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January 12, 2018

Patrick Marley
State Capitol Reporter
Milwaukee Journal Sentinel
patrick.marley@jrn.com

Dear Mr. Marley:

This is in response to your correspondence sent to me and Director of Communications and Public Affairs Johnny Koremenos on December 19, 2017, in which you requested "copies of all correspondence (including but not limited to emails) to Attorney General Brad Schimel since Dec. 6 regarding his report on the John Doe leak investigation. In addition, I am seeking all responses he sent to that correspondence (including but not limited to emails)." 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.

We searched for records from December 6, 2017 through December 19, 2017 (date of your request). Our search for responsive records included a search of emails to or from Attorney General Brad Schimel. We searched using the search term: John Doe. If you wish to narrow the scope of your request to more specific search terms and specific names of individuals within DOJ, you may do so at any time.

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

DOJ is not releasing certain records because they are attorney-client privileged communication 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 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 ("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.

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

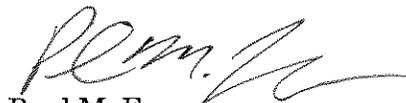
Drafts of documents are not being produced because drafts are not records as defined in Wis. Stat. § 19.32(2). See *Schill v. Wis. Rapids Sch. Dist.*, 2010 WI 86, ¶ 71, 327 Wis. 2d 572, 786 N.W.2d 177; *Journal/Sentinel, Inc. v. Sch. Bd. of Sch. Dist. of Shorewood*, 186 Wis. 2d 443, 456, 521 N.W.2d 165 (Ct. App. 1994). Final documents are being produced.

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, emails 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,



Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:cks

Enclosure