



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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November 13, 2017

Jonathan Weber
Marathon Studios, Inc.
562 Independence Road
East Stroudsburg, PA 18301

Dear Mr. Weber:

This is in response to your correspondence, dated October 16, 2017, in which you requested “a complete list of all state government employees on the state government’s payroll. We request that all data elements that are not specifically excluded for privacy reasons be provided.” You specified, “We request a copy of this dataset for the last quarter (or most recent available) for each year from the earliest year this data is maintained to the current year (2017).” 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.

First, please note, DOJ only maintains responsive records regarding DOJ employees; DOJ does not maintain records for other Wisconsin state agencies. Therefore, DOJ cannot provide records responsive to your request to the extent it encompasses employees of state agencies other than DOJ. 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). You may wish to contact the Wisconsin Department of Administration or other state agencies— as they are all separate authorities under the public records law—regarding your request.

We reviewed our files and identified records responsive to your request, and we are providing you with the records in redacted form as explained below.

We redacted the names of DOJ Division of Criminal Investigation (DCI) special agents pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. In applying this balancing test, we balanced the public's right to information regarding the affairs of government with the public interest in maintaining confidentiality of the identities of persons serving as under-cover agents, protecting the personal privacy of those agents who have been harmed or threatened in the line of duty, protecting the personal privacy of agents whose families and children have suffered harm or harassment due to the agent's status in law enforcement, maintaining confidentiality of agents who have received specialized tactical training, and in general, protecting agents and their families from being targeted for harm in what has become a very volatile environment in which for law enforcement officers to operate. There is a substantial public interest in DOJ's ability to recruit and retain qualified agents. Respecting the critical public safety role that law enforcement officers play in society, we determined that public harm in disclosing the names of special agents outweighs the public interest in disclosure. The names of special agents-in-charge have not been redacted. A detailed explanation regarding our balancing test application is provided below.

Providing information that would identify current undercover law enforcement officers or those who might perform undercover work could endanger the safety of those agents who are working, or could work, undercover. Providing this information could also jeopardize the operations of undercover agents who may be functioning in a role in which their true status as an active law enforcement officer is unknown to subjects, targets, witnesses, and others who interact with that undercover agent. Disclosure of the information publicly would reveal a confidential law enforcement technique that would lose its effectiveness if it became public knowledge. I find that the public interest in revealing this information is outweighed by the public interest in protecting the safety of law enforcement officers and promoting effective law enforcement investigations. *Cf. Linzmeyer v. Forcey*, 2002 WI 84, ¶¶ 30-32, 39, 41, 254 Wis.2d 306, 646 N.W.2d 811.

Additionally, pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, I determined that the disclosure of the names of the agents would have an adverse effect on the safety and privacy interests of the agents and their families. Law enforcement agencies have been made aware that their personnel are at increased risk of being targeted by groups or individuals who use publicly available information for cyber attacks, doxxing, or swatting activities against law enforcement officers and their families.¹ Providing a list of names of agents could subject the agents or their families to cyber, financial or personal attacks, including identity theft, stalking, harassment, and threats. Many of these threats have already manifested. For example, investigations involving undercover law enforcement officers as well as the safety of plainclothes and undercover officers have been compromised, acts of fraud and identity theft against officers have undermined their credibility and the public trust, and officers and their family and friends have suffered harassment, threats and violence. Such ever-increasing threats to law enforcement officers could have a chilling effect on DCI's ability to recruit or retain qualified candidates for those positions. Applying the public records balancing test, Wis. Stat. § 19.35(1)(a), these likely threats also weigh in favor of not disclosing the redacted names.

¹ Just as one example, it was reported last year that ISIS published a hit list of 36 Minnesota police officers. <http://www.citypages.com/news/isis-hackers-post-kill-list-of-36-minnesota-cops-8124957>

As such, I find that the public interest in disclosure of this information is outweighed by the public interest in effective investigation and prosecution of criminal activity and the protection of law enforcement officers and their families. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30-32, 39, 41.

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 a disc that contains 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 "Paul M. Ferguson", written in a cursive style.

Paul M. Ferguson
Assistant Attorney General
Office of Open Government

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