

FILED
10-17-2024
CIRCUIT COURT
DANE COUNTY, WI
2024CV003175
Honorable Frank D.
Remington
Branch 8

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

PUBLIC INTEREST LEGAL FOUNDATION, INC.,
107 S. West Street, Suite 700
Alexandria, VA 22314,

Petitioner,

v.

WISCONSIN ELECTION COMMISSION,
201 West Washington Avenue, Second Floor
Madison, WI 53703,

Respondent.

Petition for Writ of Mandamus
Case Code: 30952

PETITION FOR WRIT OF MANDAMUS

1. This is an action to enforce Wisconsin’s Public Records Law, Wis. Stat. §§ 19.31-19.39.

2. Petitioner Public Interest Legal Foundation, Inc. petitions this Court for a writ of mandamus ordering the Respondent, Wisconsin Election Commission (“WEC”), to produce records the Foundation requested. In support of this Petition, the Foundation alleges the following:

PARTIES

3. Petitioner Public Interest Legal Foundation, Inc. (“Foundation”) is a non-partisan, 501(c)(3) public interest organization incorporated and based in Alexandria, Virginia. The Foundation promotes the integrity of the electoral process nationwide through research, education, remedial programs, and litigation. The Foundation regularly utilizes the National Voter Registration Act (NVRA)’s Public Disclosure Provision and state and federal open records laws that require public disclosure of government records. Using records and data compiled through these open records laws, the Foundation analyzes the programs and activities of state and local

election officials to determine whether lawful efforts are being made to keep voter rolls current and accurate as required by federal and state law, and to determine whether eligible registrants have been improperly removed from voter rolls. The Foundation also uses public records and data to produce and disseminate reports, articles, blog and social media posts, and newsletters to advance the public education aspect of its organizational mission.

4. Respondent WEC is a commission of the State of Wisconsin with a business address of 201 West Washington Avenue, Second Floor, Madison, Wisconsin 53703.

5. WEC is an “Authority” under Wis. Stat. § 19.32(1).

VENUE & JURISDICTION

6. This Court has jurisdiction under Wis. Stat. 19.37(1)(a), which provides that a “requester may bring an action for mandamus asking a court to order release of the record.”

7. Venue in this County is proper under Wis. Stat. § 801.50(3)(a), because the sole defendant is a state commission and Petitioner designates this County as the venue.

FACTUAL ALLEGATIONS

8. On September 15, 2023, the Foundation, through its employee Logan Churchwell, sent a public records request to WEC concerning “guidance documents ... dated February 9, 2023” sent by WEC “to county and municipal clerks relating to Election Day Registration postcards,” (hereafter, the “Guidance”).¹ A true and correct copy of the Foundation’s Request is attached to this Petition as Exhibit A (hereafter, the “Request”).

¹ The Guidance instructs Wisconsin election clerks how to handle and process Election Day Registration postcards that are returned to the clerks’ offices as undeliverable after an election. More specifically, the Guidance describes circumstances under which clerks should and should not cancel voter registration records and circumstances under which clerks should and should not refer registrants to district attorneys for further investigation. The Guidance thus concerns the right to vote and election crimes, matters of great public importance.

9. The Request sought the following five (5) categories of records:
 1. Copies of all communication records between WEC and county/municipal clerk offices regarding the development and execution of the guidance to date.
 2. Copies of all communication records between WEC and legislative offices regarding the development and execution of the guidance to date.
 3. Copies of all communication records between WEC and district attorneys regarding the development and execution of the guidance to date.
 4. Copies of all communication records between WEC and non-governmental organizations and/or third parties regarding the development and execution of the guidance to date.
 5. Copies of all communication records among WEC staff detailing the justification, planning, and circulation of the guidance to date.

Exhibit A at 1.

10. The same day it sent the Request, the Foundation received an email from Anna Langdon at elections@wisconsin.gov, which stated, “Your Wisconsin Elections Commission request number (21716) is updated with the information below.” A true and correct copy of the email correspondence between WEC and the Foundation is attached to this Petition as Exhibit B.

11. The “information below” referenced in Anna Langdon’s email was a separate message from WEC staff attorney Brandon Hunzicker, which acknowledge receipt of the Request and stated further, “The WEC will contact you when its review is complete or if any questions arise.” Exhibit B at 7.

12. The Foundation received no further response from WEC and on October 9, 2023, Logan Churchwell responded to Anna Langdon’s email, asking, “[A]re there any updates on this request.” Exhibit B at 6-7.

13. WEC did not respond, and on October 26, 2023, Logan Churchwell sent another email to WEC, asking, “[C]an I get an update on this request?” Exhibit B at 6.

14. WEC did not respond, and on November 7, 2023, Logan Churchwell sent an email to WEC, attaching the letter attached to this Petition as Exhibit C (hereafter, the “November 7 Letter”).

15. The November 7 Letter repeated the Foundation’s Request, recounted the Foundation’s attempts to learn the Request’s status, and stated the Foundation’s intention to seek relief from the appropriate court if WEC did not respond to the Request, as required by Wisconsin law. *See* Exhibit C.

16. On November 15, 2023, the Foundation received an email from Hunzicker, stating that WEC’s public records system was failing to send message alerts to appropriate staff—Hunzicker included. He advised to communicate with him directly at his WEC email address. Further, he noted that a backlog of more than 60 requests were pending with the Foundation’s sitting further back in the queue. In the same email, Hunzicker asked the Foundation to “provide a range of time within which you would like us to search for responsive records. Without a time range, we cannot run a search. Second, please specify the search terms that you would like us to apply to a search. Without specific search terms, we are not able to run an effective search for specific records. As written, your request names categories of people, such as clerks and district attorneys, but it does not provide terms that can be applied to a search of records. Please provide a date range and search terms for us to use.” Exhibit B at 5-6.

17. On November 21, 2023, the Foundation responded, stating how the initial request was adequate under Wisconsin statutes but, in the spirit of moving the matter forward, provided a date range and 11 specific search terms to aid in WEC’s search for responsive documents. Exhibit B at 4-5.

18. On December 21, 2023, WEC responded with preliminary results showing potentially 7,279 responsive items. WEC asked the Foundation to consider narrowing the time range and search terms. *See* Exhibit B at 3-4.

19. Later that day, the Foundation asked WEC to clarify each of the potentially responsive documents in relation to points of time between February 2 and February 9, 2023. Exhibit B at 3.

20. On January 9, 2024, the Foundation wrote to WEC, seeking an update. Exhibit B at 2-3.

21. On February 12, 2024, the Foundation wrote to WEC again, seeking an update. Exhibit B at 2.

22. Later that day, WEC responded with figures representing the potentially responsive documents per each point in the working timeline. *See* Exhibit B at 2.

23. On February 13, 2024, the Foundation responded by noting which documents within the time range it still needed and asked that documents be provided by February 27, 2024, otherwise the documents would be picked up in person that day in WEC's offices. Exhibit B at 2.

24. On February 14, WEC noted that roughly 902 documents remained potentially responsive and would need legal reviews prior to release. WEC informed the Foundation that the documents would not be ready by February 27, regardless of if an office visit was attempted. Exhibit B at 1.

25. On March 21, 2024, the Foundation wrote to WEC seeking a status update. No response to date has been received. Exhibit B at 1.

26. As of the date this petition was filed, WEC has not responded to the Foundation's last communication.

27. The Foundation's Request has been outstanding for at least **397 days**.

28. As of the date of this Petition, WEC has failed to fulfill the Foundations' Request, deny the Request, explain its delay, ask for further clarification, or provide an update or a timeline for responding.

**CAUSE OF ACTION – VIOLATION OF WISCONSIN STATUTE § 19.35(4)
Unlawful Delay and Functional Denial of Public Records**

29. The Foundation incorporates and realleges the preceding paragraphs.

30. Under Wis. Stat. § 19.31, it is declared to be the public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them.”

31. Wis. Stat. § 19.31 provides further that “[t]he denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied.”

32. Wis. Stat. § 19.35(1)(a) and (b) provide that “any requester has a right to inspect any record” and “to make or receive a copy of a record.”

33. Subject to qualifications not relevant here, Wis. Stat. § 19.32(2) defines a record as “any material on which written, drawn, printed, spoken, visual, or electromagnetic information or electronically generated or stored data is recorded or preserved, regardless of physical form or characteristics, that has been created or is being kept by an authority.”

34. Under Wis. Stat. § 19.35(4)(a), “[e]ach authority, upon request for any record, shall, as soon as practicable and without delay, either fill the request or notify the requester of the authority's determination to deny the request in whole or in part and the reasons therefor.”

35. The Attorney General of Wisconsin has opined that “ten working days generally is a reasonable time for responding to a simple request for a limited number of easily identifiable records.” Wis. Dep't of Justice, Attorney General Brad D. Schimel, *Wisconsin Public Records*

Law Compliance Guide, March 2018, at 15. “Requests for public records should be given high priority.” *Id.*

36. An authority must either fulfill or deny an open records request; offering “compliance at some unidentified time in the future, is not authorized by the open records law.” *WTMJ, Inc. v. Sullivan*, 204 Wis. 2d 452, 458, 555 N.W.2d 140, 142 (Ct. App. 1996)

37. It has been more than one year since the Foundation made its open records request, and over six months since the Foundation asked for a status update after narrowing its request, and WEC has failed to comply with its obligation under the Open Records Law.

38. Therefore, WEC has violated the Open Records Law and Wis. Stat. § 19.35(4) by failing to fulfill or deny the record request “as soon as practicable and without delay.”

39. “If an authority ... delays granting access to a record or part of a record after a written request for disclosure is made, the requester may . . . bring an action for mandamus asking a court to order release of the record.” Wis. Stat. § 19.37(1), (a).

RELIEF REQUESTED

WHEREFORE, the Petitioner demands a writ of mandamus to issue against the Respondent under Wis. Stat. § 19.37(1):

1. Compelling the Respondent to immediately produce the requested records;
2. Awarding the Petitioner its reasonable attorney fees, damages of not less than \$100, punitive damages, and other actual costs under Wis. Stat. § 19.37(2), and;
3. Awarding such other relief as the Court deems appropriate.

Dated this 17th day of October, 2024.

For the Petitioner Public Interest Legal Foundation:

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