



GAO v Regents - Defendant's MSD Reply

1 message

Cooper II, Clifford (Gary) <cocooper@clarkhill.com>

Thu, Jun 20, 2024 at 2:34 PM

To: Matt Hardin <matthewdhardin@gmail.com>, Chris Horner <chris@govoversight.org>

Cc: "Larsen, Zachary C." <zlarsen@clarkhill.com>, "Fleming, James J." <jfleming@clarkhill.com>

Dear Chris and Matt:

We have received Defendant's Reply to our response brief. Please find attached. Generally the arguments that Defendant set forth are as follows:

- Defendant reiterates its position that the communications requested are not public records.
 - Defendant reiterates its stance that the emails requested were from Professor Rothschild's personal accounts and do not relate to her job duties at the university. Defendant again relies on Professor Rothschild's affidavit, and does not make any statements regarding the applicability of the affidavit's status as evidence outside the pleadings.
 - Defendant states that it is irrelevant that the contents of the requested emails relate to her area of scholarship, since they were allegedly made in her personal capacity.
- Defendant reiterates its position that the communications requested are subject to attorney-client privilege and are exempt from disclosure.
 - Defendant states that a public body may assert defenses not originally raised at the administrative level for the first time in circuit court. It does so to argue that it did not need to assert privilege in its initial response to the FOIA requests
 - Defendant argues that Professor Rothschild's affidavit is uncontradicted and thus that there are no fact based questions remaining regarding the affidavit's statements that the requested communications were privileged.
- Defendant then argued that our response failed to demonstrate that discovery is needed.
 - Defendant argues that Plaintiff did not provide affidavits to assert that additional information exists outside of Plaintiff's control, and instead relied on speculation. Defendant thus argues that Plaintiff did not comply with MCR 2.116(H), which states that "[a]" party *may* show by affidavit that the facts necessary to support the party's position cannot be presented because the facts are known only to persons whose affidavits the party cannot procure." (emphasis added).

Defendant continues to indicate that the only communications at issue are related to the Rockefeller Family Fund. It did not acknowledge or argue against any of the factual assertions set forth in our pleadings and response. They further continue to rely on evidence outside the pleadings (namely Prof. Rothschild's affidavit). Moreover, they do not address the true issues relevant to the summary disposition proceedings, namely, whether any development of fact could profit recovery for GAO under MCR 2.116(C)(8), and whether there are any issues of material fact under MCR 2.116(C)(10).

Defendant has asked for oral argument on summary disposition. It is at the court's discretion to grant this request.

Please let us know if you have any questions or have any insights you would like to share in the event the court grants the request for oral argument.

Thank you,

Gary

Clifford (Gary) Cooper II

Attorney At Law

Clark Hill

215 South Washington Square, Suite 200, Lansing, MI 48933

+1 517.318.3021 (office) | +1 517.918.5782 (cell) | +1 517.318.3072 (fax)

ccooper@clarkhill.com | www.clarkhill.com

PLEASE TAKE NOTE: WE HAVE MOVED: As of April 25, 2022, our new street and mailing address is:
215 South Washington Square, Suite 200, Lansing, MI 48933

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