

FILED
10-30-2018
John Barrett
Clerk of Circuit Court
2018CV008957
Honorable Marshall B.
Murray-43
Branch 43

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

CRG ADVOCATES, INC.,
Petitioner,

v.

ALDERMAN RUSSELL W. STAMPER, II,
Respondent.

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

APPLICATION FOR ALTERNATIVE WRIT

Petitioner, CRG Advocates, Inc. (“CRG”), by its attorneys, Wisconsin Institute for Law & Liberty, hereby applies to this Court for an alternative writ of mandamus ordering the Respondent, Alderman Russell W. Stamper, II, to produce records in response to CRG’s March 8, 2018, March 13, 2018, and April 18, 2018 record requests, 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. This 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 three record requests, on March 8, 2018, March 20, 2018, and April 18, 2018. (Seymer Aff. ¶¶3, 5, 7 & Exs. S1, S3, S5.) Counsel for Petitioner contacted Respondent on August 2, 2018, demanding release of the records, and received no response and also spoke with the City Attorney’s office attempting to obtain the records. (Kamenick Aff. ¶¶3-4 & Ex. K1.) The Respondent still has not provided the requested records, denied the requests, explained his delay, asked for clarification, or provided a timeline for responding. (Seymer Aff. ¶¶11-12.)

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 required by state law to provide the requested records to Petitioner and has failed to do so.

Dated this 30th day of October, 2018

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

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