



September 12, 2024

TO: Kenneth M. Charneski, Trustee
kcharneski@kronenwetter.org

RE: Response to public records requests sent via email to President Voll August 15, 2024 at 9:27 a.m. and August 16, 2024 at 7:17 a.m.

Dear Mr. Charneski:

I received via email your public records requests identified above. The response to your various requests is as follows:

Itemized requests:

1. “the emails between Leonard and von Briesen regarding the scope of work, and who their client is.”

You have asked for and received these repeatedly. They are once again enclosed.

2. “The complete transcripts or recordings of the interviews”

There are no records that are responsive to your request.

3. “all of the documentation that Bobbi sent them”

Such records are prohibited from release for the reasons identified below.

4. “the list of people that she suggested they contact”

There are no records that are responsive to your request.

5. “how Ms Hanneman decided who to interview and who not to”

There are no records that are responsive to your request. Such determinations are privileged and protected work product prohibited from release for the reasons identified below.

6. “a copy of the complaint itself, that von Briesen says they were investigating.”

Such records are prohibited from release for the reasons identified below.

Reasons:

Wisconsin’s Public Records Law requires that a government entity provide the public access to its records. The Public Records Law and other statutory, common law and public policy principles may prohibit the Village from disclosing or fully disclosing certain records or certain information within those records. After analyzing your request and the Public Records Law, I have determined that I am legally prohibited from releasing certain records you requested identified above for the following reasons.

The Village authorized an investigation conducted under privilege and as work-product by attorneys for the Village. The Village has not waived privilege. Any report prepared or information gathered or created by an attorney retained by the Village constitutes an attorney-client privileged communication or attorney work product.

Under Wisconsin’s Public Records Law, Wisconsin has long recognized a client’s right to protect confidential communications with its legal counsel and attorney work product. *Seifert v. Sch. Dist. of Sheboygan Falls*, 2007 WI App 207 ¶27 (“We conclude that the recognized statutory and common-law exception for attorney work product and the balancing test under Wis. Stat. § 19.35(1)(a) solidly support our affirmance of the circuit court’s order”); *see also Wisconsin Newspress v Sheboygan Falls Sch. Dist.*, 199 Wis. 2d 768, 782–83, 546 N.W.2d 143 (1996); *Armada Broadcasting, Inc. v. Stirn*, 177 Wis. 2d 272, 279 n.3, 501 N.W.2d 889 (Ct. App. 1993); *George v. Record Custodian*, 169 Wis. 2d 573, 582, 485 N.W.2d 460 (Ct. App. 1992); *GPS v. Town of St. Germain*, 2003 WI App 162, 266 Wis. 2d 694, 667 N.W.2d 377.

Overall, principles of common law and statutory privilege and attorney work product support the prohibition of the release of such records. Wis. Stat. §§ 804.02(1)(c)1 & 905.03; *Seifert v. Sch. Dist. of Sheboygan Falls*, 2007 WI App 207, 305 Wis. 2d 582, 740 N.W.2d 177. *See George v. Record Custodian*, 169 Wis. 2d 573, 582, 485 N.W.2d 460 (Ct. App. 1992) & *Wis. Newspress, Inc. v. Sch. Dist. of Sheboygan Falls*, 199 Wis. 2d 768, 782–83, 546 N.W.2d 143 (1996). Wisconsin statutes provide that the “client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client.” WIS. STATS. § 905.03; *see also Upjohn v. United States*, 449 U.S. 383, 394–95 (1981). According to the State Supreme Court:

One of the fundamental policies of our law, and one which dominates in the absence of a special policy arising in particular types of situations, is that the judicial system and rules of procedure should provide litigants with full access to all reasonable means of determining the truth. Secrecy of communication between one person and his attorney is one of the exceptions. It is based upon recognition of the value of legal advice and assistance based upon full information of the facts and the corollary that full disclosure to counsel will often be unlikely if there is fear that others will be able to compel a breach of the confidence.

Jacobi v. Podevels, 23 Wis. 2d 152, 156, 127 N.W.2d 73 (1964). Here, the client has not authorized release.

In addition to the statutory and common law prohibitions preserving the confidentiality of attorney-client privileged communications and work product, Wisconsin's Public Records Law respects the Village's ability to engage in risk management and to defend itself and to protect its strategic interests. Specifically, Wisconsin Statute § 19.35(1)(am)1 allows the Village to withhold access to information collected or maintained in connection with a complaint and investigation that may lead to a court proceeding or administrative proceeding. The public policy interests of this statute favoring protection of the strategic interests of the government entity also favor nondisclosure.

In addition to statutory and common law prohibitions, Wisconsin courts require government entities to conduct a balancing analysis to determine whether permitting inspection would result in harm to the public interest which outweighs the legislative policy recognizing the strong public interest in allowing inspection. Even though these records are prohibited from release for other reasons, I have conducted this balancing analysis and concluded likewise that the public's interest in nondisclosure overwhelmingly outweighs the public's strong interest in release for the following reasons.

First, the public has a strong interest in public sector employers maintaining their ability to aggressively manage risk and defend their interests in any that may lead to litigation or even a threat of litigation, as threats can themselves cause expenditure of massive costs and creation of discord undermining the entity. Wisconsin's Public Records Law respects the public's interest in preserving the Village's ability to defend itself and to protect its strategic interests, which is demonstrated by Wis. Stat. § 19.35(1)(am)1, Wis. Stat. § 103.13(6)(g), closed session provisions of Wisconsin's Open Meetings Law, and various other Wisconsin Statutes. Specifically, Wis. Stat. § 19.35(1)(am)1 provides that the right to inspect or copy information in a record under Wisconsin's Public Records Law does not apply to "[a]ny record containing personally identifiable information that is collected or maintained in connection with a complaint, investigation or other circumstances that may lead to an enforcement action, administrative proceeding, arbitration, or court proceeding." This statutory provision recognizes the public's strong interest in ensuring that any such matters be allowed to be addressed by the governmental entity in a strategic manner. In other words, the public's strong interest in favor of safeguarding thorough and effective risk management strategies favors nondisclosure.

Second, the public has very strong interests in the Village protecting the interests of the taxpayers through sound use of legal counsel and strategic risk management and litigation defense so as to promote the careful, judicious, and protective use of Village resources. Protecting this public interest necessitates that the Village not provide access to information that would undermine the Village's ability to engage in use of legal counsel, in conducting confidential investigations by its attorneys, or from developing and modifying methodical legal strategies. The release of information may improperly prejudice the Village's ability to protect and defend itself, to act in the affirmative to further its interests, or to adequately manage risk.

Third, the public has a strong interest in protecting Village employees from retaliation, retribution, or needless ridicule that has the effect of undermining the morale of the workforce, undermining productivity, undermining our ability to attract and retain high quality employees, and exposing the Village to additional liability risk. To be blunt, you hold a position of authority as an individual elected Village Board Member. To avoid retaliation and retribution against Village employees from you or from others, which is a documented subject matter of concern, and to avoid further loss of employee morale by further conduct by you or others, the public has a strong interest in nondisclosure of these records. Wisconsin courts have long taken positions to protect our employees from retaliation, to protect obtaining candid and frank information, to protect our ability to recruit and retain high quality employees and to protect our ability to maintain morale. *Hempel v. City of Baraboo*, 2005 WI 120, 284 Wis. 2d 162, 699 N.W.2d 551. The public also has a strong interest in encouraging full, candid, and complete cooperation by Village employees and officeholders with attorneys for the Village when the Village is engaging in efforts to protect its interests. Nondisclosure is also necessary to protect the Village's ability to attract quality candidates in such a difficult hiring market and when the Village has experienced turnover. The Village also needs to make sincere assessments and difficult decisions when addressing matters requiring the attention of the Village's attorneys, and candid and frank communications by our employees and officials to the attorneys are necessary in order to conduct the appropriate analysis to make those difficult strategic decisions. To the extent release would undermine the ability to obtain or would have a chilling effect on obtaining information to make those decisions, and to avoid any chilling effects on potential future witnesses and complainants, the public's interest favors nondisclosure.

I am prohibited from releasing the requested records. You may challenge my decision by contacting the local District Attorney or Wisconsin Department of Justice or you may file an action for mandamus under Wis. Stat. § 19.37(1).

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Voll", is written over a horizontal line.

Chris Voll, President & Acting Interim Administrator

Enclosure(s)