



Office of Andrew P. Naze

Kewaunee County District Attorney

April 1st, 2010

Mr. Ronald Kossik
702 New York Avenue
Manitowoc, WI 54220

Mr. Steven J. Rollins
1010 S. 8th Street
Manitowoc, WI 54220

RE: Mr. Kossik and the open records requests of Manitowoc County Departments.

Dear Gentleman:

As you know, I have been appointed special prosecutor with regards to the above-referenced matter. I have been asked to institute a writ of mandamus to compel Manitowoc County to disclose records related to contracted services for the expo center. I have received various emails, letters, exhibits and arguments from both parties.

In beginning my investigation, I am mindful of the importance of open government and transparency with the public. Transparency is the cornerstone of a government for the people and by the people.

The Public Records Law declares that it is "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." Wis. Stat. § 19.31.

Providing citizens with information on the affairs of government is: [A]n essential function of a representative government and an integral part of the routine duties of officers and employees whose responsibility it is to provide such information. To that end, Sec. 19.32 to 19.37 Wis. Stats., shall be construed in every instance with a presumption of complete public access, consistent with the conduct of governmental business. The denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied. Wis. Stat. § 19.31.

Both Mr. Rollins and Mr. Kossik do not dispute the requested information is a "record" under the law or whether Mr. Kossik's request is legitimate. Clearly, Mr. Kossik's request is legitimately made, to a government body, for unprotected "records".

The only issue is whether the county delayed in producing the requested records and if so, should a mandamus action be instituted under Sec. 19.37 Wis. Stats. For the

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reasons stated below, I believe the County has not unduly delayed in providing the requested records.

My inquiry is not whether Mr. Rollins failed to turn over a specific document or answer a certain question, but under the totality of the circumstances has the County been diligent in trying to fulfill their duty. The answer is yes.

As the Wisconsin Supreme court Stated in Watton v. Hegerty 311 Wis.2d 52, 751 N.W.2d 369 (2008) "If the custodian (of a record) gives no reasons or gives insufficient reasons for withholding a public record, a writ of mandamus compelling the production of the records must issue."

I see no indication the County has rejected or denied a request, other than to indicate certain County offices do not possess certain documents. In my review of the voluminous emails and letters, the County has produced many pages of documents.

For instance, the County and the Human Services Department has produced 26 pages totaling 1,320 payments to Holiday House and 15 pages showing 728 payments to Holiday House in 2009 and 2010.

Other department have provided documents. The personnel Department provided 24 pages of documents and Parks provided 8 pages.

In the departments that have not provided documents, Mr. Rollins has explained the delay and provided a plan to provide the documents at a later date.

A mandamus action is meant to compel inaction. What I see is action, in providing documents or explaining why those documents are forthcoming

I think the penalty for withholding records under Sec. 19.37(4) Wis. Stats. is also telling. The legislature wants to punish "arbitrary and capriciously delays". I find no such conduct. Even if one can argue Mr. Rollins has not provided a certain record, his willingness to provide many records, illustrates a County succeeding in its production and attempted production of all requested records.

Thus, I will not file a mandamus as requested.

Sincerely,

Andrew P. Naze
District Attorney