



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

BRAD D. SCHIMEL
ATTORNEY GENERAL

Paul W. Connell
Deputy Attorney General

Delanie M. Breuer
Chief of Staff

17 W. Main Street
P.O. Box 7857
Madison, WI 53707-7857
www.doj.state.wi.us

Paul M. Ferguson
Assistant Attorney General
fergusonpm@doj.state.wi.us
608/266-1221
TTY 1-800-947-3529
FAX 608/267-2779

July 25, 2018

Briana Reilly
WisPolitics
reilly@wispolitics.com

Dear Ms. Reilly:

This is in response to your correspondence, received on July 6, 2018, in which you requested “[a]ll DOJ open records logs from 2008 to the present. At a minimum, the log should include the following information fields: date of request, description of records requested, requester information (where applicable), requester organization (where applicable), and final disposition/current status.” You later revised your request to seek “[a]ll DOJ open records logs from 2015 to the present.” The Wisconsin 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.

During our July 6, 2018 telephone conversation, I explained how DOJ manages and tracks the public records requests it receives. DOJ does not maintain a simple log or spreadsheet that would fulfill each aspect of your request. DOJ uses case management software to manage its public records requests. DOJ personnel do not manually enter into the system all of the information detailed in your request. That information may be found in documents stored within each file in the case management system. In order to provide you with all of the information sought in your request, we would need to provide you with each individual public records request and each final response letter.

Generally, the public records law does not require an authority to create a new record by extracting and compiling information from existing records in a new format. *See* Wis. Stat. § 19.35(1)(L). *See also* *George v. Record Custodian*, 169 Wis. 2d 573, 579, 485 N.W.2d 460 (Ct. App. 1992). However, in this instance, as we discussed, in order to facilitate responding to your request and provide you with the information you requested, we were able to export certain information from the case management system and create a spreadsheet. This information does not necessarily correspond with every item in your request. For example, the information does not indicate the date of the request and its final disposition. Instead, the information indicates when a request was opened in the case management system and when it was closed in the system. These dates correspond approximately—usually within a couple business days—to the dates when a request was received and a response was sent. (A response either fulfilled the request completely or in part or denied the request.) If you find this information does not satisfy your request, or if you have questions about the information, please contact me.

DOJ is providing you with the information with redactions as explained below. Please note, redactions were applied either by deleting the information or by inserting three asterisks (“***”) in place of the redacted information.

Wisconsin Const. art. I, § 9m requires that crime victims be treated with “fairness, dignity and respect for their privacy.” Related Wisconsin statutes recognize that this state constitutional right must be vigorously honored by law enforcement agencies. Wis. Stat. §§ 950.01 and 950.02(4)(a). The Wisconsin Supreme Court, speaking about both Wis. Const. art. I, § 9m, and related victim rights statutes, has instructed that “justice requires that all who are engaged in the prosecution of crimes make every effort to minimize further suffering by crime victims.” *Schilling v. Crime Victim Rights Bd.*, 2005 WI 17, ¶ 26, 278 Wis. 2d 216, 692 N.W.2d 623. Even in those situations in which a criminal prosecution does not occur, it is the policy of our office to consider the privacy rights of those who could be considered victims entitled to these protections when applying the balancing test regarding the release of records. In preparing this information for release, I determined by application of the Wis. Stat. § 19.35(1)(a) balancing test that these public policies requiring that crime victims and their families be treated with respect for their privacy and dignity outweighed any public interest in disclosure of the names of these individuals. I also concluded the public interest favoring protection of crime victims and their families from unnecessary public attention, possible harassment, and unnecessary emotional upset outweighs any public interest in the disclosure of this information. Accordingly, the names of crime victims and the names of family members have been redacted.

The names of juveniles and family members of juveniles have been redacted pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. Disclosure of the names of the family members could identify the juveniles. In performing the balancing test, I determined that the public interest in avoiding unnecessary intrusion into the personal lives of persons collaterally mentioned in the records, especially minor children and juveniles, outweighs any public interest in information about the conduct of governmental affairs. Additionally, well-established public policy recognizing the confidentiality and privacy of children and juveniles is expressed in Wis. Stat. § 48.396 and Wis. Stat. § 938.396. I find that the same underlying public policy of protecting the confidentiality and privacy of children and juveniles outweighs any public interest in disclosure of the redacted information. *See* Wis. Stat. § 48.396 (“Law enforcement officers’ records of children . . . shall not be open to inspection or their contents disclosed” unless certain exceptions apply); Wis. Stat. § 938.396 (“Law enforcement agency records of juveniles may not be open to inspection or their contents disclosed” unless certain exceptions apply).

The name of a witness was redacted pursuant to the Wis. Stat. § 19.35(1)(a) public records balancing test. Public disclosure of the name could expose the individual to unwanted public scrutiny, criticism, or pressure from outside sources, which could have a chilling effect on future witnesses’ willingness to come forward and cooperate with law enforcement in investigations of similar incidents. In performing the balancing test, I determined that the public interest in protecting the ability of law enforcement to gather information and facilitate cooperation with law enforcement when conducting sensitive investigations, and in protecting the privacy of citizens involved in those investigations outweighs any public interest in disclosure of the name of the witness. *Cf.* Wis. Stat. § 19.31; *Linzmeier v. Forcey*, 2002 WI 84, ¶¶ 30, 32, 39, 41, 254 Wis. 2d 306, 646 N.W.2d 811.

Personally identifying information related to the identity of an informant has been redacted as required by Wis. Stat. §19.36(8). Under Wis. Stat. §19.36(8)(a)1, an informant includes any individual who provides information to law enforcement and either requests confidentiality or is expressly or implicitly promised confidentiality. The authority to delete information related to the identity of the informant also includes the authority to delete any other information that would tend to identify an informant. *See* Wis. Stat. §19.36(8)(b). Notwithstanding Wis. Stat. § 19.36(8)(b), I also redacted the informant's identity pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. Release of this information would compromise the ability of law enforcement to identify additional witnesses and conduct follow-up interviews and could result in the intimidation of or tampering with potential witnesses. The strong public interest in investigating and prosecuting criminal activity, protecting the integrity of the current investigation and associated investigations, protecting the livelihoods and security of individuals who cooperate with law enforcement, protecting law enforcement sources, and encouraging citizens to cooperate with law enforcement investigators in providing information essential to investigating potential criminal activity outweighs any public interest in releasing the redacted information. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶ 40.

Pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, dates of birth have been redacted to protect against identity theft or other unauthorized use following any subsequent disclosure. In performing the public records balancing test, 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 information.

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,



Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:pjm

Enclosure