



Village Attorney's Office

Raymond J. Pollen
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April 6, 2005

Mr. M. Chris Swartz
Village Manager
Village of Shorewood
3930 North Murray Avenue
Shorewood, WI 53211

Re: 3/8/2005 Davidian Public Records Request

Dear Mr. Swartz:

This letter follows the request for a review of the public records request presented by Mr. Geoff Davidian and the correspondence that has followed thereafter.

On March 8, 2005 Mr. Davidian presented a public records request to the Shorewood Village Library. The specific records requested are described as follows:

Access to inspect the archive of Shorewood Public Library e-mail as created by the agreement settling the Davidian v. Shorewood lawsuit. (Enclosed).

Ms. Beth Carey, the Director of Library Services responded to Mr. Davidian's request on March 14, 2005. She noted that the Library has complied with previous requests for records. I have learned that previous requests for identifiable public records including e-mails have been provided. As to the March 8, 2005 request, Ms. Carey noted that the inquiry was outside the scope of Wisconsin Law in that it was, "...a request for a record without a reasonable limitation as to subject matter or length of time represented by the record does not constitute a sufficient request". Because the archive includes thousands of e-mail, she observed that the request itself was impermissibly broad. Her response to this request appears appropriate and supported under Wisconsin Law. See Wisconsin Statute §19.35(1)(h); Schopper v. Gehring, 210 Wis 2d. 209 (App 1997).

Mr. Davidian disagrees with Ms. Carey's response as noted in his letter to my office dated April 1, 2005. (Enclosed). Specifically, Mr. Davidian references the agreement which was part of the resolution of his earlier lawsuit as against the Village of Shorewood. However, that agreement does not nor could it allow unfettered access into public records without prior review by the records custodian. The agreement itself reads as follows:

The Village will implement a system which will provide Village Board members and Village Employees access to a system for sending and receiving e-mails and will request of the Village Board and require Village employees to use the system for all e-mails concerning the Village. This system will allow the Village to archive all e-mail sent or received through the system. The Village will utilize its best efforts to have the system in place by June 1, 2004. (Enclosed).

The agreement put into writing a plan for maintaining e-mail that had already been discussed even before the Davidian lawsuit. Since the agreement, I understand that Village e-mail created by employees are maintained and archived both at the Village Hall and at the Library. These electronic records, however, are no more free for public access (without prior review) than are any other record maintained in the Village.

Under the public records law, a records custodian reviews the request and potential records which may be subject to the request. The custodian is then to weigh the competing interest involved and determine whether permitting inspection would result in harm to the public interest that outweighs the legislative policy which favors inspection. Newspapers Inc. v. Bryar, 189 Wis 2d. 417 (1979). Where harm outweighs the benefits from access, the custodian is required to refuse the request and state specifically the reasons for his or her refusal. State exrel Youmans v. Owens, 28 Wis 2d. 672 (1965). In this balancing, the custodians consider many factors including the privacy rights of employees, public policy issues such as those contained within Wisconsin Statute § 19.85 and for library custodians, the impact on the disclosure to those individuals who borrow or use services. [see Wisconsin Statute § 43.30(1)].

As I read Mr. Davidian's 3/8/05 request and Ms. Carey's 3/14/05 response, I note that it is not a denial based upon the fact that it requests electronic records. Indeed, I have come to understand that earlier requests have been made for records including e-mail and appropriate responses have been provided. This request, without limitations as to time or subject was determined to be unreasonable. Nothing within the agreement resolving the Davidian lawsuit appears to change this result and nothing within that settlement agreement removes the obligation of the records custodian to balance competing interests before disclosure on each request.