

2. Communication received from Nathaniel Kaleefey, Attorney with Verspoor Waalkes, including an Appeal of FOIA Decision for Request PR-2025-103



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March 21, 2025

ATTN FOIA APPEALS COMMITTEE
OFFICE OF THE CITY COMMISSION
300 MONROE AVE NW, FL 5
GRAND RAPIDS MI 49503

RECEIVED
MAR 26 2025
OFFICE OF CITY ATTORNEY

Via USPS Certified Mail

RE: PR-2025-103 FOIA Appeal
Asante D. Cain v Nichole M. Northern, 24-11037-DM, 17th Circuit Court
Our File No. 8004-2

This is an appeal of a FOIA decision.

On February 4, 2025, my office sent the enclosed FOIA request, PR-2025-103, asking for the entire personnel file of Asante Cain, among other records related to him. Your office partially denied our request on the basis that it would invade Mr. Cain's privacy. I appeal this denial and the information because Mr. Cain has waived privacy by filing for divorce.

On November 5, 2024, Mr. Cain filed for divorce from Nicole Northern in case number 24-11037-DM in the 17th Circuit Court. I represent Ms. Northern in this divorce, and I sent the FOIA request per my duty to her and the Court to gather the information she and the Court will need to resolve this divorce.

It is concerning that Mr. Cain was apparently informed about my FOIA request. Within 24 hours of your office's receipt of the request, Mr. Cain commented on it to Ms. Northern. Mr. Cain indicated that our FOIA request would not materialize into anything, indicating your office would deny the request. He knew we are interested in information related to an adverse employment action he experienced in 2024, and denied our request for that information while provided old employee records. As far as I know, Mr. Cain is not employed in the FOIA department, and there is no good reason for him to be involved with compliance. It is concerning that he would prospectively know of a denial, which eventually materialized. I suspect he will be informed about this appeal and perhaps know the outcome before it is issued. I think the best way to remedy this situation is to release the requested files.

The response seems inconsistent in that included some performance reviews, but not all. There are reviews completed in 2017, 2019, and 2020, but not the other years of Mr. Cain's employment, and not the most-recent years. Presumably, performance reviews were conducted every year. Seemingly, any concern about privacy would apply to every year's performance reviews, not just some. Also, because your office did not have a problem releasing the stated years, it seems like you could release performance reviews from every year.

I believe Mr. Cain has waived confidentiality and privacy as to the records in question by asking a court to determine custody, parenting time, and support, of the parties' minor children. As his enclosed Complaint shows, Mr. Cain is asking the Court to enter an order governing custody and parenting time. When determining custody, the Court must consider, among other things: (1) the capacity of the parties involved to provide the children with material needs; (2) the moral fitness of the parties; (3) the mental and physical health of the parties; and (4) domestic violence. See MCL 722.23. The Court cannot make a determination regarding custody and parenting time without a determination on the factors. The requested records directly relate to these custody factors. Therefore, Asante will want the Court to have the requested information so it can make an informed decision on custody and parenting time. As part of the divorce, Mr. Cain has already produced some information about his employment, which again indicates he has waived privacy concerning it.

Also, redaction of some private information will protect Mr. Cain's privacy. The provided records were heavily redacted, yet they still showed some relevant information. Those redactions balanced the privacy interest with my client's interest in understanding facts relevant to custody and parenting time.

Last, I do not think the production of the documents threatens Mr. Cain's privacy. My office has no intention of disseminating the information beyond what is necessary for the divorce Mr. Cain filed. Divorces often settle in mediation, and my office is working toward such a private settlement in this case. My office is willing to sign an agreement placing reasonable restrictions on the dissemination of the requested records. I believe production of the requested records now will protect Asante's privacy. An appeal of a denial will possibly draw attention to this matter and possibly expose private information to the public. On the other hand, I believe the production of the requested information will increase the likelihood of a private settlement as opposed to a public trial. If we are given the information, we can use it privately in mediation and settlement.

Thank you for considering this appeal. Please produce the requested information or provide guidance as to what you need to produce it. Again, my office is willing to sign an agreement restricting the dissemination of the information. We look forward to your response.

Sincerely,

Nathaniel Kaleefey
Nathaniel Kaleefey

Encl FOIA request, PR-2025-103

City of Grand Rapids Record Response to Request Number PR-2025-103 (sans
enclosures), dated 2/27/2025

Asante Cain's Complaint for Divorce

CC: Nichole M. Northern (email w/ encl)



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