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Wisconsin Institute for Law & Liberty: Sues Rep. Brostoff in e-mail dispute

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Milwaukee, WI – The Wisconsin Institute for Law & Liberty ("WILL") has sued State Representative Jonathan Brostoff (D-Milwaukee) in Dane County Circuit Court for violating the State's Open Records Law. Brostoff is refusing to turn over electronic records, instead insisting on printing them and charging unnecessary fees. The complaint can be found here.

On July 10, 2017, WILL Research Fellow Collin Roth made a record request to Brostoff for emails relating to occupational licensing reform, specifically asking for the emails in electronic format. Instead, Brostoff printed off thousands of pages of documents and sent Roth an invoice for $3,239.76. WILL attorneys wrote back pointing out that the law requires custodians to provide electronic records when requested and does not allow charging for paper copies of electronic files, but Brostoff would not relent.

In a very similar case, on January 22, 2018, a Dane County Circuit Court judge ruled that State Rep. Scott Krug (R-Nekoosa) needed to provide electronic files when requested. When informed of this case, Rep. Brostoff still refused to comply.

Legally, custodians are required to provide electronic records when requested. The law explicitly defines records to include electronic files, and a printout of the text of an email doesn't reproduce everything in the actual electronic file. Just like a

transcript captures only one facet of a video recording, a printout is no substitute for an original email file.

According to WILL President Rick Esenberg, “This is not about ideological differences. Unfortunately, both Republicans and Democrats occasionally fail to meet their obligations under our open records and open meetings laws. We’ve worked with advocates across the political spectrum to fix that. This is just the latest fight.”

In addition to a requirement under the law, providing records electronically is the smart thing to do. Why would a public servant waste taxpayer resources printing out copies of electronic files? That method is slower, more expensive, and less convenient for everybody than just copying the files onto a CD or flash drive (or even just emailing the files directly to the requester if the request is small).

“I see this all too frequently,” said Tom Kamenick, Deputy Counsel and open government specialist at WILL. “Instead of doing things the easy way, custodians intentionally make the process difficult and expensive, discouraging people from even making records requests. We shouldn’t put up with that.”

“For more than a year, WILL has been on the frontlines of an effort to reform Wisconsin’s occupational licensing laws and promote economic freedom,” said Collin Roth. “We believe citizens have a right to earn a living and that burdensome and unreasonable regulations often stand in the way of meaningful work. As with any public policy debate, government transparency is critical.”

Roth is asking the court to order Brostoff to turn over the electronic files and reduce his fees, and to assess attorney fees, court costs, and punitive damages against the representative.