

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MECOSTA

CHANGE TO WIN

Plaintiff,

Case No. 09-_____ -CZ

v.

Hon. _____
Circuit Court Judge

FERRIS STATE UNIVERSITY

Defendant.

Margaret Kwoka
(pro hac vice motion pending)
Public Citizen Litigation Group
1600 20th Street NW
Washington, D.C. 20009
202-588-7733

Ted Iorio (P43535)
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COMPLAINT

There is no other pending or resolved civil actions between these parties arising out of the same transaction or occurrence as alleged in this Complaint.

NOW COME the Plaintiff, Change to Win, by and through its attorneys, and for its Complaint against the Defendant, Ferris State University, does state and aver as follows:

INTRODUCTION

1. This is an action brought under the Michigan Freedom of Information Act (FOIA), M.C.L. § 15.231 et. seq., to compel the production of an unredacted copy of the contract between CaremarkPCS Health L.P., and Ferris State University for the provision of pharmacy benefit management services and of marketing materials provided by CaremarkPCS Health L.P. to the University.

JURISDICTION

2. Plaintiff Change to Win is an unincorporated association and a labor organization within the meaning of Section 501(c)(5) of the Internal Revenue Code, 26 U.S.C. § 501(c)(5). As such, it is a “person” under M.C.L. § 15.232(2)(c).
3. Defendant Ferris State University, located in the county of Mecosta, Michigan, is a “public body” under M.C.L. § 15.232(2)(d)(iv) and has possession of and control over the records that Plaintiff seeks.
4. This court has jurisdiction under M.C.L. § 15.240(10)(1)(b) and venue under M.C.L. § 15.240(10)(4) as Defendant’s office that holds the records Plaintiff seeks is located in Mecosta County.

GENERAL ALLEGATIONS

5. By facsimile dated August 12, 2008, and signed by Casey Cabalquinto for Change to Win, Plaintiff requested the following records concerning Ferris State University and the pharmacy benefit management company CaremarkPCS Health L.P.:
 - 1) The contract between the University and CaremarkPCS Health L.P.;
 - 2) The bid CaremarkPCS Health L.P. submitted in response to the University’s request for proposal[s] for pharmacy benefit management services that led to their award of the current contract;
 - 3) Marketing materials the University received from CaremarkPCS Health L.P.;

- 4) Audits performed by or on behalf of the University concerning CaremarkPCS Health L.P.;
- 5) Complaints the University and/or the University's health plan participants made against CaremarkPCS Health L.P.;
- 6) Records that show the University's health plan participants' utilization of individual pharmacies.

See Exhibit 1.

6. By letter dated August 20, 2008, and signed by Miles J. Postema, General Counsel and FOIA Coordinator of Ferris State University, Defendant extended the deadline for a response by 10 business days. See Exhibit 2.
7. By letter dated September 4, 2008, and signed by Miles J. Postema, Defendant informed Plaintiff that it intended to release a copy of records responsive to items (1) and (3) of the request, but that it intended to redact certain portions under the trade secrets exemption of the Michigan FOIA, M.C.L. § 15.243(13)(1)(f). See Exhibit 3. The letter stated that the portions that would be redacted contained "pricing, financial and related confidential commercial information [which is] proprietary trade secret information." See Exhibit 3. The letter further asserted that release of such redacted portions would "give a significant and unfair advantage to CaremarkPCS Health L.P.'s competitors as well as harm the University's own competitive position on the pharmacy benefits marketplace." See Exhibit 3.
8. In the September 4, 2008 letter, Defendant also asserted it was unable to locate any records responsive to the other portions of Plaintiff's request. See Exhibit 3.
9. By letter dated September 11, 2008, and signed by Miles J. Postema, Defendant provided a redacted copy of a document entitled "Managed Prescription Drug Program Participating Group Agreement," which appears to consist of a contract between

CaremarkPCS Health L.P. and Defendant responsive to item (1) of the request. See Exhibit 4. Defendant also provided a redacted copy of a document entitled “Achieving Lowest Overall Cost and the Most Engaged Consumers,” which appears to consist of CaremarkPCS Health L.P. marketing materials responsive to item (3) of the request. Defendant provided the same justification for the redactions as it did in the September 4, 2008 letter and reiterated that it was unable to locate records responsive to the other portions of Plaintiff’s request. See Exhibit 4.

COUNT I

VIOLATION OF FREEDOM OF INFORMATION ACT

10. Plaintiff incorporates by reference the allegations of paragraphs 1 through 9, as if set forth in full herein.
11. Plaintiff has exhausted its administrative remedies pursuant to M.C.L. § 15.240(10)(1)(b).
12. Plaintiff Change to Win is a “person” under M.C.L. § 15.232(2)(c).
13. Defendant Ferris State University is a “public body” under M.C.L. § 15.232(2)(d)(iv).
14. On August 12, 2008, Plaintiff submitted a request under the FOIA. See Exhibit 1.
15. On September 4, 2008, Defendant issued a response to the request. See Exhibit 3.
16. On September 11, 2008, Defendant provided a redacted copy of two records responsive to Plaintiff’s request. See Exhibit 4.
17. The requested public records are not exempt from disclosure and defendant has arbitrarily and capriciously violated the FOIA.

WHEREFORE Plaintiff requests that this Court enter judgment in its favor and issue the following relief:

- A. Plaintiff seeks a declaration that Defendant's failure to disclose records requested by Plaintiff is unlawful under FOIA;
- B. Plaintiff seeks an order requiring Defendant to make all the requested records available to Plaintiff;
- C. Plaintiff seeks an award of attorneys' fees, costs, and disbursements pursuant to M.C.L. § 15.240(10)(6);
- D. Plaintiff seeks an award of compensatory and punitive damages pursuant to M.C.L. § 15.240(10)(7);
- E. Plaintiff seeks such other and further relief as this Court may deem just and proper.

Respectfully submitted,

Dated: March 3, 2009

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Dated: March 3, 2009

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