

**SUMMARY REPORT TO MANAGER**  
for City Council Meeting of July 14, 2008

**SUBJECT:** Receipt and filing of a Freedom of Information Act appeal.

**INITIATED BY:** City Attorney's Office

**RESOLUTION SUMMARY:** This resolution acknowledges receipt of and authorizes the City Council to accept the Freedom of Information Act appeal.

**ITEMS ATTACHED:**

1. Freedom of Information Act request, denial and appeal.
2. Resolution.

**COUNCIL ACTION:**

3/5 affirmative vote required for adoption

James O. Branson III  
City Attorney



City Hall • 333 West Ellsworth Street • Midland, Michigan 48640-5132 • 989.837.3300 • 989.835.2717 Fax • [www.midland-mi.org](http://www.midland-mi.org)

July 14, 2008

Honorable Mayor and City Council  
City Hall  
333 W. Ellsworth Street  
Midland, Michigan 48640

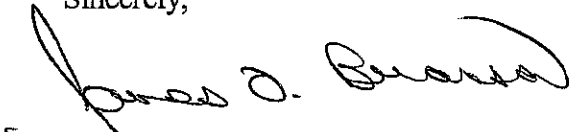
Dear Councilmen:

On May 28, 2008 a Freedom of Information Act (FOIA) request was submitted to the City Clerk by Mary Shelagowski. I determined that some of the requested documents contained information that if disclosed would identify a confidential source and would provide a means of identifying an informant. On June 3, 2008 the request was denied, in part, and granted, in part, in accordance with MCLA §15.243(1)(b)(iv) and (1)(s)(viii). Subsequently, on July 10, 2008 the City Clerk's office received an appeal of the FOIA denial as allowed under the FOIA.

Attached for filing is a copy of the FOIA request, denial and appeal. In accordance with MCLA §15.240(1)(a)(2) within ten (10) days of acknowledgment and receipt of the partial denial, City Council shall do one of the following: a) reverse the partial disclosure denial; b) issue a written notice to the requesting person upholding the partial disclosure denial; c) reverse the partial disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part; or d) under unusual circumstances, issue a notice extending the period in which the response is due by no more than ten (10) days.

Upon receipt and filing, this matter will be brought back to City Council on July 21, 2008.

Sincerely,



James O. Branson III  
City Attorney

JOB/lak



RECEIVED  
CITY CLERK  
MIDLAND, MICHIGAN

**FOIA**  
FREEDOM OF INFORMATION ACT  
REQUEST FORM  
2008 MAY 29 A 10:28  
Helena Stach

Date of Request: May 28, 2008 Day: \_\_\_\_\_ Time: \_\_\_\_\_

Request taken by: \_\_\_\_\_

Requested by: Name: Mary Shelegowski

Address: 818 S. Penny Lane

City, State, Zip: Midland MI 48640

Telephone Number: 989-832-3179 cell 989-252-2547  
(Type of identification) HOME DL S 422587067807

Where you can be reached other than above: \_\_\_\_\_

Nature of request and/or description of public records sought: I would like the details of the complaint that resulted in the closing of Sunny spot along with the name of the person. The business was located at 3200 Isabella Rd, Midland, MI

**I would like to:**

- Receive a copy of the requested document(s)
- Review and inspect a copy
- Review the original document

I request a fee estimate to be provided within three (3) days and I agree that the FOIA coordinator need not respond to my request until five (5) days after I receive the fee estimate.

I have examined the fee schedule. I agree to pay the reasonable charges for this request and waive any right to a fee estimate.

Mary Shelegowski  
Signature of FOIA requestor

**FOR OFFICE USE ONLY**

| ESTIMATED COSTS                                        |       |
|--------------------------------------------------------|-------|
| pages x \$0.10                                         | _____ |
| Cost of labor for duplicating, searching and reviewing | _____ |
| Cost of labor for monitoring                           | _____ |
| Mailing costs                                          | _____ |
| <b>TOTAL COSTS</b>                                     | _____ |
| Deposit                                                | _____ |
| Balance                                                | _____ |

| ACTUAL COSTS                                           |       |
|--------------------------------------------------------|-------|
| pages x \$0.10                                         | _____ |
| Cost of labor for duplicating, searching and reviewing | _____ |
| Cost of labor for monitoring                           | _____ |
| Mailing costs                                          | _____ |
| <b>TOTAL COSTS</b>                                     | _____ |
| Indigent - no cost first \$20                          | _____ |
| Payment                                                | _____ |
| Balance                                                | _____ |



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June 3, 2008

Mary Shelagowski  
818 S. Penny Lane  
Midland, Michigan 48640

RE: Freedom of Information Act Request

Dear Ms. Shelagowski:

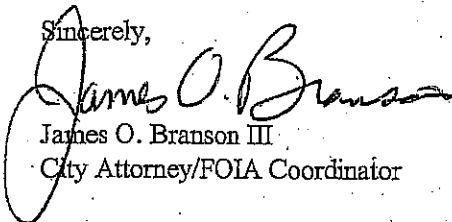
This response will certify that your recent request for public record(s) under the Michigan Freedom of Information Act ("FOIA"), MCL § 15.231 *et seq.*, is hereby granted, in part, and denied, in part. The basis for the denial is that the requested records are exempt from disclosure for the following reasons: records contain information that if disclosed would identify a confidential source and would provide a means of identifying an informant [13(1)(b)(iv) and (1)(s)(viii)].

If your request for record(s) is denied, you may submit a written appeal, specifically stating "appeal" and stating the reasons for appeal, to the City Council, or seek judicial review to the Circuit Court under Section 10 of the Act within 180 days after the public body's final determination. If appealed to the City Council, your request shall be considered to have been received at the Council's first regularly scheduled meeting following submission of the written appeal. Within ten (10) days of this meeting, the City Council shall a) reverse the denial; b) issue a written notice upholding the denial; c) reverse in part and uphold in part by written notice; or d) under unusual circumstances, issue a notice extending by ten (10) business days the time to decide the appeal.

If appealed to the Circuit Court and the Court determines after judicial review that the public body has not complied fully with the disclosure requirements, the Court shall award reasonable attorneys' fees, costs and disbursements. If the Court determines that the public body has arbitrarily and capriciously violated the Act, the Court shall award punitive damages in the amount of \$500.00.

A copy of this request will be kept on file for no less than one (1) year.

Sincerely,

  
James O. Branson III  
City Attorney/FOIA Coordinator

JOB/lak

cc: City Clerk

RECEIVED  
CITY CLERK  
MIDLAND, MICHIGAN

SUNNY SPOT FLOWERS

2008 JUL 10 P 1: 26

July 10, 2008 *Adrosia Disdale*

City Council;

Bruce Johnson,

This is an appeal for the freedom of information act that was denied me on June 3<sup>rd</sup> of this year. My reasons for this appeal are this. On May 8, 2008 my seasonal business was shut down as the result of a complaint. This cost me several thousand dollars in sales lost, along with emotional distress. I have the right to know who was behind this, and what exactly the complaint was. I was told that it had come from a competitor but upon receiving the denial; it was stated that it would identify a confidential source and would provide a means of identifying an informant. Was the city just doing its job? If so, why was a complaint stated at the top of the letter?

Being more informed will enable me to run a more successful business.

Thank you for taking the time to review this matter.

Mary Shelagowski

Sole-proprietor/Sunny Spot

989-832-3179



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BY COUNCILMAN

WHEREAS, on May 28, 2008 a Freedom of Information Act request was submitted to the City Clerk; and

WHEREAS, on June 3, 2008 the Freedom of Information Act request was granted, in part, and denied, in part, by the City Attorney; and

WHEREAS, on July 10, 2008 the Freedom of Information Act denial appeal was received by the City Clerk's office; now therefore

RESOLVED, that in accordance with the Freedom of Information Act, the City Council hereby acknowledges receipt of and files the Freedom of Information Act denial appeal and shall schedule the appeal to be placed on the agenda for the regularly scheduled City Council meeting on July 21, 2008.

YEAS:

NAYS:

ABSENT:

I, Selina Tisdale, City Clerk, City of Midland, Counties of Bay and Midland, State of Michigan, do hereby certify that the foregoing is a true and correct copy of a resolution adopted by a yea vote of all of the Councilmen present at a regular meeting of the City Council held on Monday, July 14, 2008.

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Selina Tisdale, City Clerk