

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

Plaintiff,

v.

Unclassified

Case Code: 30952
Case No. 18-CV-

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

Defendant.

AFFIDAVIT OF GIL HALSTED

STATE OF WISCONSIN)
) SS
DANE COUNTY)

Gil Halsted, being duly sworn on oath, states as follows:

1. I am a freelance writer, and I was seeking records from the Madison Police Department for a story planned to be written for Red Card Media, d/b/a Isthmus Publishing, the Plaintiff in the above-referenced matter, in coordination with Dylan Brogan.

2. I have personal knowledge of the information set forth in this affidavit.

3. On December 7, 2016, acting on behalf of Isthmus, I sent an open records request to the Defendant. A true and accurate copy of that request is attached hereto as Exhibit H1.

4. In the two months following my request, I discussed revisions and clarifications to the request with Madison Police Department Lieutenant John Radovan. On or about February 21, 2017, I agreed to a revision to my 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.

5. On or about March 10, 2017, I received a letter from Lieutenant Radovan 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 as Exhibit H2.

6. Over the next several months Dylan Brogan and I received emails from Lieutenant 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 “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 as Exhibit H3.


7. On August 1, 2017, Dylan Brogan and I received an email from Radovan stating that 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 as Exhibit H4.

8. As of the date of this affidavit, MPD has neither fulfilled my December 7, 2016 request nor denied it.



GIL HALSTED

Subscribed and sworn to before me
this 26th day of January, 2018.



Notary Public, State of Wisconsin
My Commission expires 11/29/2021.



3) Greg Leifer, Sherry Severson, and Lucia Nunez are not, nor have they ever been, employees of the Madison Police Department. As MPD Records Custodian I am only including emails to or from those individuals that fall within the search parameters if those emails were sent or received by somebody employed by MPD. For a full search of those individual's emails to see what falls within the search criteria a records request will have to be made to their respective city departments (Department of Human Resources for Greg Leifer and Sherry Severson, Department of Civil Rights for Lucia Nunez).

Please reply to this email whether or not you agree with those clarifications.

I believe I have had city IT staff conduct searches that have uncovered all documents (emails (w/attachments) and mdc messages) that are possibly responsive to your request. I now need to figure out exactly what is responsive, weed out the duplicative documents mentioned above, and do necessary redactions. I am hopeful to be done within the next couple weeks and will update you on the status by the end of the first week in January.

Lieutenant John Radovan

Records Custodian

City of Madison Police Department

(608) 266-6068

EXHIBIT H1

From: gil halsted [<mailto:gilmuni@gmail.com>]
Sent: Wednesday, December 07, 2016 1:36 PM
To: Radovan, John
Subject: Open Records request re: Steve Heimsness

Dear Lt. Radovan,

This letter is to request the following records, under the state's Open Records Law (19.31-39, Wisconsin Statutes):

1. Sarah Anderson's work schedule from Sept 1 2012 to Sept 1 2013

2. All original emails and MDC messages that include employee names “Sarah Anderson” and “Steve Heimsness” from Oct 1 2012 to Oct 1 2013 to and from:

Chief Noble Wray

Lt. Bradley Wilson

Sgt. K. Donahue

Sgt. Moore

Greg Leifer

Lt. Radovan

Lt. Roman,

Capt. Gloede

Lt. McCaw

Lt. Olivas

Dan Frei

Sherry Severson

Lucia Nunez

Please be aware that the Open Records law defines “record” to include information that is maintained on paper as well as electronically, such as data files and unprinted emails. Wis. Stat. § 19.32(2).

Please also be aware that the Open Records law “shall be construed in every instance with the presumption of complete public access consistent with the conduct of

governmental business. The denial of access generally is contrary to the public interest and only in exceptional cases can access be denied.” If you deny my request, the law requires you to do so in writing and state what part of the law you believe entitles you to deny my request. Wis. Stat. § 19.35(4)(a).

The Open Records law states that you may charge for "the actual, necessary and direct cost" of locating records, if this exceeds \$50, and for photocopies. The Wisconsin Department of Justice advises that copying fees under the OpenRecords law should be “around 15 cents per page and that anything in excess of 25 cents may be suspect.” Please advise me before processing this request if the total cost will exceed \$50.

As you know, the law requires you to respond to this request “as soon as practicable and without delay.”

If you are not the records custodian for this information, please forward this request to the appropriate person. Also, please let me know if I can clarify or refine this request.

Thank you for your time and consideration. Please don't hesitate to call if you have any questions.

--

Gil Halsted

Free lance Journalist

138 Talmadge St.

Madison 53704

608-213-6080



Madison Police Department

Michael C. Koval, Chief of Police

City-County Building
211 S. Carroll Street
Madison, Wisconsin 53703
Phone: (608) 266-4022
Fax: (608) 266-4855
police@cityofmadison.com
www.madisonpolice.com

EXHIBIT H2

March 10, 2017

Gil Halsted
138 Talmadge St
Madison, WI 53704

Dear Mr. Halsted,

Per our conversation today, I have compiled the records which would be responsive to the portion of your public records request from December 7, 2016, which requested all original emails and MDC messages that include employee names "Sarah Anderson" and "Steve Heimsness" from Oct 1 2012 to Oct 1 2013 to and from a list of individuals you provided in your request. Also per our previous conversations I included variations of those names in my search for records to be as complete as possible in obtaining the records you are seeking. There are a total of 729 pages of records responsive to your request.

Pursuant to guidelines issued by the Wisconsin Attorney General and the City of Madison Director of Information Technology, the Madison Police Department charges \$0.25/page of copied records that are given to a requestor. Also, pursuant to Madison Gen Ord 3.70(4)(b)3.e. we must require pre-payment if the records release fee exceeds \$50 before the request is processed. We will therefore require prepayment in the amount of \$182.25 before processing your request.

Prepayment may be made by cash, check, or money order at the MPD Records Office or by mail. You may also call (608) 266-4075 and pay by credit card. The Records Office is located at 211 S Carroll St., Madison, WI., 53703, Rm GR-10. When making the payment make sure you indicate it is for the Heimsness records request and that you have been working with me on it.

My understanding is that after the records are processed you would like to inspect them before deciding which records you want the copies of. In that situation we would reimburse you the difference between the \$182.25 and the cost of the actual number of copies you receive.

Feel free to contact me at (608) 266-6068 or jradovan@cityofmadison.com.

Sincerely,

John Radovan, Lieutenant of Police



Dylan Brogan <dylanbrogan@gmail.com>

Re: Reviewing records request

Dylan Brogan <dylanbrogan@gmail.com>
Draft To: dbrogan@isthmus.com

Mon, Oct 23, 2017 at 6:31 PM

----- Forwarded message -----

From: **Dylan Brogan** <dylanbrogan@gmail.com>
Date: Wed, Jun 28, 2017 at 3:59 PM
Subject: Re: Reviewing records request
To: "Radovan, John" <JRadovan@cityofmadison.com>

Fair enough. Thank you very much.

On Wed, Jun 28, 2017 at 15:56 Radovan, John <JRadovan@cityofmadison.com> wrote:

Dylan,

I do agree you have been patient with the time it has taken to process this request, which has been appreciated. I also understand and agree that there must be limits to that patience. Although there are parts of the records responsive to the very broad nature of this request that I will be redacting or denying the release of for various reasons, I have no intention to deny it as a whole and feel I am in the process of complying with it.

Lieutenant John Radovan

Records Custodian

City of Madison Police Department

(608) 266-6068

EXHIBIT H3

From: Dylan Brogan [mailto:dylanbrogan@gmail.com]
Sent: Wednesday, June 28, 2017 1:31 PM
To: Radovan, John

Subject: Re: Reviewing records request

Lieutenant,

The initial request was made on December 7, 2016. On March 22, 2017, I prepaid \$182.25 to MPD to have the request move forward. You said in May you expected the request to be completed before the end of June.

Throughout this process, I feel I have shown an exceptional amount of patience and I truly understand you have a lot on your plate.

However, the Wisconsin Attorney General put out new

[public records law compliance guide](#) in 2015 that states, "Compliance at some unspecified future time is not authorized by the public records law. The records custodian has two choices: comply or deny."

More than one of your self-imposed deadlines has come and gone. At what point should I consider this request denied?

Best,
-Dylan

d-_b

On Wed, Jun 28, 2017 at 11:50 AM, Radovan, John <JRadovan@cityofmadison.com> wrote:

Dylan,

I'm still working on it. Sorry but there are always urgent things that come up. I can make a commitment to be done with it by the end of July.

Lieutenant John Radovan

Records Custodian

City of Madison Police Department

(608) 266-6068

From: Dylan Brogan [<mailto:dylanbrogan@gmail.com>]

Sent: Tuesday, June 27, 2017 10:58 AM

To: Radovan, John

Cc: gil halsted

Subject: Re: Reviewing records request

Lt. Radovan,

I'm just following up on this records request. Will it be ready by June 30?

Thanks.

On Wed, May 24, 2017 at 11:22 Dylan Brogan <dylanbrogan@gmail.com> wrote:

Lieutenant,

Thanks for the update.

d-_-b

On Mon, May 22, 2017 at 1:42 PM, Radovan, John <JRadovan@cityofmadison.com> wrote:

Dylan and Gil,

I'm sorry but I can't give you an exact date but expect to be done with this by the end of June. I'm still working through it as I can between other priorities.

Lieutenant John Radovan

Records Custodian

City of Madison Police Department

(608) 266-6068

From: Dylan Brogan [mailto:dylanbrogan@gmail.com]

Sent: Thursday, May 18, 2017 2:10 PM

To: Radovan, John

Cc: gil halsted

Subject: Re: Reviewing records request

Lieutenant,

Any update on when this records request will be ready?

-Dylan

d-_-b

On Fri, May 12, 2017 at 1:48 PM, Radovan, John <JRadovan@cityofmadison.com> wrote:

FYI that I have started work on going over these documents doing redactions. I have about 50 pages done.

From: Radovan, John
Sent: Friday, April 28, 2017 9:18 AM
To: 'gil halsted'; Dylan Brogan
Subject: RE: Reviewing records request

I think I missed a week in giving you a response on this. Sorry about that. The bad news is I haven't had any time to work on going through all this. The good news is that the other large request I mentioned below is pretty much completed and I should be finished with that next week. When that is done I will start working through the records for your request.

Lieutenant John Radovan
Records Custodian
City of Madison Police Department
(608) 266-6068

From: gil halsted [<mailto:gilmuni@gmail.com>]
Sent: Friday, April 07, 2017 9:27 AM
To: Radovan, John; Dylan Brogan
Subject: Re: Reviewing records request

Sounds good. If you could copy Dylan on the updates on your progress that would be great.

Gil

On Fri, Apr 7, 2017 at 9:15 AM, Radovan, John <JRadovan@cityofmadison.com> wrote:

Gil,

I'm sorry for not responding. I had time off for spring break and have been running ragged with work this week. Yes, we did receive payment, but I have not even started to do the redaction work yet. With my workload and the volume of your request this will take some time to complete. Until I get another large request completed I won't be even starting on this one. Starting today, I will give you updates every two weeks on the status of the work.

Lieutenant John Radovan

Records Custodian

City of Madison Police Department

(608) 266-6068

From: gil halsted [mailto:gilmuni@gmail.com]

Sent: Friday, April 07, 2017 9:10 AM

To: Radovan, John

Subject: Reviewing records request

I have been told by Dylan Brogan that Isthmus has made the pre-payment. Can we set a time to come in and review the records? The earliest i could do it is next Friday the 14th.

--

Gil Halsted

138 Talmadge St.

Madison 53704

608-213-6080



Dylan Brogan <dylanbrogan@gmail.com>

MPD Records Request

Dylan Brogan <dylanbrogan@gmail.com>
Draft To: dbrogan@isthmus.com

Mon, Oct 23, 2017 at 6:34 PM

----- Forwarded message -----

From: **Dylan Brogan** <dylanbrogan@gmail.com>
Date: Tue, Aug 29, 2017 at 10:09 AM
Subject: Re: MPD Records Request
To: "Allen, Roger" <RAllen@cityofmadison.com>

EXHIBIT H4

Thank you!

On Tue, Aug 29, 2017 at 09:47 Allen, Roger <RAllen@cityofmadison.com> wrote:

Thank you. I've spoken with my client and we will try to expedite this. But, as to the twelve day waiting period, it is statutorily required and there is nothing I can do to expedite that time period.

From: Dylan Brogan [mailto:dylanbrogan@gmail.com]
Sent: Monday, August 28, 2017 9:06 PM
To: Allen, Roger
Subject: Fwd: MPD Records Request

Mr. Allen,

I'm aware you can't give me legal advice. But as the city's attorney, how much longer do I have to wait before your office says it's been too long?

----- Forwarded message -----

From: Radovan, John <JRadovan@cityofmadison.com>
Date: Tue, Aug 1, 2017 at 14:29
Subject: MPD Records Request
To: Dylan Brogan <dylanbrogan@gmail.com>, gil halsted <gilmuni@gmail.com>

Dylan and Gil,

I wanted to give you an update. I am done with going over the records and have a meeting set up at the city attorney's office Thursday to go over questions. After that meeting I expect to have things where I need in terms of redactions. I do have Friday off and then am off Tuesday through Friday of next week so don't know if I'll have much time to spend on finishing things up before then. Since much of these records are from employee conduct investigations the statutes (Wis 19.356(3) in particular) require me to give the employees, even ex-employees, notice followed by a statutorily required 12-day waiting period before a release of those records occurs.

Lieutenant John Radovan

Records Custodian

City of Madison Police Department

(608) 266-6068