

## FREEDOM OF INFORMATION APPEAL

March 21, 2025

**To:** Eric Buckman, City Manager  
 City of Gladstone  
 1100 Delta Avenue  
 Gladstone, MI 49837  
**Email:** [ebuckman@gladstonemi.gov](mailto:ebuckman@gladstonemi.gov)

**Dear Mr. Buckman,**

Under **MCL 15.240(1)(a)**, I formally appeal City Clerk Kim Berry's March 17, 2025, denial of my FOIA request (submitted March 7, 2025, titled "Formal FOIA Request: Redact PII from Online BOR Minutes"). My request sought:

1. **Redaction of my personal identifying information (PII)**—specifically, my name (Gary Kovala), address (1108 Lake Shore Dr.), and disabled veteran tax exemption status—from the City of Gladstone's online Board of Review (BOR) minutes for the years 2020-2024, as permitted under **MCL 15.243(1)(a)**.
2. Provide a **written explanation of the specific legal authority—under FOIA or otherwise—requiring or permitting the City to publish my PII online in unredacted form.**

City Clerk Kim Berry's denial, which claims that redaction "does not identify records" and that FOIA does not provide for such actions, is legally flawed and fails to address the privacy risks posed by the public disclosure of my PII.

## Background

Since August 2024, I have repeatedly raised concerns about the public disclosure of my PII in the City's online BOR minutes:

- **August 21, 2024:** I informed Assessor Janice Frizzell that my PII had been publicly available online since 2020. The Michigan Municipal League confirmed that such disclosure is rare and unnecessary.
- **February 3, 2025:** City Clerk Kim Berry acknowledged that redaction was possible but refused to act, citing the city attorney's opinion that no confidentiality applies under **MCL 211.7b**.
- **March 7, 2025:** I submitted a formal FOIA request, which was denied on March 17, 2025.

Notably, in her March 17, 2025, response, City Clerk Kim Berry misspelled my last name as "**Kovalainen**" instead of "**Kovala**." This error, while seemingly minor, reflects a lack of

attention to detail and further underscores the City’s failure to address my concerns with the care and seriousness they warrant.

---

## Errors in the Denial

### 1. Privacy Risks

The public disclosure of my PII—including my name, address, and disabled veteran status—exposes me to significant risks, including identity theft, stalking, doxxing, swatting, public shaming, and emotional distress. These risks extend to the 36 other veterans in Gladstone whose PII is similarly disclosed.

Despite my efforts to protect my privacy (e.g., using services like DeleteMe), the City’s continued publication of my PII since 2020 undermines these protections. If any harm comes to me or another veteran as a result of this disclosure, the City of Gladstone could be held accountable, given my repeated efforts to address this issue.

### 2. Legal Basis for Redaction

City Clerk Kim Berry’s claim that redaction constitutes “altering” public records is incorrect. **MCL 15.243(1)(a)** explicitly allows for the withholding of information if its disclosure would constitute an unwarranted invasion of privacy. Additionally, **MCL 15.244(1)** permits the redaction of exempt information from public records.

The city attorney’s opinion that no confidentiality applies under **MCL 211.7b** is misguided. While **MCL 211.7b** governs the disabled veterans’ property tax exemption, it does not override the privacy protections provided under FOIA. Specifically:

- **MCL 15.243(1)(a)** allows public bodies to exempt records from disclosure if they constitute an unwarranted invasion of privacy. This provision applies regardless of whether **MCL 211.7b** explicitly mandates confidentiality.
- The city attorney’s reliance on **MCL 211.7b** ignores the balancing test established by Michigan courts, which requires public bodies to weigh the public interest in disclosure against the privacy interests of individuals. This balancing test is rooted in **MCL 15.243(1)(a)** and has been reinforced by case law, including **Swickard v. Wayne County Medical Examiner (1981)**, **State News v. Michigan State University (1989)**, and **Mager v. Department of State Police (2000)**. In this case, the public interest in transparency is fully served by disclosing the total amount of tax exemptions granted, without exposing the names, addresses, and disability status of individual veterans.

Furthermore, the **Department of Veterans Affairs (VA)**, a federal agency, provides a strong example of how veterans’ PII should be protected. Under the **Privacy Act of 1974** and **HIPAA**, the VA strictly safeguards veterans’ sensitive information, including disability ratings, and does not disclose such information without consent. While the VA is governed by federal law, its

practices reflect a widely recognized commitment to protecting veterans' privacy, which aligns with the principles underlying Michigan's FOIA privacy exemptions.

Case law supports this position:

- **Swickard v. Wayne Med. Exam'r (1981)**: The court held that disclosure of information that is offensive and serves no public interest is not required.
- **State News v. MSU (1989)**: The court emphasized the need to balance public interest with privacy concerns.
- **Mager v. State Police (2000)**: The court affirmed that public bodies have discretion to redact information to protect privacy.

The City's refusal to redact my PII, despite the minimal effort required, is arbitrary and capricious.

### 3. Misapplication of FOIA

City Clerk Kim Berry's assertion that my request does not identify specific records is baseless. The BOR minutes for 2020-2024 are the records in question, and redaction is not equivalent to "altering" them.

Furthermore, her reliance on **MCL 15.233(4)** is misplaced. My request for a written explanation of the legal basis for publishing my PII is not a "compilation, summary, or report," but a demand for the City to justify its actions. Moreover, **MCL 15.235(5)(b)** mandates that any denial include "an explanation of the basis" for the decision, which her vague response fails to provide—itself a FOIA violation.

The City's policy of publishing unredacted PII online is a choice, not a legal requirement. The Michigan Attorney General's Opinion No. 7301 (2011) clarifies that neither FOIA nor the Open Meetings Act mandates the online publication of PII.

### Clarifying Redaction vs. Alteration

In her denial, Clerk Berry states, "**you are requesting that public records be altered, which [FOIA] does not provide for,**" incorrectly equating redaction with alteration. Under Michigan FOIA, these are legally distinct:

- **Redaction**: The removal or withholding of exempt information, expressly authorized by **MCL 15.243(1)(a)** (e.g., personal privacy exemptions) and **MCL 15.244(1)** (separation of exempt and non-exempt material). This process preserves the record's substance while protecting legitimate interests.
- **Alteration**: The modification or falsification of a record's content, which FOIA does not permit and which undermines the record's integrity.

The City's refusal to redact my PII based on this misinterpretation is legally flawed. Redaction is a standard practice under FOIA to protect sensitive information, and it does not constitute "alteration" of public records.

---

## Omission of PII in Other Cities

Unlike Gladstone, most Michigan cities (e.g., Marquette, Ann Arbor) omit veterans' PII from BOR minutes, balancing transparency with privacy. If redaction is deemed unfeasible, the City could simply remove the records from its website and store them locally—as was standard pre-internet—limiting online exposure while preserving access.

---

## Requests

I respectfully request that the City:

1. **Redact** my PII—specifically, my name, address, and disabled veteran tax exemption status—from all online BOR minutes for the years 2020-2024, as permitted under **MCL 15.243(1)(a)**.
  2. Provide a **written explanation of the specific legal authority—under FOIA or otherwise—requiring or permitting the City to publish my PII online in unredacted form.**
  3. Adopt a **policy** to **omit** sensitive PII from future BOR minutes, aligning with the practices of other Michigan cities and ensuring compliance with **MCL 15.243(1)(a)**.
  4. **Remove the records from the City's website** and store them locally, as was done in the pre-internet era, if redaction is deemed unfeasible. This would prevent the records from being easily searchable online while still making them accessible to those with a legitimate need.
- 

## Conclusion

The City's refusal to redact or omit my PII from public records violates Michigan's FOIA and privacy laws. By conflating redaction with alteration and ignoring the standard practices of other Michigan cities, the City has failed to balance transparency with privacy, exposing me and other veterans to significant risks.

I urge the City to take immediate action to correct this violation by redacting my PII from existing records, providing a legal basis for its actions, and adopting a policy to omit sensitive PII from future records. If the City fails to reverse this denial within **10 business days (by April 4, 2025, per MCL 15.240(2))**, I may pursue all legal remedies, including judicial review in **Delta County Circuit Court and other options available to me.**

**Sincerely,**  
Gary Kovala  
1108 Lake Shore Dr.  
Gladstone, MI 49837  
**Email:** [gkovalainen@gmail.com](mailto:gkovalainen@gmail.com)