



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 records:

- 1) All emails sent or received by DOJ employee Kevin LeRoy 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 Kevin LeRoy 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 Kevin LeRoy attending an Alliance Defending Freedom conference in July 2017.
- 4) All time sheets for DOJ employee Kevin LeRoy 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.

Our search for responsive records included searches of DOJ emails. We searched for emails sent to or from Kevin LeRoy 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 Kevin LeRoy 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.

Home addresses, home electronic mail addresses, and personal cell telephone numbers of employees were redacted pursuant to Wis. Stat. § 19.36(10)(a). To the extent such records and information are not directly governed by Wis. Stat. § 19.36(10)(a), the information has been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. Well-established public policy recognizing the confidentiality and privacy of the personal contact information of an employer’s employees is expressed in Wis. Stat. § 19.36(10)(a). I find that the same underlying public policy of protecting the confidentiality and privacy of personal contact information and the public interest in the expectation of privacy on the part of individuals in their personal lives outweigh any public interest in disclosure of this information.

A personal telephone number of an individual has been redacted pursuant to the Wis. Stat § 19.35(1)(a) balancing test. In performing the balancing test, I determined that the public interest in disclosure of this information is outweighed by the public interest in the expectation of privacy on the part of individuals in their personal lives. Additionally, well-established public policy recognizing the confidentiality and privacy of the personal contact information of an employer’s employee is expressed in Wis. Stat. § 19.36(10)(a). To the extent that statute does not directly govern the redacted information, I find that the same underlying public policy of protecting the confidentiality and privacy of personal contact information outweighs any public interest in disclosure of this information.

A credit card number of an individual has been redacted pursuant to Wis. Stat. § 19.36(13). To the extent this information is not directly governed by Wis. Stat. § 19.36(13), these records have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test to protect against identity theft or other unauthorized use following any subsequent disclosure. The public interest in protecting this kind of economically valuable information from misappropriation or misuse is recognized in Wis. Stat. § 19.36(13), which prohibits disclosure of financial identifying information of individuals. Although Wis. Stat. § 19.36(13) may not apply to DOJ financial information, the same public interest in protecting financial identifying information from misappropriation or other misuse applies here. Therefore, I determined that the public interest in protecting this economically valuable information from misappropriation or misuse, as well as the public policies outlined in Wis. Stat. §§ 801.19, 801.20, and 801.21, outweigh any public interest in disclosure.

The date of birth of an individual person 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 interest in favor of protecting the confidentiality of this economically valuable individually identifiable information and preventing its misuse upon any subsequent disclosure, as well as the public policies outlined in Wis. Stat. §§ 801.19, 801.20, and 801.21, outweigh any public interest in disclosure of the date of birth.

Frequent flyer numbers, event confirmation numbers, flight confirmation numbers, and event web application usernames and passwords have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. These numbers are economically valuable financially identifiable information, and they have been redacted to protect against misappropriation 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 financially identifiable information and preventing its misuse upon any subsequent disclosure outweighs any public interest in disclosure of the information.

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.

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

Pursuant to Wis. Stat. § 19.32(2), notes are not records. Therefore, notes, preliminary documents, and similar materials prepared for the originator's personal use or by the originator in the name of a person for whom the originator is working are not being produced. Wis. Stat. § 19.32(2); *see State v. Panknin*, 217 Wis. 2d 200, 209-10, 579 N.W.2d 52 (Ct. App. 1998) (personal notes of sentencing judge are not public records).

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), this determination 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 "P. M. Ferguson", with a stylized flourish at the end.

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:cks

Enclosure