

STATE OF WISCONSIN

:

CIRCUIT COURT
CIVIL DIVISION

:

MILWAUKEE COUNTY

09CV017771

THE UWM POST,
2200 East Kenwood Blvd.
Suite EG80
Milwaukee, WI 53211,

Case No.

and

JONATHAN ANDERSON,
2200 East Kenwood Blvd.
Suite EG80
Milwaukee, WI 53211,

Case Classification No.:
Other Extraordinary Writ

Case Code: 30954

Plaintiffs,

v.

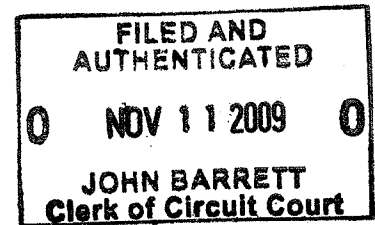
HON. TIMOTHY M. WITKOWIAK, BR. 22
CIVIL A

UNION POLICY BOARD OF THE
UNIVERSITY WISCONSIN-MILWAUKEE,
2200 East Kenwood Blvd.
Milwaukee, WI 53211,

and

AMY WATSON,
UW Milwaukee
Chapman Hall
Milwaukee, WI 53201-0413,

Defendants.



SUMMONS

To each person named above as a Defendant:

You are hereby notified that the Plaintiffs named above have filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.


Within forty-five (45) days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The

Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Court, whose address is Clerk of Circuit Court, Milwaukee County Courthouse, 901 North Ninth Street, Milwaukee, WI 53233, and to Robert J. Dreps of Godfrey & Kahn, S.C., One East Main Street, Suite 500, P.O. Box 2719, Madison, WI 53701. You may have an attorney help or represent you.

If you do not provide an answer within forty-five (45) days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 11th day of November, 2009.

GODFREY & KAHN, S.C.

By: 
Robert J. Dreps
State Bar No. 1006643
Rebecca Kathryn Mason
State Bar No. 1055500

Attorneys for Plaintiffs, The UWM Post and
Jonathan Anderson

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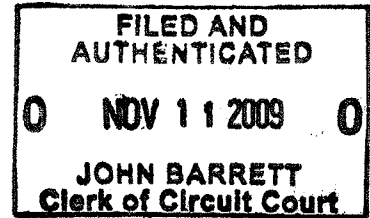
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AMY WATSON,
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Defendants.



COMPLAINT

The plaintiffs, The UWM Post and Jonathan Anderson, by their attorneys, Godfrey & Kahn, S.C., for their claims under Wis. Stat. § 19.37, allege that:

PARTIES

1. The plaintiff, The UWM Post (“the newspaper”) is the student-run independent newspaper at the University of Wisconsin-Milwaukee (“UWM”). Its principal place of business is located at 2200 East Kenwood Blvd., Suite EG80, Milwaukee, WI 53211.

2. The plaintiff, Jonathan Anderson, is an adult resident of the State of Wisconsin. He was the newspaper's editor-in-chief when he made the open records request at issue in this action.

3. The defendant, Union Policy Board of the University of Wisconsin-Milwaukee ("UPB") is an unincorporated association which is the Board of Directors for the UWM Student Union. UPB is the primary governance body for the activities of and services to union members and guests.

4. UPB is a student organization organized under Wis. Stat. § 36.09(5) that is an active participant in the immediate governance and policy development of UWM, subject to the responsibilities and power of the Board of Regents.

5. UPB is a "governmental body" as that term is defined in Wis. Stat. § 19.82(1), and used in Wis. Stat. §§ 19.81 through 19.98 ("the Open Meetings Law").

6. UPB is an "authority" as that term is defined in Wis. Stat. § 19.32, and used in Wis. Stat. §§ 19.31 through 19.39 ("the Open Records Law").

7. Defendant Amy Watson is an adult resident of the State of Wisconsin. She is the Communications Project Manager for UWM.

8. Watson is the "legal custodian" of the records at issue in this action under Wis. Stat. § 19.33, and as that term is used in the Open Records Law.

FACTS

9. On January 8, 2009, the newspaper, through Jonathan Anderson, requested in writing that UPB produce "[c]opies of any and all agendas, minutes and audio recordings of Union Policy Board meetings, with limitation to only those meetings between August 1, 2008 and January 8, 2009." A copy of the newspaper's letter request is attached to and incorporated in this complaint as Exhibit A.

10. On March 22, 2009, UPB denied, in part, the newspaper's request because six of the nine voting members of UPB are UWM students. UPB contends that the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g, required it to redact from the requested agendas and minutes the names of and any personally identifiable information concerning its student members. In addition, UPB contends that FERPA required it to remove all student voices from the audio recording of UPB meetings, leaving only the voice of student union Director Scott Gore. A copy of Ms. Watson's March 22, 2009 letter to Mr. Anderson is attached to and incorporated in this complaint as Exhibit B.

11. The redacted minutes of UPB's September 15, 2008 meeting, which UPB produced in response to the newspaper's request, is representative of the redactions UPB made in all of the records it released. A copy of those minutes are attached to and incorporated in this complaint as Exhibit C.

12. On April 22, 2009, the newspaper's counsel asked UPB to reconsider its position on FERPA, in part, on the grounds that the requested records are governmental records of UPB and not "education records" of its student members, as that term is defined in FERPA.

13. On June 11, 2009, UWM denied the newspaper's reconsideration request to UPB, in a letter from Joely Urdan, Associated Director and Senior University Legal Counsel.

14. UPB prepares an agenda for each of its meetings, in part, to satisfy its statutory duty as a governmental body to provide public notice of the time, date, place and subject matter of those meetings, as required by Wis. Stat. § 19.84.

15. UPB prepares minutes for each of its meetings, in part, to satisfy its statutory duty as a governmental body to record and preserve for public inspection the motions and roll call votes of its meetings, as required by Wis. Stat. § 19.88(c).

16. UPB's constitution requires that meeting notices, agendas, minutes and all other related records shall be sent to all of its members and the president of the UWM Student Association. On information and belief, the records prepared and sent to satisfy this requirement are not redacted to conceal the names of and any personal identifiable information concerning UPB's student members.

17. Like UPB, the Board of Regents is a governmental body under the Open Meetings Law and an authority under the Open Records Law.

18. Like UPB, the Board of Regents has student members.

19. Unlike UPB, the Board of Regents does not conceal the names of or any personally identifiable information concerning its student members before publicly disclosing the agendas, minutes or recordings of its meetings.

CLAIMS

20. Under Wis. Stat. § 19.31, it is the declared public policy of this state that every citizen is entitled to the greatest possible information regarding the affairs of government. Wis. Stat. § 19.31 affirms the presumption of complete public access to government records, consistent with the conduct of governmental business. The statute provides that "[t]he denial of public access generally is contrary to the public interest, and only an exceptional case may access be denied." This is not an exceptional case.

21. The defendants have violated the Open Records Law and Wis. Stat. § 19.37(1), by withholding the redacted portions of the requested paper and audio records and delaying the plaintiff's access to those portions of the records.

22. The defendants' denial violates the presumption of public access to government records.

23. The requested records are governmental records of UPB and not “education records” of UPB’s student members, as that term is defined in FERPA.

24. The defendants’ actions have caused and will continue to cause injury to the newspaper in that they deprive the newspaper, and the rest of the public, of their rights under the Open Records Law.

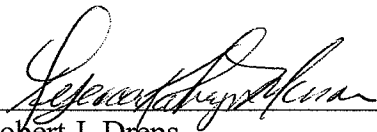
RELIEF REQUESTED

WHEREFORE, the newspaper demand a judgment of mandamus against the defendants under Wis. Stat. § 19.37(1):

- A. Compelling the defendants to provide the newspaper with unredacted copies of the requested paper and audio records;
- B. Awarding the newspaper its reasonable attorneys’ fees and actual costs and damages under Wis. Stat. § 19.37(2); and
- C. Awarding such other relief as the Court deems just.

Dated this 11th day of November, 2009.

GODFREY & KAHN, S.C.

By: 
Robert J. Dreps
State Bar No. 1006643
Rebecca Kathryn Mason
State Bar No. 1055500

Attorneys for Plaintiffs, The UWM Post and
Jonathan Anderson

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4307827_1

Thursday, January 08, 2009

VIA E-MAIL (awatson@uwm.edu)

Amy Watson
Public Records Custodian
University of Wisconsin-Milwaukee
Chapman Hall 180

Re: Public Records Request 01-08-09-A

Dear Amy:

This is to request, under the State of Wisconsin's Public Records Law, Wis. Stat. §§ 19.31-19.39.

1. Copies of any and all agendas, minutes and audio recordings of Union Policy Board meetings, with limitation to only those meetings between August 1, 2008 and January 8, 2009.
 - a. *Note: It is my understanding that these records are maintained by Union Director Scott Gore. If I am incorrect, please advise me.*

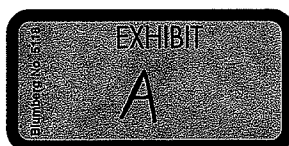
Wisconsin's Public Records Law states, in relevant part "In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be the public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of the government and the official acts of those officers and employees who represent them. Further, providing persons with such information is declared to be an essential function of a representative government and an integral part of the routine duties of officers and employees whose responsibility and duty is to provide such information." (Emphasis added)

The law continues "To that end [the Public Records Law] shall be construed in every instance with the presumption of complete public access consistent with the conduct of governmental business. The denial of access generally is contrary to the public interest and only in exceptional cases can access be denied." (Emphasis added)

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Amy Watson, Public Records Custodian
University of Wisconsin-Milwaukee
2009-01-08
Page 2 of 2

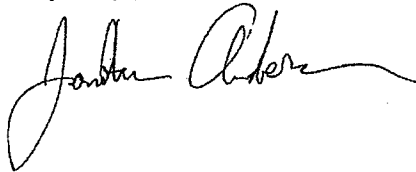
Wis. Stat. § 19.35(4)(a) states, "Each authority, upon request for any record, shall, as soon as practicable and without delay, either fill the request or notify the requester of the authority's determination to deny the request in whole or in part and the reasons therefore." (Emphasis added) If my request is denied, please do so in writing and state what part of the law you believe entities you to do so, and advise me of the process through which I may appeal.

The law states that you may charge for "the actual, necessary and direct cost" of locating records, if this exceeds \$50, and for photocopies. Please notify me if the total cost of this request will exceed \$50. If the total cost of this request exceeds \$5.00, written authorization from me will be necessary to proceed in the processing of this request.

Furthermore, please note that I wish to review any responsive records in person prior to any copies being made. As you may know, Wis. Stat. §19.35(1)(b), which gives requesters a right to inspect records, states "[e]xcept as otherwise provided by law, any requester has a right to inspect a record and to make a copy of a record which appears in written form."

Please contact me if you have any questions regarding this request, and thank you for your attention to this matter.

Very truly yours,



Jonathan Anderson
Editor in Chief
The UWM Post

CC: Scott Gore (gore@uwm.edu)



University Relations and Communications
Office of Public Records

Chapman Hall
PO Box 413
Milwaukee, WI
53201-0413
(414) 229-5188 phone
(414) 229-6261 fax

March 22, 2009

Jonathan Anderson
Editor-in-Chief
UWM Post

Dear Jon,

This letter is in response to your January 8, 2009 (which you requested to be placed on hold until February 5, 2009) requests for the following records:

"[c]opies of any and all agendas, minutes and audio recordings of Union Policy Board meetings, with limitation to only those meetings between August 1, 2008 and January 8, 2009."

With this letter, I am providing the following records:

1. Agenda, Minutes, and sound recording from September 15, 2008
2. Agenda and Minutes from October 27, 2008
3. Agenda and Minutes from November 17, 2008
4. Agenda and Minutes from December 8, 2008.

In making my decision as to whether I should release these records, I looked to the Family Educational Rights and Privacy Act ("FERPA") as well as the Wisconsin Public Records Law.

The FERPA statute and regulations (20 U.S.C. § 1232g, 34 C.F.R. Part 99) prohibit educational institutions from making a policy or practice of releasing non-directory personally identifiable information from education records absent prior written authorization from a student. 20 U.S.C. § 1232g(b)(2)(A), 34 C.F.R. § 99.30.

Directory information includes "the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student." 20 U.S.C. § 1232g(a)(5)(A). While a student's name is directory information, information about a student's activities is not, aside from a roster or list of officers of a student organization. Therefore, the name of a student associated with the student's conduct at a meeting is not directory information and is restricted by FERPA.

Personally identifiable information of a student consists of:

"the student's name; the name of the student's parent or other family members; the address of the student or student's family; a personal identifier, such as the student's social security number, student number, or biometric record; other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name; other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances,

