



**WISCONSIN DEPARTMENT OF  
ADMINISTRATION**

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GOVERNOR

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SECRETARY

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October 18, 2013

Matt Ehling, President  
Public Record Media  
2375 University Ave. W, Suite 200  
St. Paul, MN 55114

Dear Mr. Ehling:

This is in response to your September 19, 2013, public records request, which was received in our offices on September 24, 2013. Our response to the four items listed in your request is as follows:

*1) Any and all correspondence produced or maintained by the Department of Administration between January 1, 2011, and September 18, 2013 relating to the arrests of individuals engaged in singing, singing-related protests, or similar activities on the grounds of the Wisconsin State Capitol complex.*

Item 1 of your request does not provide a reasonable limitation as to subject matter or time period as required by § 19.35(1)(h), Wis. Stats. It would require a search of the email and all other hard copy and electronic records of each of the Department's 1000+ employees for a time period in excess of 2.5 years. This would be an unreasonable burden on the Department's time and resources. See *Schopper v. Gehring*, 210 Wis. 2d 208, 565 N.W.2d 187 (Ct. App. 1997). Therefore, we must deny item 1 of your request.

*2) Any and all citations and/or police reports produced or maintained by the Department and/or its component the Wisconsin Capitol Police, between January 1, 2011, and September 18, 2013 that relate to the arrests of individuals engaged in singing, singing-related protests, or similar activities on the grounds of the Wisconsin State Capitol complex.*

We are unable to provide all citations and corresponding police reports from January 1, 2011 to September 18, 2013, relating to "arrests of individuals engaged in singing...on the grounds of the Wisconsin State Capitol Complex" as you request in item 2. Citations and police reports are not filed by location of the incident, whether a citation was issued, or subject matter. To gather the requested records would require a manual search of the thousands of physical case files created by Capitol Police each year for a time period in excess of 2.5 years. Once the file for each relevant citation is found, the citations and police reports would need to be

separated from the rest of case file, much of which is confidential. For each relevant case, we would need to determine which are subject to ongoing prosecution or investigation. For each of those, we would need to consult with the prosecution to determine whether release could harm the prosecution to the extent that the interest in confidentiality would outweigh the interest in public access. In addition, we would need to redact any confidential personally identifiable, medical, or juvenile information.

Thus, this part of your request does not contain a reasonable limitation as to subject matter or time period, as required by § 19.35(1)(h), Wis. Stats. Providing all the records covered by this part of your request would be an unreasonable burden on the Department's time and resources. *See Schopper v. Gehring*, 210 Wis. 2d 208, 565 N.W.2d 187 (Ct. App. 1997). Therefore, we must deny item 2 of your request.

*3) Any and all records produced or maintained by the Department and/or its component the Wisconsin Capitol Police between January 1, 2011, and September 18, 2013 that relate to the use of acoustical amplification devices by the Wisconsin Capitol Police on the grounds of the Wisconsin State Capitol Complex.*

It is not clear what you mean by "acoustical amplification devices." Wis. Stat. § 19.35(1)(h). A records custodian is not required to guess what records a requestor desires. *Seifert v. Sch. Dist. of Sheboygan Falls*, 2007 WI App 207, 305 Wis. 2d 582, 740 N.W.2d 177.

In addition, Item 3 of your request does not provide a reasonable limitation as to subject matter or time period as required by § 19.35(1)(h), Wis. Stats. It would require a search of the email and all other hard copy and electronic records of each of the Department's 1000+ employees for a time period in excess of 2.5 years. This would be an unreasonable burden on the Department's time and resources. *See Schopper v. Gehring*, 210 Wis. 2d 208, 565 N.W.2d 187 (Ct. App. 1997). Therefore, we must deny item 3 of your request.

*4) Any and all legal opinions or other legal materials relied upon in connection with the arrest of individuals engaged in singing, singing-related protests, or similar activities on the grounds of the Wisconsin State Capitol complex between January 1, 2011, and September 18, 2013.*

We understand item 4 of your request to solely cover records which would be protected by attorney client privilege. Records that constitute attorney-client privileged communications or attorney work product are not required to be produced under Wisconsin's Public Records Law. *See* §§ 19.35(1)(a), 804.01(2)(c); and 905.03, Wis. Stats.; *George v. Record Custodian*, 169 Wis. 2d 573, 485 N.W. 2d 460 (1992); *Seifert v. School District of Sheboygan Falls*, 2007 WI App 207, 305 Wis. 2d 582, 740 N.W. 2d 177. Please notify us if we misunderstood this part of your request.

We are required to inform you that to the extent this amounts to a denial of a written request for records, it is subject to review by mandamus under § 19.37(1), Wis. Stats., or upon application to the Attorney General or a District Attorney.

To the extent you wish to more clearly define, narrow, or more reasonably define the scope or time period of the records you seek, please contact us. If you wish to do so or if you have any questions regarding this information, please contact the Department of Administration's Communications Director, Stephanie Marquis, at [REDACTED] or at [REDACTED].

Sincerely,

  
Gregory D. Murray  
Chief Legal Counsel