ARGUMENT

The University's determination that the records are not "public records" within the meaning of the Michigan FOIA is incorrect as a matter of law.

In *Amberg v. City of Dearborn*, 859 NW 2d 674 (Mich. 2014), the Michigan Supreme Court considered whether the Court of Claims correctly upheld denial a FOIA request. The request in *Amberg* consisted of video surveillance recordings created by third parties but received by defendant, a public body, during pending criminal proceedings, and the Court of Claims found they did not constitute "public records." In reversing the Court of Claims, the Michigan Supreme Court found the crucial component is "whether the public body prepared...or retained them in the performance of an official function."

In the instant case, it is beyond dispute that the records are in the possession of the University and that the University is a public body. It is likewise beyond dispute that the requested records were acquired by the University for an official purpose. Indeed, the mere fact they are listed on the BHL website suffices to show same. At issue is whether, by being marked "closed," they ceased to be utilized, possessed or retained in the performance of an official University function. The official function is the research purposes of the University.<sup>1</sup> The fact that the records are under seal or closed is not apropos here.

There is simply no provision in the Michigan FOIA for a public body to utilize, retain or possess records pursuant to an official function and subsequently unilaterally shield them from FOIA by marking them "closed." Whatever right the University may have to restrict files from research as an administrative matter, it cannot override the law. As *Amberg* notes, even if the items are not in use at the time of the FOIA, they may still be discoverable through a FOIA: "...even if the recordings did not factor into defendants' decision to issue a citation, they were nevertheless collected as evidence by defendants to support that decision." *Id.* at 677. Michigan courts have consistently interpreted the FOIA as an act requiring full disclosure of public records unless a statutory exemption precludes the disclosure of information. *See, e.g., Messenger v. Dep't of Consumer & Industry Services*, 238 Mich.App. 524, 531, 606 N.W.2d 38 (1999). Moreover, FOIA exemptions are narrowly construed, and it is squarely the University's burden here to prove that the exemption's applicability is consonant with the purpose of the FOIA. *Manning v. East Tawas*, 234 Mich.App. 244, 248, 593 N.W.2d 649 (1999).

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<sup>1</sup> Indeed, the donor himself, Dr. John Tanton, reproduced a letter from Kenneth Scheffel, former archivist at the BHL, dated November 28, 1989. That letter stated: "Because of Dr. John Tanton's distinguished career as a conservationist, **our library asked him** for his papers." (Emphasis added.)

Based on the foregoing, we respectfully request that the denial be overturned and the records be produced forthwith.

We also request that all documents currently listed on the BHL website as "on loan to donor" *also* be provided, as they also fall into the definition of "public record" within the meaning of the Michigan FOIA. We would request formal acknowledgment by the University that copies of said documents exist. According to information on the BHL website as of today's date, these include:

Box 18: (Federation for American Immigration Reform)

Board meeting minutes 1978-1989, 1993, 1998-1999 (5 folders)  
Reports to the Board 1979-1996 (4 folders)  
Summer Summit 1989-1990 (2 folders)

Box 22: (WITAN)

Meetings 1986-1988

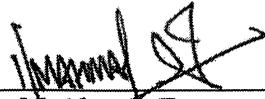
Box 23: (Immigration Reform Law Institute)

Meetings and reports 1986-1990 (3 folders)

Lastly, we would note that the estimated timeframe to respond (18 months) is egregiously long and would request that you order the FOIA office to comply with the request in 30 days.

Respectfully,

THE HMA LAW FIRM, PLLC



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Hassan M. Ahmad, Esq.  
7926 Jones Branch Dr. Suite 600  
McLean, VA 22102  
Tel: 703.964.0245  
Fax: 703.997.8556  
[hma@hmalegal.com](mailto:hma@hmalegal.com)

CC:



# EXHIBIT 9

OFFICE OF THE PRESIDENT



2074 FLEMING ADMINISTRATION BUILDING  
503 THOMPSON STREET  
ANN ARBOR, MI 48109-1340  
734 764-6270 FAX: 734 936-3529

May 30, 2017

Hassan M. Ahmad  
The HMA Law Firm  
7926 Jones Branch Dr. Suite 600  
McLean, VA 22102  
hma@hmalegal.com

Dear Mr. Ahmad:

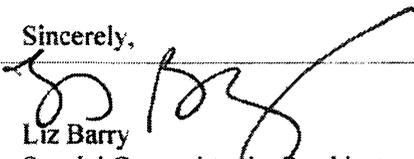
RE: Appeal of FOIA final determination, University File AHM 0633-16.

I am writing in response to your email dated May 16, 2017 which was received in the President's Office on May 16, 2017 appealing the response dated May 8, 2017 by Ms. Patricia Sellinger, the University's Freedom of Information Coordinator, to your Freedom of Information Act (FOIA) inquiry referenced above.

After careful review and consideration, your appeal is denied for the reasons stated in Ms. Sellinger's May 8 response, which will not be repeated herein. These Bentley Library records emanating from a private source are restricted and are not available to the university community or the public at this time by a valid charitable gift agreement with a donor. As such, they are not public records subject to disclosure under the FOIA and the University does not currently have the right to disseminate them. Further, disclosure of these records in contravention of the gift agreement would not only violate the terms by which a private citizen donated his property to the University, but would constitute an unwarranted invasion of the donor's privacy and, potentially, that of unrelated and unknowing third parties. Moreover, violating the terms of the gift agreement in this manner would undermine the University's ability to fully achieve its educational mission, insofar as preserving the history of the state of Michigan is one important aspect of its academic mission and is directly related to the willingness of others (e.g., legislators and judges) to donate their papers to the Bentley Library. Potential donors with key historical documents will be chilled by the University's failure to observe the limits expressly placed upon such gifts.

Please note that within 180 days from the date of the letter from the Freedom of Information Act Coordinator denying your request, you have the right to seek judicial review in the circuit court to try to compel disclosure. If you seek judicial review in the Michigan circuit court and prevail, you will be awarded reasonable attorney's fees, costs and disbursements incurred in maintaining the action. If you prevail in part, you may still be awarded complete or partial reimbursement for those expenses. In addition to actual and compensatory damages, you will be awarded punitive damages in the amount of \$500 if the court finds that the University was arbitrary and capricious in its denial.

Sincerely,



Liz Barry

Special Counsel to the President