



The Wisconsin Transparency Project

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VIA EMAIL & FIRST CLASS MAIL

December 7, 2020

Re: Failure to Fulfil Open Record Requests

Ms. Heinrich & Ms. Faletti:

My name is Tom Kamenick and I am the President and founder of the Wisconsin Transparency Project, Wisconsin's only law firm dedicated exclusively to enforcing Open Records and Open Meetings Laws. Since founding the Project little more than a year ago, I have filed over a dozen lawsuits against record custodians and written dozens of letters demanding the release of records. My experience in government transparency dates back over a decade; prior to founding the Project I was the litigation manager and open government specialist at the Wisconsin Institute for Law & Liberty.

In all my years, I have never seen a more callous disregard of the obligations imposed by the Open Records Law than that displayed by Public Health Madison & Dane County. Never have I received so many complaints about the same entity, from people who have no connection to each other, each having the same exact problem, in such a short period of time. I have repeatedly heard from people who requested records months ago who have been ignored and brushed off. Your boilerplate response that I have seen many times over claims that you are too busy with the pandemic to bother with such petty inconveniences as providing records to the public. I have seen you claim it could take as long as 60 days to fulfill requests, fail to meet those deadlines, and then start telling people it will now take 90 days.

Your delays and refusal to fulfil your basic obligations are unacceptable. You cannot use the excuse that you are busy with other work – the Open Records Law makes clear that fulfill record requests is a basic and fundamental function of all levels of government. Wis. Stat. § 19.31. PHMDC is a large organization with scores of employees that has received substantial funding

for dealing with the pandemic. You have the resources to treat record requests as a priority as you ought.

I have heard many claims from public health officials that providing information to the public somehow must take a backseat in the middle of a pandemic. To the contrary, it is when society faces a global threat and government claims the emergency authority to take unprecedented actions that the importance of transparency in government action reaches its apex. To engender trust in the populace – not to mention a willingness to accept the restrictions you claim are necessary – you must be forthcoming about both what you know and what you are doing. Keeping the public in the dark about the truth does not further the cause of fighting this virus.

Your delays and refusal to provide records appear to be nothing more than an attempt to control the narrative and portray the pandemic in the manner you want it portrayed. You put out information about COVID to the public but refuse to allow people to see the underlying data. You present your conclusions as fact while hiding the bases for those conclusions and the processes you used to reach them. You are taking dramatic and unprecedented actions to curtail personal freedoms while at the same time denying the public the ability to see if the facts truly support such measures. Your attitude that the public is only entitled to the data you choose to release does a disservice to the people you are charged with protecting and violates both the spirit and the letter of the Open Records Law.

State law requires record requests to be fulfilled “as soon as practicable and without delay,” Wis. Stat. § 19.35(4)(a), yet you have chosen to ignore these requests and delay for months. The Attorney General, who is charged with interpreting and enforcing the law, believes that 10 days is a reasonable time for most requests and fulfilling record requests should always be a priority. While some of the requests you have received are broad and could reasonably be expected to take longer, many of them are quite simple and should be fulfilled within days, if not hours. And even with complex requests, no request should ever take months to fulfill. With the resources you have available to you, you need to dedicate a significant portion of them to catching up on this backlog and then maintaining a short response time after that.

Your prevarication cannot continue. You must immediately make responding to these outstanding requests a priority or face legal action from the numerous individuals and organizations that you have been ignoring and putting off. In each lawsuit you would face liability for the requester’s attorney fees, court costs, and statutory damages, as well as the potential of punitive damages, which seems particularly likely here given your inexcusable delay and conscious choice to ignore your obligations. I expect to hear back from the people who have come to me that you have provided records or have at least begun collecting them and they will be provided within a few days time no later than one week after the date of this letter.

Furthermore, on behalf of a client who wishes to remain anonymous, *see* Wis. Stat. § 19.35(i), they request the following records:

1. Every tracking document, log or other record used to track open record requests;
2. If PHMDC does not track record requests in this manner, then a copy of each record request received by PHMDC since May 1, 2020.

I look forward to hearing back from you.

Sincerely,

Tom Kamenick

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