



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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July 22, 2016

Mr. Bryan Polcyn
FOX 6 Investigator
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Dear Mr. Polcyn:

This is in response to your email correspondence to Wisconsin Department of Justice (DOJ) Certification & Curriculum Supervisor Dana Vike, on June 10, 2016, in which you requested “a list of all law enforcement officers who have been reported to the Training & Standards Bureau as being discharged from a law enforcement agency in Wisconsin over a specific period of time. For the purpose of this request, I am seeking the first name, last name, middle initial and date of birth of each discharged officer whose separation date was reported as January 1, 2012 or later. For each officer discharged during the specific time period (Jan. 1, 2012 – present), I am also requesting their current employer, if they are employed as a law enforcement officer in the State of Wisconsin as of the date of this request.”

Concerning your request for “a list of all law enforcement officers who have been reported to the Training & Standards Bureau as being discharged from a law enforcement agency in Wisconsin,” interpreting your request as seeking a list of those let go for cause, DOJ has no records responsive to your request. The public records law “does not require an authority to provide requested information if no record exists, or to simply answer questions about a topic of interest to the requester.” *Journal Times v. City of Racine Board of Police and Fire Commissioners*, 2015 WI 56, 55 (citation omitted); see also *State ex rel. Zinngrabe v. Sch. Dist. of Sevastopol*, 146 Wis. 2d 629, 431 N.W.2d 734 (Ct. App. 1988).

However, law enforcement employers are required to notify DOJ's Training and Standards Bureau when an officer's employment ends, regardless of the reason. Those categorized as “discharged” were not necessarily let go for cause. Family reasons, health issues, or career decisions could be reasons why an officer's employment ends and why the officer would be categorized as “discharged.” As a result, individuals categorized as “discharged” may be employed with another law enforcement employer. In the event your request sought a copy of the list of “discharged” employees, as explained herein, we identified 12 pages of records responsive to your request, which we are providing you with redactions as explained below.

Pursuant to the Wis. Stat. § 19.35(1)(a) balancing test, I redacted the dates of birth of individuals listed in the records. I determined that the public interest in preventing identity theft or other misuse of this economically valuable information following any subsequent disclosure outweighs any public interest in its disclosure.

Certain individuals are listed as working with law enforcement employers currently, and it is also possible that other individuals are working with law enforcement employers that are not noted in the records. Since we are unable to determine which individuals are currently working as law enforcement officers, I redacted the names of all listed individuals pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. Law enforcement agencies have been made aware that their personnel are at increased risk of being targeted by groups or individuals who use publicly available information for cyber-attacks, doxxing or swatting activities against officers and their families. Providing the names of police officers could subject them or their families to cyber, financial or personal attacks, including identity theft, stalking, harassment and threats. Such ever-increasing threats to officers could have a chilling effect on their ability to recruit or retain qualified candidates for those positions. Applying the public records balancing test, I concluded these likely threats weigh in favor of not disclosing this information. As such, I find that the public interest in disclosure of this information is outweighed by the public interest in effective investigation and prosecution of criminal activity and the protection of law enforcement officers and their families. *Cf. Linzmeyer v. Forcey*, 2002 WI 84, ¶¶ 30-32, 39, 41, 254 Wis. 2d 306, 646, N.W.2d 811.

Furthermore, there are 587 law enforcement agencies in Wisconsin. DOJ does not have a list of which individuals working as law enforcement officers may be working undercover at any given time or which officers may be working in specialized units such as those protecting dignitaries and those on federal task forces. DOJ does not maintain information related to which agencies post information publicly, and we do not maintain a list of law enforcement agencies that do not publicly disclose officers' names on nameplates, or otherwise. In addition, DOJ does not know if any particular officers have specific safety concerns that a record custodian should consider prior to release of records pertaining to that officer. *See, e.g., State ex rel. Ardell v. Milwaukee Bd. of Sch. Dir.*, 2014 WI App 66, ¶ 10, 354 Wis. 2d 471, 849 N.W.2d 894. Without knowing how each agency treats the release of information about their officers, it would be contrary to the public interest to disclose information that could threaten current law enforcement efforts or adversely affect the officers or agencies. DOJ does not have the resources to gather the information necessary to release all of the information you request without compromising the safety of officers and their families, and the security of the communities they protect.

As such, I find that the public interest in obtaining this information is outweighed by the public interest in effective investigation and prosecution of criminal activity and the protection of law enforcement officers and their families. *Cf. Linzmeyer*, 254 Wis. 2d 306, ¶¶ 30-32, 39, 41.

Additionally, disclosing the requested information would potentially require DOJ to provide notice to persons that information about them was being released. *See* Wis. Stat. § 19.356. The statutes require this notice to be via certified mail or personal service. Then,

Mr. Bryan Polcyn

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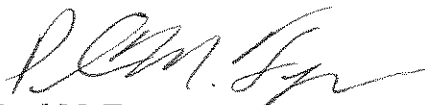
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the notified individual would then be able to challenge release of the particular record(s) or would be permitted to augment the record(s) to be released. Serving such notice on that number of individuals would place an untenable and unreasonable burden on DOJ staff. See *Schopper v. Gehring*, 210 Wis. 2d 208, 212-13, 565 N.W.2d 187 (Ct. App. 1997).

The law permits DOJ to impose fees for certain "actual, necessary and direct" costs associated with responding to public records requests. Wis. Stat. § 19.35(3). Pursuant to Wis. Stat. § 19.35(3)(f), DOJ may require prepayment for the costs of locating (if applicable), copying and mailing the requested records if the total amount exceeds \$5.00. Pursuant to Wis. Stat. § 19.35(3)(e), in this instance, DOJ is waiving its fees associated with responding to your request. Enclosed, please find the records responsive to your request.

Pursuant to Wis. Stat. § 19.35(4)(b), this determination is subject to review by mandamus under Wis. Stat. § 19.37(1) or upon application to a district attorney or the Attorney General.

Sincerely,



Paul M. Ferguson
Assistant Attorney General
Office of Open Government

PMF:pjm

Enclosure