

State-level FOIA releases in Michigan help expose both the cost-driven decisions not to add corrosion controls to Flint water supply, and the cover-up to hide the grave mistake.

“A steady parade of community groups keeping everyone hopped-up and misinformed” was the root cause of the Flint water controversy, according to [an August 27, 2015, email](#) from a senior official at the Michigan Department of Environmental Quality (MDEQ). A series of FOIA requests submitted by the ACLU of Michigan and Virginia Tech researchers, however, would show the opposite: that MDEQ led efforts to conceal the extent of lead contamination in Flint’s water and to shield MDEQ and City of Flint officials from accountability or punishment.

The water situation was so bad that one home in Flint had lead levels measuring [at 397 parts per billion](#), 26 times higher than the federal action level of 15 parts per billion.

The water was so poisonous that the children in [LeeAnn Walters’](#) home were getting rashes all over their bodies, their hair was falling out in clumps, and they stopped growing.

And yet city and state officials remained complacent.

Frustrated by Flint’s lack of response and problematic lead testing procedures, Walters contacted the Environmental Protection Agency’s Miguel Del Toral. Del Toral got to work compiling an interim report on Flint’s lead levels, which included EPA testing of the pipes and faucets in Walters’ home that concluded, in effect, that the pipes outside the home and under MDEQ control could be the only cause of high lead readings. Del Toral also put Walters in touch with Virginia Tech’s Mark Edwards and his research team, who began testing water samples in their own independent survey, the results of which would be released in the fall of 2015. Once Del Toral finished his interim report, he sent it to both the EPA and MDEQ on June 24, 2015, and provided Walters with a copy as a courtesy, since her home is discussed extensively in the report. Walters provided this report to the ACLU of Michigan’s Curt Guyette, who began seeking comment from city and state officials.

Guyette’s request for comment, met with denials and whitewashing, prompted both Guyette and Edwards to work in tandem filing a series of FOIA requests – beginning in July 2015 – with the City of Flint, MDEQ, and the Michigan Department of Health and Human Services (DHHS).

The results were damning.

FOIA requests to MDEQ uncovered the root of the dangerously-high lead levels – lack of corrosion controls. The documents show state officials firmly defending their decision [to stop using corrosion control treatments](#) to prevent lead from pipes leeching into the water supply after Flint started getting its water from the Flint River, rather than buying water from Detroit, even though such controls are required. The emails obtained through FOIA show MDEQ’s herculean efforts to find a loophole absolving it from enacting such basic safety procedures, and lying to the EPA when the federal agency explicitly asked if such controls were in place, saying the nonexistent controls were in effect.

Perhaps unsurprisingly, the FOIA process for getting the documents released was a struggle. In one especially egregious instance, a FOIA request by Edwards and his team for minutes of the conference call between MDEQ staff and Flint cited in Del Toral's report was denied because the "request does not include the date/time of the conference call and who from the Department of Environmental Quality participated on the conference call." The team appealed, and was again denied.

In another instance, DHHS fought hard to prevent the release of incriminating documents, including an October 2015 graph showing a statistically significant spike in blood lead in summer 2014 and "blood lead skyrocketing in summer of 2015, to the point where 9.5-12.5 percent of children in Flint's two high risk zip codes were lead poisoned." After Edwards paid the fees associated with this document's release, "DHHS fabricated claims of a 'Litigation Hold' and 'Attorney Client Privilege' as cause for further delays."

Flint's water crisis – and FOIA's role in helping bring it to light – made headline news across Michigan and the country. The story was covered by the New York Times (*Emails Deepen Criminal Cases in Flint, but Charges May Be Tough to Prove*, April 24, 2016), Government Technology (*Lessons in Transparency from Flint, Mich.*, April 20, 2016), the International Business Times (*Lead Emails Released By Michigan Gov Snyder After FOIA Request*, February 12, 2016), and Michigan Public Radio (*Could Flint's water crisis help spur FOIA reform?* March 17, 2016), among many others.

The intense attention spurred legislative action and brought more than a dozen criminal charges against city employees and state legislators to date, with more likely to come.

The FOIA requests were so successful uncovering official malfeasance that they prompted Michigan governor Rick Snyder – whose office is exempt from the FOIA – to release records on his own poor handling of the crisis in February 2016. The inadequacy of the governor's response to the water crisis has even spurred a bipartisan effort by Michigan lawmakers to introduce a series of legislation that would remove those exemptions – if successful this could significantly expand the "limited power" of Michigan's FOIA.

13 charges against three government officials, including conspiring to manipulate water monitoring reports, tampering with reports, and misleading local and federal officials, were brought in April 2016. One of the officials is a city employee, as well as two MDEQ regulators who were nominally in charge of keeping track of Flint's actions. The charges are considered highly unusual because they were filed not only against a city employee, but also against regulators. University of Chicago Law school professor Mark N. Templeton told the New York Times, "People are going to sit up straighter in their chairs."