

# CLARK HILL

---

Scott G. Smith  
T 616.608.1109  
F 616.608.1169  
Email: [sgsmith@clarkhill.com](mailto:sgsmith@clarkhill.com)

Clark Hill PLC  
200 Ottawa Avenue NW  
Suite 500  
Grand Rapids, Michigan 49503  
T 616.608.1100  
F 616.608.1199

[clarkhill.com](http://clarkhill.com)

August 27, 2009

Mr. Pat Foster  
Editor  
West Michigan News Company  
6079 Mallard Drive  
Fennville, MI 49408

Re: Freedom of Information Act request

Dear Mr. Foster:

As general legal counsel for the Cities of Allegan, Plainwell and Otsego, at the request of their respective FOIA Coordinators, we are denying your August 24, 2009, requests under the Michigan Freedom of Information Act (the "FOIA")<sup>1</sup> to inspect the ballots of the general election. The ballots are exempt from disclosure under Section 13(1)(d) of the FOIA as records or information exempted from disclosure by statute.<sup>2</sup> The Michigan Election Law<sup>3</sup> and Rule 20 of the Michigan Administrative Code<sup>4</sup> prohibit the disclosure of general election ballots without the prior approval of the State Board of Canvassers.

Be advised that you are entitled under Section 10 of the FOIA to appeal this denial to the legislative body of each City.<sup>5</sup> The Allegan City Council may be reached through its City Clerk's office at (269) 673-5511 or [lvanderclay@cityofallegan.org](mailto:lvanderclay@cityofallegan.org). The Plainwell City Council may be reached through its City Clerk's office at (269) 685-6821 or [nfarmer@plainwell.org](mailto:nfarmer@plainwell.org). The Otsego City Commission may be reached through its City Clerk's office at (269) 692-3391 or [city.clerk@ci.otsego.mi.us](mailto:city.clerk@ci.otsego.mi.us).

Alternatively, if you believe the requested records are wrongfully being withheld you may commence an action in the Allegan County Circuit Court to compel disclosure.<sup>6</sup> If you are successful in asserting the right to inspect or to receive a copy of a public record or a portion of a public record in court, the court will award reasonable attorney fees, costs, and disbursements. If you prevail in part of your action, the court may, in its discretion, award reasonable attorney fees, costs, and disbursements or an appropriate portion of those attorney fees, costs, and disbursements.

---

<sup>1</sup> 1976 PA 446, as amended, MCL 15.231 *et seq.*

<sup>2</sup> MCL 15.243(1)(d).

<sup>3</sup> 1954 PA 116, as amended, MCL 168.1 *et seq.*

<sup>4</sup> R 168.790(19).

<sup>5</sup> MCL 15.240.

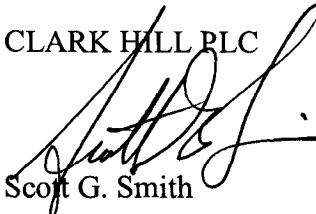
<sup>6</sup> MCL 15.240.

Mr. Pat Foster  
August 27, 2009  
Page 2

We trust that this letter fully responds to your request. Please contact us with any questions.

Sincerely,

CLARK HILL PLC



Scott G. Smith

cc: Mr. Robert Hillard, Ms. Lori Vander Clay  
Mr. Erik Wilson, Ms. Noreen Farmer  
Mr. Thad Beard, Ms. Angela Cronen