

## FOX6 Open Records

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To: GOVPublicRecords@wisconsin.gov <GOVPublicRecords@wisconsin.gov>

Cc: GovPress@wisconsin.gov <GovPress@wisconsin.gov>; Watson, LeeAnn <Leeann.Watson@fox6now.com>

Good afternoon,

I'm following up on the conversation we had yesterday about my open records request for

- The Governor's calendar(s) from 2019
- The Governor's emails (sent and received) from June 14, 2019 through June 30th, 2019 and from September 2, 2019 through September 18, 2019.
- Maggie Gau's emails (sent and received) from June 4, 2019 through June 30th, 2019 and from September 2, 2019 through September 18, 2019

I was pleased to hear that the Governor's office will have no problem providing the calendars, and I look forward to the fulfillment of that request.

After speaking with my Executive Producer, I'm willing to narrow my emails requests to the following:

- The Governor's emails (sent and received) from June 14, 2019 through June 20, 2019
- Maggie Gau's emails (sent and received) from June 14, 2019 through June 20, 2019

If it helps your search, I am willing to exclude newsletters and press releases from my request. However, if that would make your search more difficult, I'm happy to leave those in.

In our phone conversation yesterday, I was left with the impression that the Governor's Office is taking the position that it will only fulfill email requests that provide either 1) specific search terms or 2) phraseology that the Governor's Office can use to come up with its own specific search terms.

I have several concerns with this position.

To start, the Open Records statute 19.35(1)(h) says a request is deemed sufficient "if it reasonably describes the requested record or the information requested." In this case, I've described the requested record (emails sent to and from two specific accounts over the course of one week).

The next sentence in the statute says a request is insufficient if it does not have "a reasonable limitation as to subject matter or length of time."

This part of the statute does not require a subject matter; it gives the choice of subject matter or time. In this case, I gave a very specific and short period of time. Although the statute does not require me to provide a subject matter, I would argue the emails themselves are subject matter in the same way expense reports themselves are subject matter.

I understand that my request will yield a large number of records. However, it has been established that a search resulting in a voluminous amount of records does not in and of itself make the request overly burdensome. In fact, in order to make the request less burdensome, I offered on the phone to limit my search to a three hour time span (between 9am and noon on one particular day). I was informed that, even though this narrowed search would result in significantly fewer emails, that request would still be

denied because any request without search terms or phraseology that could be converted into search terms would be denied (no matter how many or few records would result).

The Governor's Office underlying concern is clearly not a belief that my request for emails is burdensome, because offers to alleviate the burden were rejected. The next rationale I was given was that others could then file multiple small requests adding up to a longer period of time.

While I can appreciate that dealing with more open records requests might be inconvenient for the Governor's Office, there is no legal basis for denying a request simply because it could lead to more requests.

I was then informed that my records request would result in a large fee for the station. However, the Governor's Office admitted that locating the records responsive to my request would not be difficult or time consuming; the time-consuming part would be going through each record for redactions. Agencies are not permitted to charge for redactions in Wisconsin, so I would like more clarity about how the Governor's Office is calculating any potential charges.

Lastly, I was told that searchable terms or words that could yield searchable terms were necessary in order for the Governor's Office to be consistent in its responses to requests; that is, in the name of fairness, all requests require narrowed and specific subject matter. I respectfully disagree.

When I request a public employee's or elected leader's expense reports for a given year, I am not required to limit my request to the subject matter of fuel expenses. When I request a public calendar, I am not required to limit my request to the subject matter of specific meetings. When I request legal invoices for public agencies, I am not required to limit my request to the subject matter of specific cases. I request the actual records, just as I requested the records of emails, and they are released because they are presumed to be public and they provide important information when provided in their entirety.

The Governor's records are no different; as far as I am aware, the law does not put his emails, nor anyone else's, in a special class.

The restrictions outlined by the Governor's Office contradict the law's clear presumption that these records are public, and require a requester to have knowledge of the contents of the records before actually seeing the records. Such restrictions have the effect of making it easy for public leaders to hide information; they also allow records custodians to force the requester to de facto provide a reason for the request.

I can appreciate the amount of time and energy it takes to respond to Open Records requests. However, the law clearly states that responding to such requests is part of the routine responsibilities of an agency. I would respectfully suggest that the Governor's Office should be staffed in a manner that allows it to carry out the routine responsibility of providing one week's worth of emails.

Sincerely,

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