

FILED
09-27-2022
Clerk of Circuit Court
Waukesha County
2022CV001409

**STATE OF
WISCONSIN**

**CIRCUIT
COURT**

**WAUKESHA
COUNTY**

REPUBLICAN PARTY OF WISCONSIN
148 E. Johnson Street
Madison, WI 53703

Plaintiff,

v.

TONY EVERS
In his Official Capacity as Governor
of the State of Wisconsin
115 East State Capitol
Madison, WI 53702,

OFFICE OF GOVERNOR TONY EVERS
115 East State Capitol
Madison, WI 53702,

MARY KOLAR
In her Official Capacity as Secretary of the
Wisconsin Department of Veterans Affairs
2135 Rimrock Road
PO Box 7843
Madison, WI 53707-7843,

-and-

WISCONSIN DEPARTMENT OF VETERANS AFFAIRS
2135 Rimrock Road
PO Box 7843
Madison, WI 53707-7843,

Defendants.

Case Codes: 30952, 30701
Classification: Petition for Writ of
Mandamus, Declaratory Judgment

SUMMONS

THE STATE OF WISCONSIN to each party 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 forty-five (45) days of receiving this Summons, you must respond with a written answer, as that term is used in Wis. Stat. Ch. 802, 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 Waukesha County Circuit Court, 515 W. Moreland Boulevard, Waukesha, Wisconsin 53188, and to the Plaintiff's attorneys, Cramer, Multhauf & Hammes, LLP, whose address is 1601 East Racine Avenue, P.O. Box 558, Waukesha, Wisconsin 53187. You may have an attorney help or represent you.

If you do not provide a proper answer within forty-five (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 27th day of September, 2022.

CRAMER, MULTHAUF & HAMMES, LLP
Attorneys for Plaintiff,

By: /s/ Electronically signed by Matthew M. Fernholz
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Michael A. Snider (SBN: 1070388)

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COMPLAINT FOR MANDAMUS

NOW COMES the above-named Plaintiff, Republican Party of Wisconsin, by its attorneys,
Cramer, Multhauf & Hammes, LLP, and as and for its Complaint against the above-named
Defendants, allege and show to the Court as follows:

NATURE OF THIS ACTION

1. Plaintiff brings this action for mandamus under Wis. Stat. § 19.37(1)(a), requesting that this Court order Defendants to release public records that Plaintiff requested, which Defendants have thus far failed to release or delayed in releasing, under the Public Records law, Wis. Stat. §§ 19.31 *et seq.*, and assess appropriate damages, Wis. Stat. §§ 19.31-.39.

PARTIES

2. Plaintiff, Republican Party of Wisconsin (“RPW”), is the principal State of Wisconsin political party focused on electing Republican candidates and is located at 148 E. Johnson Street, Madison, WI 53703.

3. Plaintiff is a “requester” as that term is defined in Wis. Stat. § 19.32(3), and as used throughout Wisconsin’s public records law, Wis. Stat. § 19.31-19.39.

4. Defendant, Tony Evers, is the Governor of the State of Wisconsin, an elected state office, and maintains an office located at 115 East State Capitol, Madison, WI 53702.

5. Governor Evers is an “authority” as that term is defined in Wis. Stat. § 19.32(1), and as that term is used in the Open Records law, Wis. Stat. § 19.31, *et seq.*

6. Defendant, Office of Governor Tony Evers, is the formal office of Governor Tony Evers, and maintains an office located at 115 East State Capitol, Madison, WI 53702.

7. The Office of Governor Tony Evers (the “Office”) is an “authority” as that term is defined in Wis. Stat. § 19.32(1), and as that term is used in the Open Records law, Wis. Stat. § 19.31, *et seq.*

8. Defendant, Mary Kolar, is the Secretary of the Wisconsin Department of Veterans Affairs (the “SDVA”) and maintains an office located at 2135 Rimrock Road, Madison, WI 53707-7843.

9. Secretary Kolar is an “authority” as that term is defined in Wis. Stat. § 19.32(1), and as that term is used in the Open Records law, Wis. Stat. § 19.31, *et seq.*

10. Defendant, Wisconsin Department of Veterans Affairs (the “WDVA”), is a State of Wisconsin Administrative Agency whose mission is to provide health, educational assistance, economic assistance, and other services to specified veterans of the armed forces of the United States. The principal office of the SDVA is located at 2135 Rimrock Road, Madison, WI 53707-7843.

11. The WDVA is an “authority” as that term is defined in Wis. Stat. § 19.32(1), and as that term is used in the Open Records law, Wis. Stat. § 19.31, *et seq.*

JURISDICTION AND VENUE

12. Jurisdiction is proper in the State of Wisconsin pursuant to Wis. Stat. § 801.05(1) as all Defendants are engaged in substantial and not isolated activities in Wisconsin.

13. Venue is proper in Waukesha County pursuant to Wis. Stat. § 801.50(3)(a), as the exceptions contained in § 801.50(3)(b) and (c) do not apply, it is the venue designated by the Plaintiff, and no other venue is specifically authorized by law.

BACKGROUND FACTS

14. On June 2, 2022, Plaintiff sent a request under the Open Records law to Governor Evers Office stating, in relevant part:

This is a request for records kept by your office in accordance with Wisconsin Public Records Law (Wis. Stats. §§ 19.31-39). Pursuant to state law, the Republican Party of Wisconsin requests the following:

- Any record of communication (emails, text messages, call logs, etc.) to/from Governor Tony Evers containing “Union Grove”
- Any record of communication (emails, text messages, call logs, etc.) to/from Chief of Staff Maggie Gau containing “Union Grove”

I kindly request this information in electronic format when possible. If there are fees associated with obtaining these records, please notify me by email at

(Exhibit A).

15. On June 2, 2022, Plaintiff sent a request under the Open Records law to the WDVA stating, in relevant part:

This is a request for records kept by your office in accordance with Wisconsin Public Records Law (Wis. Stats. §§ 19.31-39). Pursuant to state law, the Republican Party of Wisconsin requests the following:

- Any record of communication (emails, text messages, call logs, etc.) between Secretary Mary Kolar and Governor Tony Evers from January 1, 2021 – Present
- Any record of communication (emails, text messages, call logs, etc.) between Secretary Mary Kolar and Chief of Staff Maggie Gau between January 1, 2021 – Present

I kindly request this information in electronic format when possible. If there are fees associated with obtaining these records, please notify me by email at

(Exhibit B).

16. On June 8, 2022, Plaintiff sent a request under the Open Records law to Governor Evers Office stating, in relevant part:

This is a request for records kept by your office in accordance with Wisconsin Public Records Law (Wis. Stats. §§ 19.31-39). Pursuant to state law, the Republican Party of Wisconsin requests the following:

- Any record of communication (emails, text messages, call logs, etc.) between Governor Tony Evers and Secretary Mary Kolar from January 1, 2021 – Present
- Any record of communication (emails, text messages, call logs, etc.) between Chief of Staff Maggie Gau and Secretary Mary Kolar between January 1, 2021 – Present

I kindly request this information in electronic format when possible. If there are fees associated with obtaining these records, please notify me by email at

(Exhibit C).

17. On June 3, 2022, The Office of the Governor, through its official public records email account, acknowledged receipt of the open records requests, and stated that a response would be provided as soon as practicable and without delay.

18. On July 7, 2022, The Office of the Governor emailed Plaintiff stating it was working on processing the requests and wanted to clarify the timeframe for one of the requests; a representative of the Plaintiff responded an hour later with the requested timeframe.

19. On August 3, 2022, a representative of the Plaintiff emailed the DSVa, through its official public records email account, to check on the status of the open records request.

20. On August 11, 2022, a representative of the Plaintiff emailed the Office of the Governor through its official public records email account to check on the status of the requests.

21. On August 11, 2022, one of Plaintiff's staff members called and left a voicemail for the DSVa to check on the status of the requests.

22. On August 12, 2022, Plaintiff's staff member again called and emailed the DSVa through its official public records email account, to check on the status of the open records request. A representative of the DSVa returned the call and stated that the DSVa was processing the request.

23. On August 31, 2022, the DSVa, through its official public records email account, emailed Plaintiff in response to a voicemail left by one of Plaintiff's staff members, stating in pertinent part:

The Wisconsin Department of Veterans Affairs is not assessing the statutory authorized location fees for these requests. Still fulfilling these requests has taken considerable time by multiple staff members given the broad nature of the requested records.

In completing the response to your Open Records Request, the Wisconsin Department of Veterans Affairs does not want to inadvertently violate a veteran's rights who is residing at one of our Veterans Homes and whose right to confidentiality is protected by laws, such as HIPAA. The review of these requests is in the final review to ensure that the appropriate redactions are made in compliance with applicable laws, but that review is nearing completion.

(Exhibit D.)

24. On September 14, 2022, Plaintiff's staff member emailed the Office of the Governor through its official public records email account to check on the status of the requests.

25. As of the filing of this complaint, Defendants have failed to respond to the specific requests for records set forth in the June 2, 2022 and June 8, 2022 open records requests and have failed to provide any records responsive to those requests.

CLAIM FOR MANDAMUS

26. Plaintiff incorporates by reference all allegations set forth in the proceeding paragraphs.

27. 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.”

28. 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). Responses to Open Records requests must be provided “as soon as practicable and without delay.” Wis. Stat. § 19.35(4)(a).

29. Defendants have violated the Wisconsin Open Records law and Wis. Stat. § 19.37(1) by failing to provide the requested records and delaying granting access to the requested records.

30. Defendants’ actions have caused and will continue to cause injury to the Plaintiff by depriving it and the public of their rights under the Open Records law.

REQUESTED RELIEF

WHEREFORE, Plaintiff requests an order for mandamus directing each of the Defendants as follows and granting the following relief pursuant to Wis, Stat. §§ 19.31-19.39 and Wis. Stat. § 806.04:

- A. Order Defendants to provide copies of the requested records to Plaintiff;
- B. Award Plaintiff its actual costs and damages under Wis. Stats. § 19.37(2)(a);
- C. Assess whether Defendants acted in a willful or intentional manner, and arbitrarily and capriciously denied or delayed responses to the requests from Plaintiff, and assess appropriate damages under Wis. Stats. §§ 19.37(2)(b) and (3); and
- D. Order other such relief as the Court deems appropriate.

Dated this 27th day of September, 2022.

CRAMER, MULTHAUF & HAMMES, LLP
Attorneys for Plaintiff,

By: /s/ Electronically signed by Matthew M. Fernholz
Matthew M. Fernholz (SBN: 1065765)
Michael A. Snider (SBN: 1070388)

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