

FILED
11-14-2019
CIRCUIT COURT
DANE COUNTY, WI
2019CV003166
Honorable Peter C
Anderson
Branch 17

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

JOHN DOE,
an anonymous person,
c/o Tom Kamenick,
Kamenick Law Office
1144 Noridge Trail
Port Washington, WI 53074,

Petitioner,

Petition for Writ of Mandamus
Case Code: 30952
Case No. 19-CV-

MADISON METROPOLITAN
SCHOOL DISTRICT,
545 W. Dayton St.
Madison, WI 53703,

Respondent

PETITION FOR WRIT OF MANDAMUS

This is an action to enforce Wisconsin’s Open Records Law, Wis. Stat. §§ 19.31-19.39. State law declares it the public policy of this state that every citizen is presumptively entitled to complete access to the records of state and local government.

Petitioner John Doe, an anonymous person, by their Attorney, Thomas C. Kamenick, of the Wisconsin Transparency Project and Kamenick Law Office, LLC, hereby petitions this Court for a writ of mandamus directing the Respondent, Madison Metropolitan School District, “MMSD”, to produce records requested by the Petitioner, alleging to the Court as follows:

FACTUAL ALLEGATIONS

Parties

1. Petitioner John Doe is an adult citizen of the State of Wisconsin residing in the City of Madison, proceeding anonymously. Doe’s address is c/o Tom Kamenick, Kamenick Law Office, LLC, 1144 Noridge Trail, Port Washington, WI 53074.

2. State law allows people to file record requests anonymously and prohibits records custodians from denying requests to requesters who refuse to identify themselves. *See State ex rel. Auchinlek v. Town of LaGrange*, 200 Wis. 2d 585, 593 (1996); Wis. Stat. § 19.35(1)(i). MMSD has denied multiple requests from Doe solely because Doe filed the requests anonymously.

3. Doe is entitled to proceed anonymously in this case because their statutory right to anonymity outweighs the public's interest in knowing their identity. Requiring Doe to identify themselves would eliminate their right to request records anonymously and make it impossible to challenge an unlawful denial of a record request on that basis.

4. Doe, as a member of the public and a resident of the city that MMSD serves, seeks records containing information provided by MMSD administrators to its Board of Education but not to the public, as well as information that is not provided either to its Board of Education or the public. Doe seeks this information to become a better informed and engaged community member concerning the decisions made and activities undertaken by MMSD in serving its students.

5. Respondent MMSD is a public school district organized under the laws of the State of Wisconsin with a business address of 545 West Dayton Street, Madison, Wisconsin 53703.

6. MMSD is an "Authority" under Wis. Stat. § 19.32(1).

Venue & Jurisdiction

7. This Court has jurisdiction to hear this matter under Wis. Stat. § 19.37(1)(a), which provides record requesters a private right to "bring an action for mandamus asking a court to order release of the record."

8. Venue is proper in this County under Wis. Stat. § 801.50(2), as the action arose in Dane County and the Respondent does substantial business in Dane County.

MuckRock Website

9. Between July 10, 2019, and October 31, 2019, Doe made 26 anonymous record requests to MMSD, using the online public records database and portal “MuckRock.”

10. MuckRock describes itself as “a non-profit collaborative news site that gives you the tools to keep our government transparent and accountable.” See www.muckrock.com.

11. MuckRock provides tools to its users to “file, track and share public records requests, using a mix of software and hands-on help to make the process as easy and transparent as possible.” See www.muckrock.com/about/how-we-work.

12. MuckRock has a database of tens of thousands of government agencies, and allows its users to send record requests to those agencies directly through its website and to use its website to receive the requested records and responses to their requests.

13. MuckRock informs government agencies that “this request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests.”

14. MuckRock’s services allow users to collect, organize, and track all of their requests, responses, and received records in a single location on MuckRock’s public website.

15. MuckRock also sends follow-up messages on behalf of its users on a scheduled periodic basis if the government agency has not responded.

16. MuckRock also retains archived copies of all records received, allowing the public to view public records that have already been produced without having to make new requests, reducing burdens on government agencies.

Doe's Record Requests

17. All of the following described record requests were made by Doe, to MMSD, using MuckRock.

18. Doe made the following 17 requests for documents provided on a regular basis to the MMSD Board of Education (“Weekly Request”):

1. All records referred to (whether formally or colloquially) as “weekly update” document(s) provided on behalf of the Madison Metropolitan School District to the Board of Education of the Madison Metropolitan School District, during the period from and including July 1, 2019 through and including July 7, 2019; and

2. All records provided on behalf of the Madison Metropolitan School District to any member(s) of the Board of Education of the Madison Metropolitan School District, during the period from and including July 1, 2019 through and including July 7, 2019, in response to inquiries or requests by member(s) of the Board of Education.

19. Each of the 17 Weekly Requests was substantively identical except that each successive Weekly Request requested documents for the next sequentially progressing week.

20. Doe made the Weekly Requests on the following dates: 7/10/19, 7/17/19, 7/24/19, 7/31/19, 8/7/19, 8/14/19, 8/21/19, 8/28/19, 9/4/19, 9/11/19, 9/18/19, 9/25/19, 10/2/19, 10/9/19, 10/16/19, 10/25/19, and 10/31/19.

21. On 8/9/19, Doe made the following request: “All School Improvement Plans (or SIPs) for the 2019-20 school year for Madison Metropolitan School District schools, including all drafts and/or revisions.”

22. On 8/19/19, Doe made the following request: “The kindergarten through grade 12 sequential curriculum plan, in the subject area of reading, that has been developed, adopted and implemented by the board of education of the Madison Metropolitan School District as required under Wisconsin Department of Public Instruction Administrative Code PI 8.01(2)(k)2.a.”

23. On 8/29/19, Doe made the following request: “The latest Inequitable Distribution of Teachers Report for the Madison Metropolitan School District.”

24. On 9/5/19, Doe made the following request: “All reports for each school in the Madison Madison [sic] Metropolitan School District which were required to be submitted by September 1, 2019 to the Madison Metropolitan School District’s Board of Education under Section 118.305(4)(c) of the Wisconsin Statutes (Notification and Reporting Following Use of Seclusion or Physical Restraint).”

25. On 9/13/19, Doe made the following request: “The annual certifications by the Madison Metropolitan School District board under Administrative Code PI 8.01(2)(a) (School District Standards: Licensure), as required by PI 8.01(1), for the current school year and the last two school years.”

26. On 9/17/19, Doe made the following request: “The Preliminary Official Statement for the Madison Metropolitan School District’s Tax and Revenue Anticipation Promissory Notes maturing in September 2020 in the amount of \$68,000,000.”

27. On 9/27/19, Doe made the following request: “The Madison Metropolitan School District’s Carl Perkins grant application for FY 2019-20, and all correspondence sent and/or received by the Madison Metropolitan School District regarding such application.”

28. On 10/4/19, Doe made the following request: “Records showing, for the 2018-19 school year: (1) the total number of diplomas granted by the Madison Metropolitan School District's Board of Education, (2) the number of diplomas granted under Section 11.c. of the Madison Metropolitan School District's Policies and Procedures 3540 (“Policy 3540”) for students not meeting academic performance criteria under Section 11.b. of Policy 3540, (3) the number of diplomas granted under Section 12 of Policy 3540 for students under modified or

alternative graduation criteria, and (4) the number of diplomas granted under Section 13 of Policy 3540 for students enrolled in alternative education program(s).” In the same request, Doe requested identical documents for the preceding three school years.

29. On 10/7/19, Doe made the following request: “Documents provided and/or presented in training(s) (including agenda(s) and/or schedule(s) of such training) for member(s) of the Board of Education of the Madison Metropolitan School District on the Wisconsin Open Meetings Law and/or the Wisconsin Public Records Law, during the period commencing on January 1, 2014 through the date of this request.”

30. MMSD has failed to respond to the 7/10/19, 7/17/19, 7/24/19, 7/31/19, and 8/7/19 Weekly Requests, even though MuckRock, on behalf of Doe, sent multiple follow-up messages for those Weekly Requests to MMSD.

31. To each of the remaining Weekly Requests, with one exception, MMSD provided the same substantive response:

The Madison Metropolitan School District (MMSD) is in receipt of your open records request dated August 9, 2019. However, despite your disclaimer that "this request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests," your request has not identified the actual requester. While the Wisconsin Open Records law does not require disclosure of the requester's identity, the MMSD contends that the requester's identity is relevant in its determination of whether there is a safety concern that would prohibit disclosure of the requested documents.

See Wisconsin Statute 19.351(i).[sic]

If you have any questions, please contact the MMSD at publicrecords@madison.k12.wi.us.

32. To the 8/9/19 request for School Improvement Plans, including drafts and revisions, MMSD provided that same response, but also added the following:

Please note, all School Improvement Plans (SIPs) for the 2019-20 school year are available on each MMSD school's websites. As you know, all drafts and/or revisions of SIPs are not subject to the Wisconsin Open Records law.

33. However, the SIPs located on the schools' websites are for the 2018-19 school year and therefore are not responsive to Doe's request.

34. MMSD has not provided any records in response to Doe's 26 requests.

COUNTS I-V – Violation of § 19.35(4)(a)
Failure to Respond to and Fulfill Record Requests

35. Each count herein relates, respectively, to the Weekly Requests Doe made on 7/10/19, 7/17/19, 7/24/19, 7/31/19, and 8/7/19.

36. Under Wis. Stat. § 19.31, it is the declared public policy of this state that every citizen is entitled to the greatest possible information regarding the affairs of government. The statute provides that “[t]he denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied, establishing a presumption of complete public access to government records, consistent with the conduct of governmental business.”

37. Wis. Stat. § 19.35(1)(a) and (b) provide that “any requester has a right to inspect any record” and “to make or receive a copy of a record.”

38. Subject to qualifications not relevant here, Wis. Stat. § 19.32(2) defines a record as “any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or kept by an authority.”

39. Under Wis. Stat. § 19.35(4)(a), “[e]ach authority, upon request for any record, shall, as soon as practicable and without delay, either fill the request or notify the requestor of the authority's determination to deny the request in whole or in part and the reasons therefor.”

40. The Attorney General of Wisconsin has opined that “10 working days generally is a reasonable time for responding to a simple request for a limited number of easily identifiable records.” Wis. Dep’t of Justice, Attorney General Josh Kaul, *Wisconsin Public Records Law Compliance Guide*, May 2019, at 15. “Requests for public records should be given high priority.” *Id.*

41. It has been four months and four days since Doe made their first of the five unacknowledged requests and three months and seven days since Doe made their last of those requests. MMSD has ignored those requests, failing even to acknowledge their receipt.

42. Therefore, MMSD has violated the Open Records Law and Wis. Stat. § 19.35(4)(a) by failing to fulfill or deny the record request “as soon as practicable and without delay.”

43. “If an authority . . . delays granting access to a record or part of a record after a written request for disclosure is made, the requester may . . . bring an action for mandamus asking a court to order release of the record.” Wis. Stat. § 19.37(1), (a).

COUNTS VI-XXVI – Violation of § 19.35(1)(i)
Denial of Anonymous Requests

44. Each count herein relates, respectively, to the requests Doe made on 8/9/19, 8/14/19, 8/19/19, 8/21/19, 8/28/19, 8/29/19, 9/4/19, 9/5/19, 9/11/19, 9/13/19, 9/17/19, 9/18/19, 9/25/19, 9/27/19, 10/2/19, 10/4/19, 10/7/19, 10/9/19, 10/16/19, 10/25/19, and 10/31/19.

45. “Wisconsin Stat. § 19.35(1)(i) provides that a person may file an open records request anonymously.” *State ex rel. Auchinleck v. Town of LaGrange*, 547 N.W.2d 587, 200 Wis.2d 585 (1996).

46. Wisconsin law expressly prohibits Authorities from denying record requests because the requester wishes to remain anonymous:

Except as authorized under this paragraph, no request . . . may be refused because the person making the request is unwilling to be identified or to state the purpose of the request. . . . A requester may be required to show acceptable identification whenever the requested record is kept at a private residence or whenever security reasons or federal law or regulations so require.

Wis. Stat. § 19.35(1)(i)

47. MMSD has denied 21 of Doe's requests solely because Doe filed their requests anonymously.

48. None of the requested records are kept at a private residence.

49. MMSD has not identified any security reasons, federal law, or regulations that require Doe to identify themselves, and no such reasons, laws, or regulations exist.

50. The Open Records Law requires denials to be made with enough specificity in order to ensure that the custodian did not act arbitrarily and to give the requester sufficient notice as to allow a challenge to the denial. *Journal/Sentinel v. Aagerup*, 429 N.W.2d 772 (Ct. App 1998).

51. Although Wisconsin courts have determined that a requester's identity, if known, may be relevant to the balancing of interests weighing in favor of or against disclosure, *see Ardell v. Milwaukee Bd. Of Sch. Directors*, 2014 WI App 66, ¶¶16-17, they have never held that a requester can be forced to identify themselves.

52. *Ardell* was an extreme case involving a violent and threatening man who was criminally convicted of twice violating a domestic abuse injunction and was seeking detailed records of his victim's employment. *Id.*, ¶¶2, 11-13. Calling the case "exceptional", the court concluded that the public interest in protecting the victim outweighed the public interest in disclosing the records to her abuser. *Id.*, ¶14.

53. MMSD failed to engage in the necessary “fact-intensive inquiry” as to whether or not there existed the “documented and well-founded safety concerns” inherent in fulfilling the request that might weigh in favor of non-disclosure. *See Ardell*, 2014 WI App 66, ¶10.

54. This is not the “exceptional” case. The requested records are routine government documents, not focused on any individual, and they contain no information that would put any person’s safety in danger if revealed.

55. MMSD has refused 21 of Doe’s requests for a reason expressly prohibited by state law, blatantly disregarding their statutory responsibilities and Doe’s statutory rights.

56. Therefore, MMSD has violated the Open Records Law and Wis. Stat. § 19.35(1)(i) by refusing to fulfill a request because the person making the request is unwilling to be identified.

57. “If an authority withholds a record . . . after a written request for disclosure is made, the requester may . . . bring an action for mandamus asking a court to order release of the record.” Wis. Stat. § 19.37(1), (a).

58. Furthermore, MMSD has denied responding to Doe’s request arbitrarily, acting blatantly in violation, making it subject to punitive damages under Wis. Stat. § 19.37(3).

COUNT XXVII – Violation of Wis. Stat. § 19.32(2)
Illegal Use of “Drafts” Exception

59. This Count relates to the request Doe made on 8/9/19.

60. Under Wis. Stat. § 19.32(2), the term “Record” is defined expansively, but expressly excludes “drafts, notes, preliminary computations, and like materials prepared

for the originator's personal use or prepared by the originator in the name of a person for whom the originator is working.”

61. Under the Open Records Law, all exceptions to full public disclosure must be construed narrowly. *Fox v. Bock*, 149 Wis. 2d 403, 411, 438 N.W.2d 589 (1989). “The denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied. Wis. Stat. § 19.31.

62. Wisconsin courts have explicitly rejected the argument that preliminary documents not yet in their final form are not “records” under the Open Records Law. *Fox*, 149 Wis. 2d at 412-14.

63. Merely calling a document a “draft” is not sufficient to qualify it for the statutory exemption. *Id.* at 417.

64. When a preliminary document is shared by the originator with other people who do not report directly to the originator, the document is no longer kept “for the originator’s personal use, but rather has a different purpose and becomes a “record.” *Id.* at 414.

65. In denying Doe’s request for “drafts and/or revisions” of “School Improvement Plans”, MMSD claimed that “all drafts and/or revisions of SIPs are not subject to the Wisconsin Open Records law.”

66. MMSD failed to engage in the correct analysis for the drafts exception, resulting in its misapplication.

67. MMSD seems to be claiming that all “drafts” or earlier versions of documents do not qualify as “records”, a position inconsistent with the statutory definition and interpreting case law.

68. MMSD failed to explain how the draft SIPs or earlier versions of SIPs were used and how that use qualifies as being exclusively for their “originator’s personal use” or if they were prepared “in the name of a person for whom the originator is working,” making it impossible for Doe to gauge the legality of MMSD’s refusal.

69. MMSD refused Doe’s lawful request for the SIP drafts and revisions and failed to provide a sufficiently specific reason for its denial.

70. Therefore, MMSD has violated the Open Records Law and Wis. Stat. § 19.35(1)(a) by refusing to provide copies of documents that are “records” under § 19.32(2).

71. “If an authority withholds a record . . . after a written request for disclosure is made, the requester may . . . bring an action for mandamus asking a court to order release of the record.” Wis. Stat. § 19.37(1), (a).

COUNTS XXVIII-XLVIII – Violation of § 19.35(4)(b)
Failure to Inform Doe of Right to Mandamus Review

72. Each count herein relates, respectively, to the requests Doe made on 8/9/19, 8/14/19, 8/19/19, 8/21/19, 8/28/19, 8/29/19, 9/4/19, 9/5/19, 9/11/19, 9/13/19, 9/17/19, 9/18/19, 9/25/19, 9/27/19, 10/2/19, 10/4/19, 10/7/19, 10/9/19, 10/16/19, 10/25/19, and 10/31/19.

73. Under Wis. Stat. § 19.35(4)(b), “[e]very written denial of a request by an authority shall inform the requester that if the request for the record was made in writing, then the determination is subject to review by mandamus under s. 19.37(1) or upon application to the attorney general or a district attorney.”

74. MMSD gave written denials of 21 of Doe’s requests.

75. None of MMSD’s written denials contained the information required by § 19.35(4)(b).

76. Therefore, MMSD has violated the Open Records Law and Wis. Stat. § 19.35(4)(b) by failing to inform Doe of their rights.

RELIEF REQUESTED

WHEREFORE, the Petitioner demands a writ of mandamus to issue against the Respondent under Wis. Stat. § 19.37(1):

1. Compelling the Respondent to immediately produce the requested records;
2. Declaring the Petitioner's rights and limiting the Respondent's conduct with respect to the requested records;
3. Awarding the Petitioner its reasonable attorney fees, damages of not less than \$100 for each Count, and other actual costs under Wis. Stat. § 19.37(2);
4. Awarding the Petitioner punitive damages for Counts VI-XXVI and;
5. Awarding such other relief as the Court deems appropriate.

Dated this November 14, 2019

Respectfully submitted,
WISCONSIN TRANSPARENCY PROJECT
KAMENICK LAW OFFICE, LLC
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