

**CITY OF MADISON
CITY ATTORNEY'S OFFICE
Room 401, CCB
266-4511**

January 2, 2002

OPINION 2002-02

TO: Roger Goodwin, Streets Superintendent
Carol Froistad, Library

FROM: Eunice Gibson, City Attorney

SUBJECT: Responding To Public Records Requests for Employee Names

You have asked how you should respond to requests for the names of City of Madison employees. Your immediate concerns are whether employees must disclose their full names when asked by a citizen. Such a request is not a public records request. The requestor is asking for information, not for records containing information, See §3.42(5)(a)9. Your Department/Division will have to address, as a matter of policy or work rule, how your employees respond to requests that they identify themselves by name.

The public records laws would come into play where a request is made for any records which identify the names of City employees. I understand that you have asked me how you should respond to such requests.

First of all, each Department/Division must have a duly appointed records custodian, See § 3.42(2) & (3), MGO. Those custodians are the only persons authorized to analyze and respond to requests for public records. The City Attorney's Office routinely provides training and legal assistance to designated records custodians. Therefore, any other employee receiving a request for public records should redirect or forward that request to the appropriate records custodian.

Records custodians, faced with a request for public records identifying the names of City employees, will want to follow the same procedures in analyzing such requests as they would follow in analyzing any other public records requests. That process is too complex to recount herein, but it can be found by consulting APM 3-6 and §3.42, MGO.

For most such requests the determination of whether to release such records will be answered by determining whether the public interest in disclosing such records is outweighed by the public's interests in keeping such information confidential. In Wisconsin, we start with the strong presumption, based in well-established public policy, that the public records law strongly favors

disclosure. Indeed, the declared policy of this state is that “[t]he denial of public access is contrary to the public interest, and only in an exceptional case may access be denied.”¹

I understand that many City employees, for a variety of reasons, oppose the release of their names to records requesters. Unfortunately for their concerns, the courts have given strong indication, in two recent cases, that public employee names must be disclosed to public records requesters. In a case involving whether the names of a private contractor’s employees had to be released to a records requestor², the Court of Appeals held that “...the public interest in protecting the privacy interests of these employees of a private company [hired by the county] outweighs the public interest in disclosing their names.”³ However, the court noted that the outcome may have been different if the employees had been public employees. To that end the court stated that “...public employees have a lower expectation of privacy because of their public employment.”⁴

In a more recent case the courts ordered the Milwaukee Public Schools (hereafter referred to as MPS) to disclose the roster it maintained of public school bus drivers. Although the drivers worked for private contractors, those contractors were obligated to provide MPS with a roster of names and driver’s license numbers of their employees. That roster, by virtue of MPS possession, became a public record. The court determined that out of 801 names and driver’s licenses on that roster, only six names and driver’s licenses could be withheld from the records requestor. Although the court does not explicitly enumerate the privacy interests at stake in those six records, it appears that the court focused on whether the release of such information would credibly endanger the identified employee.

Thus, from these two cases we can see that the public records statute and the courts interpreting those statutes will strongly favor the disclosure of public employee names. Indeed, § 3.42(11), MGO and §19.36(7), Wis. Stats. mandate the release of the names of final candidates for public employment.⁵ It would seem odd that a person’s name must be released when they are a finalist for a position, but is shielded from public disclosure once they have accepted such a position.

¹Atlas Transit, Inc., v. Korte, 2001 WL 1403613 (Wis. App.) Citing §19.31, Wis. Stats., Declaration of policy

²Kramer Brothers, Inc. v. Dane County, 229 Wis.2d 86 (Ct. App. 1999).

³Id. at 88.

⁴Id. at 102, citing to State ex rel. Journal/Sentinel, Inc., v. Arreola, 207 Wis.2d 496, 515 (Ct. App. 1996).

⁵See also Milwaukee Journal v. Board of Regents of the University of Wisconsin System, 163 Wis.2d 933, 939 (1991). In discussing the state statute the court held, “... the state has no business shielding the names of the finalists for public positions from public view.”

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The courts and the Wisconsin Attorney General have suggested that records custodians may want to notify affected public employees and allow them sufficient time to mount a legal challenge to prevent the disclosure of their identities. This is generally known as a providing *Woznicki* notice to the employee. *Woznicki* notices are provided to persons whose privacy interests are at stake or implicated in the release of public records. The notice allows such persons the opportunity to go to court and establish that their personal interests in maintaining the confidentiality of such records outweighs the public interests favoring the disclosure of such records. Records custodians may consult with this office to determine whether *Woznicki* notices are appropriate in any given case.

The opinion expressed in this memorandum is limited to the disclosure of public employee names only. This opinion does not cover more sensitive personnel record materials which may not be disclosable under the public records laws.

Eunice Gibson
City Attorney

CAPTION: Responding to Public Records Requests for employee names.

EG:RAA

cc: Mayor
City Clerk

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bcc: City of Madison Home Page - IS Simle and IS Sweeney (via e-mail attachment) with
a copy to AT Group - minus this page
Central Opinion Book
Attorney Book
File