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10-30-2018  
John Barrett  
Clerk of Circuit Court  
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Honorable Marshall B.  
Murray-43  
Branch 43

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

CRG ADVOCATES, INC.,  
9272 N. Thrush Ln.  
Bayside, WI 53217

Petitioner,

v.

ALDERMAN RUSSELL W. STAMPER, II,  
200 E. Wells St.  
Milwaukee, WI 53202,

Respondent.

Petition for Writ of Mandamus

Case Code: 30952

Case No. 18-CV-

**PETITION FOR WRIT OF MANDAMUS**

This is an action to enforce Wisconsin’s Open Records Law, Wis. Stat. §§ 19.31-19.39. State law declares it the public policy of this state that every citizen is presumptively entitled to complete access to the records of state and local government.

Petitioner CRG Advocates Inc., (“CRG”), by its attorneys, Wisconsin Institute for Law & Liberty, hereby petitions this Court for a writ of mandamus directing the Respondent, Alderman Russell W. Stamper, II, to produce records requested by the Petitioner, alleging to the Court as follows:

**FACTUAL ALLEGATIONS**

1. Petitioner CRG is a non-stock corporation incorporated in the State of Wisconsin with a business address of 9272 North Thrush Lane, Bayside, Wisconsin 53217.
2. Respondent Stamper is an elected Alderman of the City of Milwaukee with a business address of 200 East Wells Street, Milwaukee, Wisconsin 53202.
3. Alderman Stamper is an “Authority” under Wis. Stat. § 19.32(1).
4. On March 8, 2018, Orville Seymer, Field Operations Director of Petitioner CRG, sent an open records request to Alderman Stamper asking for a copy of the Alderman’s calendar.

A true and accurate copy of that request is attached to the Affidavit of Orville Seymer as Exhibit S1.

5. On March 13, 2018, Dameon Ellzey, Legislative Assistant to Alderman Stamper, acknowledged receipt of the request and stated that they would “respond promptly.” A true and accurate copy of that email is attached to the Affidavit of Orville Seymer as Exhibit S2.

6. On March 20, 2018, Seymer sent a second open records request to Alderman Stamper asking for a copy of the Alderman’s phone records. A true and accurate copy of that request is attached to the Affidavit of Orville Seymer as Exhibit S3.

7. Alderman Stamper failed to acknowledge receipt of the March 20, 2018 request.

8. On April 17, 2018, Seymer followed up with Alderman Stamper on the March 8, 2018 open records request. A true and accurate copy of that email is attached to the Affidavit of Orville Seymer as Exhibit S4.

9. On April 18, 2018, Seymer sent a third open records request to Alderman Stamper asking for emails meeting particular search requirements. A true and accurate copy of that email is attached to the Affidavit of Orville Seymer as Exhibit S5.

10. On April 19, 2018, Dameon Ellzey, Legislative Assistant to Alderman Stamper, acknowledged receipt of the request and stated that they were “working on it.” A true and accurate copy of that email is attached to the Affidavit of Orville Seymer as Exhibit S6.

11. On April 26, 2018, Seymer followed up with Alderman Stamper on the March 8, 2018 open records request. A true and accurate copy of that email is attached to the Affidavit of Orville Seymer as Exhibit S7.

12. On August 2, 2018, counsel for CRG wrote to Alderman Stamper demanding release of the records. A true and accurate copy of that letter is attached to the Affidavit of Thomas Kamenick as Exhibit K1.

13. As of the date of this petition, Alderman Stamper has failed to fulfill any of CRG's three record requests, deny the requests, explain his delay, ask for clarification, or provide a timeline for responding.

**CAUSE OF ACTION – VIOLATION OF § 19.35(4)**  
**Illegal Delay in Producing Records**

14. The preceding paragraphs are hereby incorporated and realleged as if fully stated herein.

15. 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. The statute provides that “[t]he denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied, establishing a presumption of complete public access to government records, consistent with the conduct of governmental business.”

16. Wis. Stat. § 19.35(1)(a) and (b) provide that “any requester has a right to inspect any record” and “to make or receive a copy of a record.”

17. Subject to qualifications not relevant here, Wis. Stat. § 19.32(2) defines a record as “any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or kept by an authority.”

18. Under Wis. Stat. § 19.35(4)(a), “[e]ach authority, upon request for any record, shall, as soon as practicable and without delay, either fill the request or notify the requestor of the authority’s determination to deny the request in whole or in part and the reasons therefor.”

19. The Attorney General of Wisconsin has opined that “ten working days generally is a reasonable time for responding to a simple request for a limited number of easily identifiable records.” Wis. Dep’t of Justice, Attorney General Brad D. Schimel, *Wisconsin Public Records Law Compliance Guide*, November 2015, at 15. “Requests for public records should be given high priority.” *Id.*

20. An authority must either fulfill or deny an open records request; offering to comply at some unidentified time in the future is not authorized by law. *WTMJ, Inc. v. Sullivan*, 204 Wis. 2d 452, 457-58, 555 N.W.2d 140 (Ct. App. 1996).

21. It has been over six months since CRG made its open requests, and Alderman Stamper has failed to comply with his obligations under the Open Records Law. The Alderman has arbitrarily and maliciously ignored CRG’s record requests and offered no explanation for his delay.

22. No explanation Alderman Stamper could offer would justify refusing to even respond and acknowledge a record request for over six months.

23. As of the date of this Petition, 237 days have passed since CRG’s first request was made, and Alderman Stamper has neither fulfilled nor denied CRG’s requests.

24. Alderman Stamper has acted in a wholly arbitrary and capricious matter in needlessly delaying response to CRG’s record requests.

25. Therefore, Alderman Stamper has violated the Open Records Law and Wis. Stat. § 19.35(4) by failing to fulfill or deny the record request “as soon as practicable and without delay.”

26. “If an authority . . . delays granting access to a record or part of a record after a written request for disclosure is made, the requester may . . . bring an action for mandamus asking a court to order release of the record.” Wis. Stat. § 19.37(1), (a).

### **RELIEF REQUESTED**

WHEREFORE, the Petitioner demands a writ of mandamus to issue against the Respondent under Wis. Stat. § 19.37(1):

1. Compelling the Respondent to immediately produce the requested records;
2. Declaring the Petitioner’s rights and limiting the Respondent’s conduct with respect to the requested records;
3. Awarding the Petitioner punitive damages under Wis. Stat. § 19.37(3);
4. Awarding the Petitioner his reasonable attorney fees, damages of not less than \$100, and other actual costs under Wis. Stat. § 19.37(2), and;
5. Awarding such other relief as the Court deems appropriate.

Dated this 30<sup>th</sup> day of October, 2018

Respectfully submitted,

WISCONSIN INSTITUTE FOR LAW & LIBERTY  
Attorneys for Petitioner

Electronically Signed by Thomas C. Kamenick

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