



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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June 21, 2018

Joanne Beilman-Dulin
One Wisconsin Now
own@onewisconsinnow.org

Dear Ms. Beilman-Dulin:

This is in response to your correspondence, received on May 18, 2018, in which you requested the following:

- 1) All emails sent or received by DOJ employee Misha Tseytlin containing any of the following words or phrases:
 - 'Alliance Defending Freedom'
 - 'ADF'
 - 'transgender'
 - 'queer'
 - 'homosexual'
 - 'Ritz'
 - 'Ritz-Carlton'
 - 'Dana Point'
 - 'Orange County'

I request these documents for June 1, 2017 through August 31, 2017.

- 2) All emails sent or received by DOJ employee Misha Tseytlin where the email address of at least one recipient contains the phrase "adflegal.org" from June 1, 2017 through August 31, 2017.
- 3) Any receipts, credit card statements, checks and other financial documents containing information related to DOJ employee Misha Tseytlin attending an Alliance Defending Freedom conference in July 2017.
- 4) All time sheets for DOJ employee Misha Tseytlin for July 2017.

The Department of Justice (DOJ) construes your correspondence as a public records request pursuant to the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39. In a May 21, 2018 email, you revised your request such that you submitted your request #4 as a separate public records request, to which DOJ responded.

Regarding your request #3, DOJ does not have records responsive to this portion of your request. The public records law “does not require an authority to provide requested information if no record exists, or to simply answer questions about a topic of interest to the requester.” *Journal Times v. City of Racine Board of Police and Fire Commissioners*, 2015 WI 56, ¶ 55, 362 Wis. 2d 577, 866 N.W.2d 563; *see also State ex rel. Zinngrabe v. Sch. Dist. of Sevastopol*, 146 Wis. 2d 629, 431 N.W.2d 734 (Ct. App. 1988). Solicitor General Misha Tseytlin did not attend the July 2017 Alliance Defending Freedom summit in his official capacity. Generally, purely personal content found in personal files or email accounts is not subject to disclosure under the public records law. Activities engaged in by government staff that are not a part of their official duties may be considered purely personal so long as they do not use official time or official resources for such activity or to pay for any connected expenses. Such content found in DOJ files or official email accounts may be subject to disclosure under the public records law, but such content found in a personal file or email account may not be unless government staff use official time or resources for such activity.

Our search for responsive records included searches of DOJ emails. We searched for emails sent to or from Misha Tseytlin from June 1, 2017 through August 31, 2017 using the search terms: Alliance Defending Freedom, ADF, transgender, queer, homosexual, Ritz, Ritz-Carlton, Dana Point, and Orange County. We also searched for emails between Misha Tseytlin and adflegal.org from June 1, 2017 through August 31, 2017.

We reviewed our files and identified records responsive to your request. We are providing them to you as explained below.

I am not releasing certain records because they are attorney-client privileged communications or attorney work product. Attorney-client privileged communications are not subject to disclosure under the public records law. *George v. Record Custodian*, 169 Wis. 2d 573, 582, 485 N.W.2d 460 (Ct. App. 1992); *Wisconsin Newspress, Inc. v. School Dist. of Sheboygan Falls*, 199 Wis. 2d 768, 782-83, 546 N.W.2d 143 (1996). Attorney-client privileged communications include those between DOJ attorneys and counsel representing others in a matter of common interest. *See* Wis. Stat. § 905.03(2). Attorney work product is a statutory and common-law exception to disclosure. *See* Wis. Stat. § 19.35(1)(a); *see also Seifert v. Sch. Dist. of Sheboygan Falls*, 2007 WI App 207, ¶¶ 27-28, 305 Wis. 2d 582, 740 N.W.2d 177 (“The common law long has recognized the privileged status of attorney work product, including the material, information, mental impressions and strategies an attorney compiles in preparation for litigation.”); Wis. Stat. § 804.01(2)(c)1.

An employee identification number, which is analogous to a social security number or other economically valuable individually identifiable information for DOJ employees, has been redacted to protect against identity theft or other unauthorized use following any subsequent disclosure. In performing the public records balancing test pursuant to Wis. Stat. § 19.35(1)(a), I concluded that the public policy in favor of protecting the confidentiality

of this economically valuable individually identifiable information and preventing its misuse upon any subsequent disclosure outweighs any public interest in disclosure of the employee identification number.

Pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, links to an intern evaluation survey form have been redacted. Disclosure of the links would allow for misuse upon subsequent disclosure that would adversely impact the evaluation process. I determined that the public interest in preventing misuse of the evaluation processing, in ensuring fair and thorough evaluations, and in individuals performing their job responsibilities without disruption and unnecessary interruption outweighs any public interest in disclosure of the links.

Records containing copyrighted information are not being produced. Examples of such records include copyrighted newsletters from WisPolitics and E & E News. "[M]aterials to which access is limited by copyright" are not records under the public records law. Wis. Stat. § 19.32(2).

Where possible, only one copy of records for which duplicate copies exist has been included with the records prepared for release. *Stone v. Bd. of Regents*, 2007 WI App 223, ¶ 20, 305 Wis. 2d 679, 741 N.W.2d 774. Duplicate copies of records are not included when attached to emails when copies of these records are included as attachments within the responsive records. Where possible, email chains, where the last email of the chain is being produced, were omitted.

The law permits DOJ to impose fees for certain "actual, necessary and direct" costs associated with responding to public records requests. Wis. Stat. § 19.35(3). Pursuant to Wis. Stat. § 19.35(3)(f), DOJ may require prepayment for the costs of locating (if applicable), copying, and mailing the requested records if the total amount exceeds \$5.00. Pursuant to Wis. Stat. § 19.35(3)(e), in this instance, DOJ is waiving its fees associated with responding to your request. Enclosed, please find the records responsive to your request.

Pursuant to Wis. Stat. § 19.35(4)(b), if a determination denies a request, in whole or in part, it is subject to review by mandamus under Wis. Stat. § 19.37(1) or upon application to a district attorney or the Attorney General.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul M. Ferguson", is written over a horizontal line.

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:cks

Enclosure