

RED CARD MEDIA,
d/b/a ISTHMUS PUBLISHING,

Petitioner,

v.

Case No. 18-CV-290

MADISON POLICE DEPARTMENT,

Respondent.

APPLICATION FOR ALTERNATIVE WRIT

Petitioner, Red Card Media, d/b/a Isthmus Publishing, by its attorneys the Wisconsin Institute for Law & Liberty, hereby apply to this Court for an alternative writ of mandamus ordering the Respondent, Madison Police Department, to produce the 729 pages of records Respondent identified as responsive to Petitioner's open records request of December 7, 2016, for which Petitioner paid on March 22, 2017, or to appear before this Court and show cause to the contrary. The grounds for this application are as set forth in the accompanying affidavits and as follows:

1. An alternative writ of mandamus is "a mandamus issued upon the first application for relief, commanding the defendant either to perform the act demanded or to appear before the court at a specified time to show cause for not performing it." *State ex rel. Milwaukee Police Ass'n v. Jones*, 2000 WI App 146, ¶7, n. 7, 237 Wis. 2d 840, 615 N.W.2d 190 (quoting BLACK'S LAW DICTIONARY (7th Ed. 1999)).

2. "The usual practice, if a prima facie case is made out by the petition or application, is to issue an alternative writ of mandamus, directed to the person claimed to be

under a duty to act, requiring the person, either to act or to show cause why the person should not be compelled to do so.” 9 Wis. Pleading & Practice Forms, sec. 85.37 (5th Ed. 2017).

3. Courts can issue alternative writs of mandamus immediately in open records cases. See, e.g., *ECO, Inc. v. City of Elkhorn*, 2002 WI App 302, 259 Wis. 2d 276, 655 N.W.2d 510 (court issued alternative writ on same day petition was filed); *Jones*, 2000 WI App 146, ¶7 (court issued alternative writ on same day petition was filed); *State ex rel. Richards v. Foust*, 165 Wis. 2d 429, 477 N.W.2d 608 (1991) (“The Honorable Gerald C. Nichol issued an alternative writ of mandamus directing Foust to furnish Richards with access to the prosecutor’s case file or show cause why access to the file should be denied.”); *State ex rel. Morke v. Donnelly*, 155 Wis. 2d 521, 455 N.W.2d 893 (1990) (“[T]he alternative writ of mandamus commanded that Donnelly either provide Morke with access to the requested public records or show cause for withholding the records.”); *Webster v. Township of Spruce*, 2013 WI App 94 (unpublished) (court issued alternative writ the day after petition was filed).

4. The Petition and supporting affidavits establish a prima facie case that Respondent has failed to perform a clear duty mandated by the Open Records Law. Petitioner made a record request on December 6, 2017. (Halsted Aff. ¶¶1, 3 & Ex. H1.) Respondent identified 729 pages of responsive records on March 10, 2017. (*Id.* ¶5 & Ex. H2.) Petitioner paid \$182.25 in fees for the records on March 22, 2017. (Brogan Aff. ¶¶1, 3.) By August 1, 2017, Respondent had completed redacting the records. (Halsted Aff. ¶7 & Ex. H4.) The Respondent still has not provided the requested records. (*Id.* ¶8; Brogan Aff. ¶8.)

5. The Open Records Law requires custodians to provide requesters with records “as soon as practicable and without delay.” Wis. Stat. § 19.35(4)(a).

6. Respondent is duty-bound to provide the requested records to Petitioner and has failed to do so.

Dated this 2nd day of February, 2018.

Respectfully submitted,
WISCONSIN INSTITUTE FOR
LAW & LIBERTY
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