

Note added by Michigan Plate Readers. Our appeal of the denial of request EP-2026-10-04-B (system exports), sent October 6, 2026 at 12:28 pm by email to the City's FOIA mailbox and to the Mayor, copying the Records mailbox, the City Manager and the Chief of Police. Three PDF attachments are not reproduced here: the Records Bureau's letter of October 6, 2026 and our request of October 4, 2026, both published separately, and Flock Safety's guide named in the appeal. Text as sent. End of note.

To Mayor Klinefelt, as head of the public body, filed with the City Clerk as FOIA Coordinator, with a copy to the City Manager's Office and the Chief of Police:

This is an appeal under MCL 15.240(1)(a) and Section 8 of the City's FOIA Procedures and Guidelines. I appeal the denial of my request of October 4, 2026 for records held in the Eastpointe Police Department's Flock Safety account (system exports), which the Police Department's Records Bureau denied in full by a letter dated October 6, 2026. I ask that the denial be reversed and the records released.

The letter gives two reasons: "We are not the keeper of the requested records. That information is generated in a database directly with FLOCK Safety", and the public body is not required to create a new public record, citing MCL 15.233(4) and (5). Neither applies to these records.

1. These are the City's public records. The Act 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, from the time it is created" (MCL 15.232(i)). The Michigan Supreme Court has said that "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 v City of Dearborn*, 497 Mich 28 (2014)). Each entry in the records the request names is recorded in the Police Department's own Flock account when a search, an alert or a change happens: the audit of searches run by the Department's users, the audit of searches of its cameras by other agencies, which the Department's own sharing settings allow, its sharing settings, its hot-list event log and any other change log the system keeps, its alerts and its list of users.

The Department uses these records. The draft minutes of the City Council meeting of September 15, 2026 record Chief Haines telling the Council that "Flock now provides reports on what license plates people are running", and, asked about misuse, "that these users have been permanently removed with further discipline being sought." Reviewing users' searches and removing users are official functions performed with these records.

The Department also owns them. Flock's published Terms and Conditions (last updated August 21, 2026) provide: "As between Flock and Customer, all right, title, and interest in and to Customer Data belong to and are retained by Customer." They define Customer Data to include "content input into the Web Interface by Customer or its Authorized End Users", which is what a search, a search reason or a hot-list entry is. Flock's own explanation of that section adds: "This has always been the case." The City's agreement with Flock, which my documents request of the same day asks for, will show the version that applies to Eastpointe.

That Flock stores the records does not change whose records they are. In *MacKenzie v Wales Township*, 247 Mich App 124 (2001), the Court of Appeals held that computer tapes made and kept by the townships' data-processing contractor were the townships' public records because the townships used them, and said: "Defendants may not avoid their obligations under the FOIA by contracting for a clerical service that allows them to more efficiently perform an official function." It directed that the

townships be ordered to produce the tapes, by signing the contractor's release form or by obtaining copies from the contractor.

2. The request asks for no new record. It asks for copies of records that already exist, made with the export function in the Department's own account, and it said so: "These exports are copies of existing public records." It also said: "I am not asking for a compilation, summary, or report (MCL 15.233(4))". Where item 5 names a summary or a report, it asks only for one the system already produces, which is an existing record. Section 15.233(5) provides that the Act does not require a public body to create a new public record "except as required in section 11, and to the extent required by this act for the furnishing of copies, or edited copies pursuant to section 14(1), of an already existing public record." The Court of Appeals has held that copying data a system already holds onto another medium "does not create a new document, because no new information is being compiled or organized" (*Farrell v City of Detroit*, 209 Mich App 7 (1995)). And even where no new record is owed, the Supreme Court has said that "the fact that the city had no obligation to create a record says nothing about its obligation to satisfy plaintiff's request in some other manner as required by the foia" (*Herald Co v City of Bay City*, 463 Mich 111 (2000)). The request anticipated that: "For any item the system displays but does not export, a copy in whatever form the system provides is acceptable."

Flock's own guidance to agencies on open-records requests ("Guide to Flock Safety Data for Open Records Laws", last updated September 3, 2025; a copy is attached) lists among its best practices:

Export data using built-in tools (e.g., audit logs from the Flock admin portal; this is generally not considered "creating a new record.")

The same guide says of the audit logs: "These records are accessed via your agency's Flock admin dashboard", and "Customers may download these logs in the user interface as spreadsheets in 31-day increments."

3. If the Department's position is that any of these records does not exist, the Act calls for a certificate that the record "does not exist under the name given by the requester or by another name reasonably known to the public body" (MCL 15.235(5)(b)). The letter gives none.

4. Preservation. On September 15, 2026 the Council voted to end the City's use of Flock services. Under MCL 15.233(3), "A public body shall protect public records from loss, unauthorized alteration, mutilation, or destruction." I ask the City to keep the records this request covers, as they existed when the request was received on October 5, 2026, until this appeal is decided, any release is made, and the time to seek judicial review under MCL 15.240(1)(b) has passed, including records held in the Flock account that would otherwise be deleted when the account closes. Flock's Terms and Conditions provide for deletion of a customer's data at the customer's request after termination, so I also ask the City not to request their deletion from Flock during that time.

5. The letter came on the thread of the exports request and refers to "your request". I read it as the answer to the exports request only, and understand that my request for documents sent the same day is still being processed. Please tell me if that is not so.

Under Section 8 of the City's Procedures and Guidelines, "the burden shall be upon the FOIA Coordinator to demonstrate that the denial of information is justified and should be upheld." Under MCL 15.240(2), the head of the public body is to respond within 10 business days after receiving this appeal.

Thank you,
Chance Ackley-Smith

[Mailing address, email address and telephone number, as on the request. Left out of this published copy.]

Attachments:

1. The Records Bureau's letter of October 6, 2026.
2. My request of October 4, 2026 (system exports).
3. Flock Safety, "Guide to Flock Safety Data for Open Records Laws" (last updated September 3, 2025).