

WISCONSIN RIGHT NOW, LLC,
5546 Donegal Road,
Hubertus, Wisconsin 53033,

Plaintiff,

v.

WISCONSIN PAROLE COMMISSION,
3099 East Washington Avenue,
Madison, Wisconsin 53704,

Defendant.

Case Code: 30952

Case Type: Writ of Mandamus

COMPLAINT

Plaintiff Wisconsin Right Now, LLC, by its undersigned attorneys at the Wisconsin Institute for Law & Liberty, hereby alleges as follows:

INTRODUCTION

1. This is an action brought pursuant to Wisconsin's Open Records Law, Wis. Stat. §§ 19.31 – 19.39.
2. State law declares it the public policy of Wisconsin that every citizen is "entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them," Wis. Stat. § 19.31.
3. In accordance with that policy, Wisconsin Right Now, LLC, sought records from the Wisconsin Parole Commission in May of this year. The Wisconsin Parole Commission has failed to comply with its statutory obligations, and has not provided all of the records requested.

4. Wisconsin Right Now, LLC, by its undersigned attorneys, hereby files this action seeking a writ of mandamus directing the Wisconsin Parole Commission to produce the records requested by Wisconsin Right Now, LLC.

PARTIES

5. Plaintiff Wisconsin Right Now, LLC, is a Wisconsin limited liability company with a business address of 5546 Donegal Road, Hubertus, Wisconsin 53033.

6. Wisconsin Right Now, LLC, is a news company which provides Wisconsin-focused news and opinion pieces which it makes available to the public on its website.

7. Defendant Wisconsin Parole Commission (“WPC”) is a commission of the state of Wisconsin created by Wis. Stat. § 15.145 (1), which maintains its office at 3099 East Washington Avenue, Madison, Wisconsin 53704.

8. The WPC is an “Authority” under Wis. Stat. § 19.32(1).

JURISDICTION AND VENUE

9. This Court has jurisdiction to hear this matter under Wis. Stat. § 19.37(1)(a), which provides record requesters a private right to “bring an action for mandamus asking a court to order release of the record.”

10. Venue is proper in this County under Wis. Stat. § 801.50(3), as Plaintiff is located here and the sole defendant is the state. Plaintiff hereby designates this County as venue.

FACTS

11. On May 7, 2022, Jessica McBride, a reporter for Wisconsin Right Now, LLC, submitted a series of questions and a request for public records to the WPC via e-mail related to a story she was working on at the time:

“How many paroles have been granted in each of the last five years? How many were early release? Please provide a list of names”

A true and accurate copy of the May 7, 2022 request for public records is attached to the Affidavit of Jessica McBride as **Exhibit M1**.

12. In addition to the list of names requested on May 7, 2022, McBride asked for additional related records via e-mail on May 29, 2022:

1. “Every parole grant/release/early release approved by John Tate from his date of appointment in 2019 to present. I would like the name of each inmate granted release with their DOB. Alternatively, you could provide their DOC offender ID number for each that would work in this database: <https://appsdoc.wi.gov/lop/searchbasic.do>”
2. Alternatively, we would be willing to accept an Excel sheet like the one attached but from 2014 to present but only if it has offender name/DOB OR DOC offender ID (not just the ID listed in the attached sheet). We want to be able to figure out who he has released.

A true and accurate copy of the May 29, 2022 request for public record is attached to the Affidavit of Jessica McBride as **Exhibit M2**.

13. On June 17, 2022, the WPC responded to McBride’s May 7, 2022, e-mail with what they termed a “partial response” to the record request, providing documents showing parole grants through calendar year 2021 and stating “We will follow up when we have this year’s [2022’s] grants as we are still getting that data pulled.” A true and accurate copy of the June 17, 2022 partial response is attached to the Affidavit of Jessica McBride as **Exhibit M3**.

14. Jessica McBride responded the same day and asked when the remaining records would be provided. A true and accurate copy of this follow up is attached to the Affidavit of Jessica McBride as **Exhibit M4**.

15. Following the June 17, 2022 partial response from WPC in which they said they would follow up and provide the remaining records, Wisconsin Right Now, LLC, received no additional follow up from WPC regarding the requested records.

16. On September 19, 2022, Jim Piwowarczyk, another reporter with Wisconsin Right Now, LLC, sent a follow up e-mail to the WPC (replying to the June 17, 2022 partial response from WPC) stating “We are looking for an update on this open records request. We have yet to receive the list of names of people paroled in 2022 year to date.” A true and accurate copy of that September 19, 2022 e-mail is attached to the Affidavit of Jim Piwowarczyk as **Exhibit P1**.

17. Wisconsin Right Now, LLC has received no response from WPC regarding this additional request for an update on its record request.

18. Wisconsin Right Now, LLC has been publishing news stories regarding the individuals who have been paroled by the WPC.

19. The documents sought by Wisconsin Right Now, LLC will allow it to continue publishing these news stories regarding the most-recently released individuals, from this year.

20. Wisconsin Right Now, LLC’s request has now been pending for approximately four months.

21. By refusing to turn over any records from 2022, WPC is denying Wisconsin Right Now, LLC the ability to publish news stories regarding individuals who have been paroled into Wisconsin communities during the current calendar year.

22. As of today, WPC has failed to fully fulfill Wisconsin Right Now, LLC’s request for records, explain its delay, ask for clarification, or even provide a timeline by which it intends to fully respond to the request for records.

**CAUSE OF ACTION – VIOLATION OF WIS. STAT. § 19.35(4)
ILLEGAL DELAY IN PRODUCING RECORDS**

23. The preceding paragraphs are incorporated as if fully alleged herein.

24. 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.”

25. 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.”

26. 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 or electronically generated or stored data is recorded or preserved, regardless of physical form or characteristics, that has been created or is being kept by an authority.”

27. 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 requester of the authority’s determination to deny the request in whole or in part and the reasons therefor.”

28. Under Wisconsin law, an Authority may not delay or deny the release of records based on the identity of the requester or the use to which the Authority believes the requester may put the records. *See State ex rel. Ledford v. Turcotte*, 195 Wis.2d 244, 252, 536 N.W.2d 130 (Ct. App. 1995).

29. The Attorney General of Wisconsin has opined that “10 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 Josh Kaul, *Wisconsin Public Records Law Compliance Guide*, October 2019, at 15. “Requests for public records should be given high priority.” *Id.*

30. 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).

31. It has now been four months since the original request was made, and more than three months since WPC informed Wisconsin Right Now that they would “follow up” when they were ready to produce the additional records which were requested.

32. WPC has neither provided a timeline for when it will fully fulfill the record request, nor has it responded to requests from Wisconsin Right Now, LLC, seeking an update on the status of the request.

33. WPC has willfully and purposefully delayed fully responding to Wisconsin Right Now, LLC’s request for records.

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

35. “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).

36. Furthermore, WPC has delayed responding to Wisconsin Right Now, LLC’s request arbitrarily and capriciously seeking to prevent Wisconsin Right Now, LLC, from publishing stories regarding its most recent activities, making it subject to punitive damages under Wis. Stat. § 19.37(3).

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests the court grant the following relief:

A. A writ of mandamus against the Defendant pursuant to Wis. Stat. §19.37(1) compelling Defendant to immediately produce the requested public records and declaring Plaintiff’s rights and limiting Defendant’s conduct with respect to the requested records;

B. An order awarding the Plaintiff its reasonable attorney fees, damages of not less than \$100.00, and other actual costs under Wis. Stat. § 19.37(2);

C. An order finding that Defendant has acted arbitrarily and capriciously and awarding the Plaintiff punitive damages under Wis. Stat. § 19.37(3); and

D. Awarding such other relief that the Court deems just and equitable under the circumstances.

Dated this 26th day of September, 2022.

Wisconsin Institute for Law and Liberty, Inc.
Attorneys for Plaintiff Wisconsin Right Now, LLC

/s/ Electronically signed by Lucas T. Vebber
Richard M. Esenberg (Wis. Bar No. 1005622)
Lucas T. Vebber (Wis. Bar No. 1067543)
Anthony F. LoCoco (Wis. Bar No. 1101773)
330 East Kilbourn Avenue, Suite 725
Milwaukee, Wisconsin 53202
Phone: 414-727-9415
Facsimile: 414-727-6385
Rick@will-law.org
Lucas@will-law.org
ALoCoco@will-law.org