

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH __

FILED
08-19-2016
DANE COUNTY
CIRCUIT COURT
DANE COUNTY, WI
2016CV002189

BILL LUEDERS
3505 Lerdahl Rd.
Madison, WI 53704

Honorable Rhonda L. Lanford
Branch 16

Plaintiff,

v.

Case No. _____
30952 Petition for Writ of Mandamus

SCOTT KRUG,
72nd Assembly District Representative
Room 207 North
State Capitol
Madison, WI 53708

Defendant.

SUMMONS

THE STATE OF WISCONSIN, To each person named above as a Defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within 45 days of receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is Dane County Courthouse, 215 S. Hamilton Street, Madison, WI 53703, and to Christa Westerberg, Bender Westerberg LLC, Plaintiff's attorney, whose address is 10 East Doty Street, Suite 800, Madison, WI 53703. You may have an attorney help or represent you.

If you do not provide a proper answer within 45 days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 19th day of August, 2016.

BENDER WESTERBERG LLC
Attorneys for Plaintiff

Electronically signed by Christa O. Westerberg

Christa O. Westerberg
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COMPLAINT

Plaintiff, by his attorneys, Bender Westerberg LLC, complains against Defendant as follows under the Wisconsin Open Records Law, Wis. Stat. § 19.31 *et seq.* (“Open Records Law”):

Parties

1. Bill Lueders is an adult resident of the State of Wisconsin and news reporter for various media outlets. Mr. Lueders submitted Open Records requests to the Defendant and is a “requester” within the definition of the Open Records Law, Wis. Stat. § 19.32(3).

2. Scott Krug is an adult resident of the State of Wisconsin and an elected member of the Wisconsin State Assembly. Representative Krug is an “authority” as that

term is defined in Wis. Stat. § 19.32(1) and the legal custodian of the records requested in this matter under Wis. Stat. § 19.33.

Venue

3. Venue is proper under Wis. Stat. §§ 801.50(2)(a) and (3)(a).

Facts

4. Plaintiff Bill Lueders has been a reporter and member of the news media in Wisconsin for approximately 30 years. During that time, he has also been a strong advocate for the cause of freedom of information and Wisconsin's open records and open meetings laws. He currently serves in a volunteer capacity as President of the Wisconsin Freedom of Information Council ("WFOIC").

5. Due to his expertise with the Open Records law and in his role with the WFOIC, Mr. Lueders frequently fields inquiries from other members of the news media and citizens about the Open Records law.

6. In June 2016, Mr. Lueders received an inquiry from citizens with the group "We the Irrelevant." The group tries to track constituent contacts with legislators, including Rep. Krug, on specific issues and determine whether legislative votes are consistent with their constituents' views as expressed through the contacts.

7. Through group member Ron Berger, on April 29, 2016, We the Irrelevant requested constituent contacts from Representative Krug on a series of bills that would have affected Wisconsin water laws. The request further stated, "I prefer to receive these records electronically."

8. In response, the group was provided with paper copies of hundreds of emails, along with a printout of “Contact Reports” that in most cases did not indicate the constituent’s position on the proposed legislation. Rather, the reports used generalized language such as, “wants high capacity wells/CAFO’s/ground water reform.” In some cases, there were listed contact reports for which the original emails were not provided. The group was not satisfied with the response because, *inter alia*, the paper copies were difficult to work with and not all responsive contacts were provided.

9. In an attempt to facilitate the matter, and as part of a column he was writing on the experience of We the Irrelevant, Mr. Lueders contacted Rep. Krug by phone on June 21, 2016. Rep. Krug encouraged Mr. Lueders to make his own request for the same records and said that upon receipt of a request, he would instruct his staff to set aside other duties and attend to it promptly.

10. The same day, on June 21, 2016, Mr. Lueders requested from Rep. Krug the exact same documents sought by We the Irrelevant on April 29. In his emailed Open Records request, Mr. Lueders stated:

What follows is a cut-and-paste reiteration of Ron Berger's records request on April 29, in hopes that I can see the actual records that were provided in response to that request.

I request access to review, under the state's Open Records Law §§19.31-39, Wisconsin Statutes) **any and all citizen correspondence**, including phone records, sent and/or received by Representative Krug or his/her staff, beginning January 1 through and including April 8, 2016, related to the following search terms:

AB600/SB459; AB603/SB477; AB804/SB654; AB874/SB239; stewardship fund; DNR scientists; state parks; conservation staff; high capacity wells; groundwater; lakeshore dredging; navigable waters; wetlands; water rights.

A true and correct copy of Mr. Lueders’ request is attached hereto as **Exhibit A**.

11. On Friday, July 15, 2016, Mr. Lueders was notified that the records he requested from Rep. Krug were available for pickup at the Assembly Chief Clerk's office. The notice also advised, "The total cost incurred is to be determined as the records exceed 1500 pages. The cost for copies is .15 per page."

12. Mr. Lueders did view the records, including the 143 pages of Contact Reports and more than 1,000 pages of emails and other documents. However, the records were virtually unusable in the provided hard copy because they could not be searched, were lacking other attributes available in a native or electronic version of the records, and were costly to obtain.

13. On July 21, 2016, Mr. Lueders made an explicit request for an electronic copy of the same records so he could search and access electronic data in the records, match Contact Report names to the original constituent contacts, and otherwise more efficiently use and understand the records. The request stated in pertinent part:

Thank you for making the records available to me. I did get copies of the 143 pages of Contact Reports produced by your office. Obviously, trying to match these with more than 1,000 pages of paper is an impossible task. Which is why I am restating my request to receive the records in electronic form, a much simpler method of compliance that the law specifically requires. (See Attorney General's Compliance Guide, P. 52-59.)

This is to request, under the state's open records law (19.31-19.39, state statutes), access to all emails received by your office in response to proposed changes to the state's water laws, from Jan. 1, 2016 to Feb. 29, 2016. This request is not for printed copies of these records; it is for the records in electronic form, as an email folder, or on a flash drive or CD.

Obviously, given the ease with which archived electronic records can be retrieved and identified, as must have been done for the emails printed out and provided as paper copies, my request[] substantially simplifies the process of compliance.

A true and correct copy of the July 21, 2016, request is attached hereto as **Exhibit B**.

14. On July 26, 2016, Representative Krug denied Mr. Lueders' request for an electronic copy of the records. The denial stated, in pertinent part: "we have provided you with access to review the records you have requested and the ability to receive copies of those records that are substantially as readable as the original. Those records were provided for your review in the Assembly Chief Clerk's Office. We now consider your request closed." A true and correct copy of the denial is attached hereto as **Exhibit C**.

15. The paper copy of the water legislation constituent contacts did not satisfy Mr. Lueders' request for the electronic copy of the records he requested on July 26, 2016.

**CAUSE OF ACTION: Defendant Has
Violated the Wisconsin Open Records Law**

16. Plaintiff incorporates by reference all allegations set forth in the preceding paragraphs.

17. Under Wis. Stat. § 19.31, it is the declared public policy of this State that every citizen is entitled to the greatest possible information regarding the affairs of government and the official acts of government officers and employees. Wis. Stat. § 19.31 thus provides that the Open Records law "shall be construed in every instance with a presumption of complete public access, consistent with the conduct of governmental business," and further, that "[t]he denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied."

18. The Open Records Law provides that a requester has the right to inspect any record except as otherwise provided by law. Wis. Stat. § 19.35(1)(a).

19. The electronic copy of the water legislation constituent contacts requested by Mr. Lueders on July 21, 2016, was a “record” subject to disclosure under the Open Records law.

20. Defendant has violated the Open Records Law by denying Plaintiff’s July 21, 2016, request for an electronic copy of the water legislation constituent contact records, without a valid basis for denial.

21. Defendant’s actions have caused and will continue to cause injury to the Plaintiff by depriving him and the public of their rights under the Open Records Law.

RELIEF REQUESTED

WHEREFORE, Plaintiff requests that the Court grant the following relief pursuant to Wis. Stat. § 19.31 *et seq.*:

1. An order declaring that Defendant violated Wisconsin’s Open Records Law, Wis. Stat. §§ 19.31 *et seq.*;
2. A mandamus order directing Defendant to produce for the Plaintiff an electronic, native copy of the requested records without further delay, Wis. Stat. § 19.37(1)(a);
3. An award to Plaintiff for his reasonable attorneys’ fees, damages of not less than \$100, Plaintiff’s other actual costs, and punitive damages if the Court finds the Defendant arbitrarily and capriciously denied or delayed response to Plaintiffs’ requests, Wis. Stat. § 19.37(2), (3); and
4. Such other relief as the Court deems just and equitable.

Dated this 19th day of August, 2016.

BENDER WESTERBERG LLC
Attorneys for Plaintiff

Electronically signed by Christa O. Westerberg

Christa O. Westerberg
State Bar No. 1040530
10 E. Doty St., Suite 800
Madison, Wisconsin 53703
Telephone: (608) 310-3560
Facsimile: (608) 441-5707
westerberg@benderwesterberg.com

On Tue, Jun 21, 2016 at 1:57 PM, Bill Lueders <blueders@gmail.com> wrote:

Dear Rep. Krug:

What follows is a cut-and-paste reiteration of Ron Berger's records request on April 29, in hopes that I can see the actual records that were provided in response to that request.

I request access to review, under the state's Open Records Law §§19.31-39, Wisconsin Statutes) **any and all citizen correspondence**, including phone records, sent and/or received by Representative Krug or his/her staff, beginning January 1 through and including April 8, 2016, related to the following search terms:

AB600/SB459; AB603/SB477; AB804/SB654; AB874/SB239; stewardship fund; DNR scientists; state parks; conservation staff; high capacity wells; groundwater; lakeshore dredging; navigable waters; wetlands; water rights.

I'll spare you the usual boilerplate regarding your obligations under the records law.

Thank you for your time and consideration.

--

Bill Lueders

Wis. FOIC

blueders@gmail.com

[608-669-4712](tel:608-669-4712)

Bill Lueders <blueders@gmail.com>

7/21/2016

Dear Rep. Krug,

Thank you for making the records available to me. I did get copies of the 143 pages of Contact Reports produced by your office. Obviously, trying to match these with more than 1,000 pages of paper is an impossible task. Which is why I am restating my request to receive the records in electronic form, a much simpler method of compliance that the law specifically requires. (See [Attorney General's Compliance Guide](#), P. 52-59.)

This is to request, under the state's open records law (19.31-19.39, state statutes), access to all emails received by your office in response to proposed changes to the state's water laws, from Jan. 1, 2016 to Feb. 29, 2016. This request is not for printed copies of these records; it is for the records in electronic form, as an email folder, or on a flash drive or CD.

Obviously, given the ease with which archived electronic records can be retrieved and identified, as must have been done for the emails printed out and provided as paper copies, my requests substantially simplifies the process of compliance.

Please be aware that the Open Records Law "shall be construed in every instance with the presumption of complete public access consistent with the conduct of governmental business. The denial of access generally is contrary to the public interest and only in exceptional cases can access be denied." If you deny my request, the law requires you to do so in writing and state what part of the law you believe entitles you to deny my request. Wis. Stat. § 19.35(4)(a).

Thank you for your time and consideration.

From: **Rep.Krug** <Rep.Krug@legis.wisconsin.gov>

Date: Tue, Jul 26, 2016 at 5:30 PM

Subject: RE: Records request

To: Bill Lueders <blueders@gmail.com>

Dear Mr. Lueders:

As you know, “[t]he Public Records Law provides “[e]xcept as otherwise provided by law, any requester has a right to inspect any record.” Wis. Stat. § 19.35(1)(a). The law requires copies of written documents be “substantially as readable” as the originals. Wis. Stat. § 19.35(1)(b). Additionally, Wis. Stat. § 19.35(1)(b) provides the custodian has the option to choose how a record will be copied. *See Grebner v. Schiebel*, 240 Wis. 2d 551 (2000).”

Our standard policy is to make responsive records available to requesters through the office of the Assembly Chief Clerk. The Chief Clerk makes arrangements for the requester to review the records, provides any copies that may be requested, and collects any location or reproduction costs associated with the request. This policy is the most efficient way for our office to comply with records request, while continuing the day-to-day operation of our official duties without disruption. Individual offices are not set up to accept cash or check as payment for records requests.

Accordingly, we have provided you with access to review the records you have requested and the ability to receive copies of those records that are substantially as readable as the original. Those records were provided for your review in the Assembly Chief Clerk’s Office. We now consider your request closed.

Sincerely,

Representative Scott Krug