

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

RED CARD MEDIA, LLC  
d/b/a ISTHMUS PUBLISHING  
100 State Street  
Madison, WI 53703,

**SUMMONS**

Case Class: Petition for Writ of Mandamus  
Case Code: 30952  
Case No. 18-CV-

Petitioner,  
v.

MADISON POLICE DEPARTMENT,  
211 South Carroll Street  
Madison, WI 53703,

Respondent.

THE STATE OF WISCONSIN

To each person named above as a Respondent:

You are hereby notified that the Petitioner named above has filed a lawsuit or other legal action against you. The Petition, which is attached, states the nature and basis of the legal action.

Within 20 days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Petition. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is: **Clerk of Circuit Court, Dane County, 215 S Hamilton St., Room 1000, Madison, WI 53703**, and to the Wisconsin Institute for Law & Liberty, Petitioner' attorneys, whose address is: **1139 E. Knapp Street, Milwaukee, WI 53202**.

You may have an attorney help or represent you.

If you do not provide a proper answer within 20 days, the court may grant judgment against you for the award of money or other legal action requested in the Petition, and you may lose your right to object to anything that is or may be incorrect in the Petition. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Respectfully submitted,  
WISCONSIN INSTITUTE FOR LAW & LIBERTY  
Attorneys for Petitioner

Electronically signed by Richard M. Esenberg

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**PETITION FOR WRIT OF MANDAMUS**

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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 Red Card Media, d/b/a Isthmus Publishing ("Isthmus"), by its attorneys, the Wisconsin Institute for Law & Liberty, hereby petitions this Court for a writ of mandamus directing the Respondent, Madison Police Department ("MPD"), to produce records requested by the Petitioner, alleging to the Court as follows:

**FACTUAL ALLEGATIONS**

1. The Petitioner is a domestic limited liability corporation incorporated in the State of Wisconsin with a business address of 100 State Street, Madison, Wisconsin 53703. The Petitioner does business under the trade name of Isthmus Publishing.
2. The Respondent is a department of the City of Madison and has offices at 211 South Carroll Street, Madison, Wisconsin, 53703.
3. The Respondent is an "Authority" under Wis. Stat. § 19.32(1).

4. On December 7, 2016, Gil Halsted, a freelance writer acting in coordination with Dylan Brogan, an Isthmus reporter, sent an open records request to the Respondent. A true and accurate copy of that request is attached to the Affidavit of Gil Halsted as Exhibit H1.<sup>1</sup>

5. Over the next two months, Halsted and Madison Police Department Lieutenant John Radovan discussed revisions and clarifications to the request. On or about February 21, 2017, Halsted agreed to a revision to his request. The revised request sought original emails and MDC (“mobile data computer”) messages including the names Sarah Anderson and Steve Heimsness from October 1, 2012, through October 1, 2013.

6. On March 10, 2017, Radovan wrote Halsted a letter indicating he had collected all responsive records, totaling 729 pages, and requesting prepayment of \$182.25 for copying charges. A true and accurate copy of that letter is attached to the Affidavit of Gil Halsted as Exhibit H2.

7. On March 22, 2017, Dylan Brogan paid MPD \$182.25 in prepayment for the record request.

8. Over the next several months, Brogan called Radovan at least six times asking for MPD’s records. Each time, he was given variations of the same story – Radovan apologized for the delay, offered excuses for why the records were not ready to be produced, and promised to get right on it.

9. Emails were exchanged during the same time period between Brogan, Halsted, and Radovan. In those emails, Radovan promised to give updates every two weeks, stated that he will do the redaction on their request as soon as he finishes another one, and said he

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<sup>1</sup> Exhibits attached to the Affidavit of Gil Halsted are numbered H1 through H4. The exhibit attached to the affidavit of Dylan Brogan is numbered B1.

“expect[s] to be done with this by the end of June,” and then later “by the end of July.” True and accurate copies of those emails are attached to the Affidavit of Gil Halsted as Exhibit H3.

10. On August 1, 2017, Radovan emailed Brogan and Halsted telling them he was finished and just had to go over the material with the city’s attorney in a meeting scheduled for “next Thursday.” He also noted that there would be a 12-day waiting period due to having to notify employees under Wis. Stat. § 19.356(3). A true and accurate copy of that email is attached to the Affidavit of Gil Halsted as Exhibit H4.

11. On August 28, 2017, Brogan forwarded that email to Madison Assistant City Attorney Roger Allen, asking when the records would be produced. The next day, Allen responded saying he would “try to expedite this.” True and accurate copies of those emails are attached to the Affidavit of Dylan Brogan as Exhibit B1.

12. Despite having identified all responsive records, having been paid the copying fee, and having completed all redactions, MPD has neither fulfilled the December 7, 2016 request nor denied it.

**CAUSE OF ACTION – VIOLATION OF § 19.35(4)  
Illegal Delay in Producing Records in Response to December 7, 2016 Request**

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

14. 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.”

15. 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.”

16. 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.”

17. 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.”

18. 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.*

19. 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).

20. MPD had identified all responsive records by March 10, 2017. MPD received payment for copying fees by March 22, 2017. It then took MPD almost five months merely to complete redactions of those records. That delay alone is unacceptable.

21. Yet it has been almost six months since MPD completed its redactions and still has not complied with its obligations under the Open Records Law. MPD has offered no explanation for its delay.

22. No explanation MPD could offer would justify a record request being delayed for 11 months after the records had been identified and paid for.

23. As of the date of this Petition, 421 days have passed since the request was made and MPD has neither fulfilled nor denied the request.

24. MPD's most recent response, on August 29, 2017, indicated that MPD intended to comply at some indefinite future time.

25. MPD has acted in a wholly arbitrary and capricious matter in needlessly delaying response to Isthmus' record request for well over a year despite being paid promptly.

26. Therefore, Respondent 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."

27. "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 1<sup>st</sup> day of February, 2018

Respectfully submitted,

WISCONSIN INSTITUTE FOR LAW & LIBERTY  
Attorneys for Petitioner

Electronically Signed by Richard M. Esenberg \_\_\_\_\_

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