



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

BRAD D. SCHIMEL
ATTORNEY GENERAL

Andrew C. Cook
Deputy Attorney General

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

November 28, 2016

Mr. Fabian Maldonado

[REDACTED]
Racine, WI 53403

Dear Mr. Maldonado:

The Wisconsin Department of Justice (DOJ) is in receipt of your April 30, 2016 letter to Attorney General Brad Schimel in which you stated that you wished "to file a complaint on the holder of records in the City of Racine Wisconsin, Attorney Tran, Nhu and holder of records Paul Ancona" regarding the public records request you filed with the City of Racine on April 4, 2016.

You also provided email discussions on the progress of your request and a response letter from Attorney Tran, dated March 29, 2016, explaining that your initial request was overly burdensome as a search resulted in approximately 32,399 emails. Following an exchange of emails describing the number of results and associated estimated costs for subsequent, narrowed searches, you requested to inspect the emails. Attorney Tran informed you that the emails would still require review, and the city would still assess copy costs.

Requested records fall into one of three categories: (1) absolute right of access; (2) absolute denial of access; and (3) right of access determined by balancing test. *Hathaway v. Joint Sch. Dist. No. 1 of Green Bay*, 116 Wis. 2d 388, 397, 342 N.W.2d 682 (1984). If neither a statute nor case law requires disclosure or creates a general exception to disclosure, the records custodian must decide whether the strong public policy favoring disclosure is overcome by some even stronger public policy favoring limited access or nondisclosure. This "balancing test" determines whether the presumption of openness is overcome by another public policy concern. *Hempel v. City of Baraboo*, 2005 WI 120, ¶ 4, 284 Wis. 2d 162, 699 N.W.2d 551.

Under the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39, "[A]n authority may charge a fee not exceeding the actual, necessary, and direct costs of *four specific tasks*: (1) 'reproduction and transcription'; (2) 'photographing and photographic processing'; (3) 'locating'; and (4) 'mailing or shipping.'" *Milwaukee Journal Sentinel v. City of Milwaukee*, 2012 WI 65, ¶ 54 (citation omitted) (emphasis in original). Even if a requester seeks to inspect records, an authority may charge such fees if they are the "actual, necessary, and direct" costs of responding to the request as explained. The amount of such fees may vary depending on

Mr. Fabian Maldonado

November 28, 2016

Page 2

the authority. For example, currently, DOJ's Office of Open Government charges \$0.15 per page for hard copies and \$0.07 per page for scanned copies for records provided in response to public records requests. (DOJ's complete current fee schedule is available at <https://www.doj.state.wi.us/office-open-government/making-public-records-request-department-justice-records>.) The law permits an authority to impose a fee for locating records if the cost is \$50.00 or more. Wis. Stat. § 19.35(3)(c). Additionally, an authority may require prepayment for the costs associated with responding to a public records request if the total amount exceeds \$5.00. Wis. Stat. § 19.35(3)(f).

As stated above, the amount of fees may vary depending on the authority. It appears that the City of Racine charges \$0.25 per page for hard copies of emails. An authority may not charge for redactions of records. If an authority is copying records for the sole purpose of redaction, such costs are redaction costs and may not be assessed. From the information provided, it is unclear whether the city's sole purpose for copying is for redaction.

The Attorney General and DOJ's Office of Open Government are committed to increasing government openness and transparency, and DOJ endeavors to offer guidance in these areas. If you would like to learn more about the Wisconsin Public Records Law, DOJ's Office of Open Government offers several open government resources through the Wisconsin DOJ website (<https://www.doj.state.wi.us/office-open-government/office-open-government>). DOJ provides the full Wisconsin Public Records Law, maintains a Public Records Law Compliance Guide, and provides a recorded webinar and associated presentation documentation.

The public records law provides several remedies for a requester dissatisfied with an authority's response, or lack of response, to a public records request. A requester may file an action for mandamus, with or without an attorney, asking a court to order release of the records. Wis. Stat. § 19.37(1)(a).

Alternatively, the requester may submit a written request for the district attorney of the county where the record is found, or the Attorney General, to file an action for mandamus seeking release of the requested records. Wis. Stat. § 19.37(1)(b). The Attorney General is authorized to enforce the public records law; however, he generally exercises this authority in cases presenting novel issues of law that coincide with matters of statewide concern. While the public records issue that you raised is important, it does not appear to present novel issues of law that coincide with matters of statewide concern. Although you did not specifically request the Attorney General to file an action for mandamus, nonetheless, we respectfully decline to pursue an action for mandamus on your behalf.

Although we are declining to pursue an action for mandamus under the public records law in this instance, the other remedies outlined above may still be available to you. Additionally, you may wish to contact a private attorney regarding this matter. The State Bar of Wisconsin operates an attorney referral service. The referral service is free; however, a private attorney may charge attorney fees. You may reach the service using the contact information below:

Mr. Fabian Maldonado
November 28, 2016
Page 3

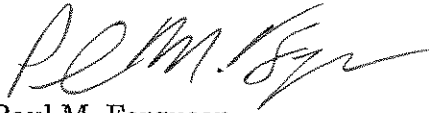
Lawyer Referral and Information Service
State Bar of Wisconsin
P.O. Box 7158
Madison, WI 53707-7158
(800) 362-9082
(608) 257-4666

<http://www.wisbar.org/forpublic/inedalawyer/pages/lris.aspx>

DOJ appreciates your concern. We are dedicated to the work necessary to preserve Wisconsin's proud tradition of open government. Thank you for your correspondence.

The information provided in this letter does not constitute an informal or formal opinion of the Attorney General pursuant to Wis. Stat. § 165.015(1).

Sincerely,



Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:lah

Cc: Attorney Nhu Tran, Assistant City Attorney