

Note added by Michigan Plate Readers. Our appeal to the Charter Township of Waterford Board of Trustees, submitted to the Office of the Township Clerk by email on October 21, 2026 at 5:13 pm (a paper copy follows), with a copy to the FOIA Coordinator: the letter as sent, with the requester's address, email and phone lines left out. Its four attachments (the Department's scans of the two requests as received and its three letters of October 20, 2026) are published separately. End of note.

October 21, 2026

Charter Township of Waterford Board of Trustees
c/o Office of the Township Clerk
5200 Civic Center Drive
Waterford, MI 48329

Copy: FOIA Coordinator, Charter Township of Waterford
Copy: FOIA Coordinator, Waterford Police Department

Subject: FOIA appeal: the Waterford Police Department's letters of October 20, 2026 on my two requests of September 29, 2026, "Flock Request (2)" (system exports, denied in full) and "Flock Request (1)" (documents, items 3, 4 and 7 denied)

To the Board of Trustees:

This is an appeal under MCL 15.240(1)(a) and Section 8 of the Township's FOIA Procedures and Guidelines. On September 29, 2026 I sent the Waterford Police Department two requests about its Flock Safety license plate reader program, one for program documents and one for exports from the Department's Flock account. The Department answered both by letters dated October 20, 2026: the documents letter grants items 1 and 2, points to the Department's transparency page for items 5 and 6, and denies items 3, 4 and 7; the exports letter denies all six items. I appeal the denial of the exports request in full and the denial of items 3, 4 and 7 of the documents request, and I ask the Board to reverse them. I thank the Department for its responses and for granting items 1 and 2. Both requests and responses are attached.

On timing for this appeal – the Procedures and Guidelines provide that "The Township Board is not considered to have received a written appeal until its first regularly scheduled meeting following submission of the written appeal to the Township Clerk." MCL 15.240(3) provides the same: "A board or commission that is the head of a public body is not considered to have received a written appeal under subsection (2) until the first regularly scheduled meeting of that board or commission following submission of the written appeal under subsection (1)(a)." I am submitting this appeal to the Office of the Township Clerk on Wednesday, October 21, 2026, with a copy to the FOIA Coordinator, before the Board's regular meeting of Monday, October 26, 2026, the first regularly scheduled meeting after submission on the Township's 2026 schedule. I ask that it be placed on that meeting's agenda, and I ask the Clerk's office to confirm receipt to me by email.

The exports request (Flock Request (2), items 1 through 6):

1. The letter names exemptions without saying how any record fits them. For items 1 through 5 it cites MCL 15.243(1)(b)(i) and (v) and 15.243(1)(s)(v); for item 6 it cites 15.243(1)(s)(ii), (v) and (viii). It does not say what the records contain or how releasing them would have any of those effects. In *Evening News Ass'n v City of Troy*, 417 Mich 481 (1983), the Michigan Supreme Court rejected a "generic determination" of exemption (p. 486) and wrote that "the exemptions require particularized justification"

(pp. 493-494). Its fifth rule for any claim of exemption is that justification must be more than "simple repetition of statutory language"; "A bill of particulars is in order"; the justification must "indicate factually how a particular document, or category of documents, interferes with law enforcement proceedings" (p. 503).

2. Subsection (1)(b) applies "only to the extent that disclosure as a public record would" have one of the listed effects. Evening News read the word "would" strictly: "The statute is positive. The opinion is tentative." (p. 506). In *King v Oakland County Prosecutor*, 303 Mich App 222, 227 n 2, 232 (2013), the Court of Appeals applied the same distinction: the Michigan exemption is narrower than its federal counterpart because it reaches only records whose release would interfere, and a finding that release merely could do so is not enough. The letter does not say that releasing any export would interfere with any proceeding.

3. The duty to separate. MCL 15.244(1) provides that "the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying." Evening News calls this an "affirmative statutory duty under the act to separate exempt material from that which is nonexempt" (pp. 486-487). My request anticipated it: if the Department believed individual case numbers, license plates, text prompts or user names were exempt, it should "redact those fields within the CSV (replace the value and keep the column)" and release every other field, and "A role or pseudonym in place of a user name is acceptable." A denial of every export in whole leaves that step undone. With those fields blanked, a search audit still shows when each search was run, by which organization, of what type, across how many networks and for what stated reason.

4. What these records are. Subsection (1)(b) reaches "Investigating records compiled for law enforcement purposes". As I read the exemption, an audit log that records who searched the system, when, and for what stated reason is kept to account for use of the system, and the sharing configuration, the hot-list event log, the alert summary and the user list record how the system is set up and used. I offer that as my reading.

5. The public-interest test in subsection (1)(s). That subsection applies "Unless the public interest in disclosure outweighs the public interest in nondisclosure in the particular instance". In *Detroit Free Press, Inc v City of Southfield*, 269 Mich App 275 (2005), the Court of Appeals held that a record in one of the (1)(s) categories "is not automatically exempt from disclosure" and "is exemptible and exempt only if the public-interest balancing test is also satisfied." The letter shows no weighing. The public interest here is oversight of the Township's license plate reader system: who searches the Township's cameras, how often, for what stated reasons, and which other organizations may search them. These exports are the records that show it.

6. Item 6, the user list. On appeal I narrow item 6 to each user's role or title and a count of users, with no names.

The documents request (Flock Request (1), items 3, 4 and 7):

7. Items 4 and 7. Item 4 asks for the Department's data-sharing agreements and authorizations and any record of its decision to join or leave the Flock sharing networks. Item 7 asks for internal audit memos or reports of ALPR use, written findings that a user violated the policy (names may be redacted), any memo about searches of the Department's cameras by other organizations, and the usage reports Flock sends. The letter denies both under 15.243(1)(b)(v) and 15.243(1)(s)(v) and (vi), and item 7 also under 15.243(1)(i). Points 1 through 5 apply here as well. Subsection (1)(i) covers "A bid or proposal by a person to enter into a contract or agreement" until bids are opened or their deadline has passed; it

does not describe an audit memo, a usage report or a sharing agreement. The letter does not say how a sharing agreement or a vendor's usage report would reveal a staff manual or an operational instruction to officers.

8. Item 3, the policy. Item 3 asks for the ALPR or Flock policy, standard operating procedures, hot-list criteria and audit policy, with any list of approved search reasons and any record showing whether a search reason is required. Even if some part of the policy is an operational instruction to officers, the parts that set the retention period, who may access the system, what sharing and what uses are permitted and how use is audited are the terms on which the Township runs the system, and anyone can read them without learning how an officer conducts an investigation. MCL 15.244(1) requires those parts to be separated and released. The letter does not say which part of the policy would disclose a technique or an instruction, or why the rest cannot be released, and it weighs no public interest for this item either. "Exemptions must be interpreted narrowly" (Evening News, p. 503); "The exemptions in § 13 are narrowly construed" (Bradley v Saranac Community Schools Bd of Ed, 455 Mich 285 (1997)).

What I ask:

I ask the Board to reverse the denials and to direct release of the records requested, with any redactions the Act permits made within each record and each redaction explained as MCL 15.235(5)(a) and (c) require. For anything still withheld after that, I ask for a statement of what the record is and how it fits the exemption claimed.

I am glad to talk this through with the Department or the Township's counsel by phone or email, and to receive the records in stages as they are ready.

Thank you for your consideration.

Sincerely,

Chance Ackley-Smith