



BE A FORCE

Milwaukee Police Department
Police Administration Building
749 West State Street
Milwaukee, Wisconsin 53233
<http://www.milwaukee.gov/police>

Edward A. Flynn
Chief of Police

(414) 933-4444

September 21, 2015

Mike Katz-Lacabe
46 Estabrook St.
San Leandro, CA 94577

Dear Mr. Katz-Lacabe:

This letter is in response to your records request dated August 3, 2015, in which you have made a request for records pursuant to the Wisconsin Public Records Law. Wis. Stat. §§ 19.31-39. You have requested:

- The letter from the Federal Bureau of Investigation to the Harris Corporation acknowledging an approved non-disclosure agreement with the Milwaukee Police Department and granting approval for the Harris Corporation to sell hardware and software to the Milwaukee Police Department. A copy of this letter was sent to the Milwaukee Police Department and is likely dated August, September, or October 2013.
- Any policies concerning use of cellular telephone monitoring and surveillance equipment.
- Any templates used for obtaining judicial authorization, warrant, or a court order for the use of cellular telephone monitoring and surveillance equipment.
- Logs or documentation of each time the cellular telephone monitoring and surveillance equipment was used.

The public policy in this state is to give the public the greatest amount of access to government records as possible. Wis. Stat. § 19.31. The general presumption is that government records are open to the public unless there is a clear statutory or common law exception. If there is no clear statutory or common law exception the custodian must "decide whether the strong presumption favoring access and disclosure is overcome by some even stronger public policy favoring limited access or nondisclosure." *Hempel v. City of Baraboo*, 2005 WI 120, § 28 (Citations omitted). Notwithstanding the presumption of openness, the public's right to access to public records is not absolute. *Journal/Sentinel v. Aagerup*, 145 Wis. 2d 818, 822 (Ct. App. 1988).

Upon inspection of our records, at the time of your request, we located the following records:

- FBI letter to the Harris Corporation
- Template for obtaining judicial authorization
- Log documenting the use of cellular telephone surveillance equipment

After reviewing these records, I have determined that it is necessary to make some redactions.

Wisconsin Statute 19.35(1)(am) limits the disclosure of personally identifying information when the release of that personally identifying information could endanger an individual's life or safety. Wisconsin Courts have held that inspection of records may be denied when "there is an overriding public interest in keeping the public record confidential." *Hathaway v. Joint Sch. Dist. No. 1*, 116 Wis. 2d 388, 397, 342 N.W.2d 682 (1984). In *State ex rel. Morke v. Record Custodian*, 159 Wis. 2d 722, 465 N.W.2d 235 (Ct. App. 1990), the Wisconsin court of appeals held that a records custodian's denial of a public records request from an inmate who requested the names, home addresses, and phone numbers of prison employees was justified. The court in *State Ex rel. Morke v. Record Custodian* held that the public interest in nondisclosure outweighed the right to inspect. Specifically, the court of appeals held that concern for the safety and wellbeing of the employees, as well as institutional morale, outweighed the presumption of full access. *Id.* at 726.

Additionally, Wisconsin courts have recognized personal safety as a strong public-policy reason that may justify nondisclosure of a record or a portion of a record. *Linzmeier*, 2002 WI 84, ¶ 30, 254 Wis. 2d 306; *Klein v. Wisconsin Res. Ctr.*, 218 Wis. 2d 487, 496, 582 N.W.2d 44 (Ct. App. 1998); *State ex rel. Morke v. Record Custodian*, 159 Wis. 2d 722, 726, 465 N.W.2d 235 (Ct. App. 1990). Regarding the personal safety of an anonymous caller, the insurance suit of *Monfils v. Charles*, 216 Wis. 2d 323, 575 N.W.2d 728 (Ct. App. 1998), took place against a tragic background in which a police department complied with a public-records request for a tape of a 911 call from an anonymous caller warning of an impending theft. After release of the tape, the caller was found brutally murdered. The alleged thief (who was also the requester) and some of his colleagues were later convicted of the murder. As one court has stated, "[i]n retrospect, the release of the tape was a tragic mistake." *Milwaukee Teachers Educ. Ass'n*, 227 Wis. 2d at 802 (Bablich, J. concurring) (citing *Monfils*). *Melanie R. Swank, The Wisconsin Public Records and Open Meetings Handbook* (4th ed. 2009).

After a review of the responsive record, I have determined that I must redact some personally identifying information including officer names, suspect names, and phone numbers because it is likely that the release of this information would endanger the life or safety of the named individuals.

Additionally, the responsive record contains names and phone numbers of individuals who may be confidential informants or witnesses. The Milwaukee Police Department will not release the identity of a citizen who wishes to remain anonymous. Disclosure of a confidential informant's identification would likely lead to identification of this confidential informant, and could jeopardize his or her safety. The Milwaukee Police Department's ability to function effectively in many areas of law enforcement would be seriously jeopardized if its ability to maintain confidentiality with respect to the identity of the informants was hampered through a requirement that such information must be disclosed. Wis. Stat. § 905.10. As well, Wisconsin courts have held that the privilege protecting the identities of confidential informants recognizes "the reality that informers are an important aspect of law enforcement and that the anonymity of informers is necessary for their effective use." *State v. Vanmanivong*, 2003 WI 41, ¶ 18, 261 Wis. 2d 202, 661 N.W.2d 76 (quoting *State v. Outlaw*, 108 Wis. 2d 112, 121, 321 N.W.2d 145 (1982)).

Additionally, Wisconsin courts have recognized personal safety as a strong public-policy reason that may justify nondisclosure of a record or a portion of a record. *Linzmeier*, 2002 WI 84, ¶ 30, 254 Wis. 2d 306; *Klein v. Wisconsin Res. Ctr.*, 218 Wis. 2d 487, 496, 582 N.W.2d 44 (Ct. App. 1998); *State ex rel. Morke v. Record Custodian*, 159 Wis. 2d 722, 726, 465 N.W.2d 235 (Ct. App. 1990). Regarding the personal safety of an anonymous caller, the insurance suit of *Monfils v. Charles*, 216 Wis. 2d 323, 575 N.W.2d 728 (Ct. App. 1998), took place against a tragic background in which a police department complied with a public-records request for a tape of a 911 call from an anonymous caller warning of an impending theft. After release of the tape, the caller was found brutally murdered. The alleged thief (who was also the requester) and some of his colleagues were later convicted of the murder. As one court has stated, "[i]n retrospect, the release of the tape was a tragic mistake." *Milwaukee Teachers Educ. Ass'n*, 227 Wis. 2d at 802 (Bablich, J. concurring) (citing *Monfils*). *Melanie R. Swank, The Wisconsin Public Records and Open Meetings Handbook* (4th ed. 2009). In another case, a City employee requested that certain personal information be kept confidential because of fear of her abusive former husband. Subsequently, a supervisor mistakenly released some of the information and the employee suffered "severe emotional distress. The release of the information sought was a tragic mistake." *MTEA*, 227 Wis. 2d at 802, citing *Weiss v. City of Milwaukee*, 208 Wis. 2d 95 (1997).

While I am not suggesting that similar results would occur if we were to release the above-referenced information from the confidential informant or witness here, I am convinced that the public interest in protecting the safety and welfare of this individual outweighs the public interest in disclosure of these portions of the responsive records. *Hempel*, 2005 WI 120, ¶ 66. Therefore, based upon the above-referenced safety concerns, and after carefully conducting the balancing test, I have redacted names and phone numbers from the responsive record.

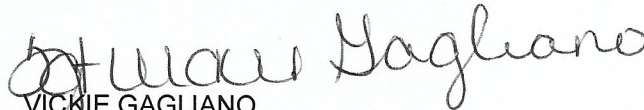
Upon review of the records responsive to your request, I have redacted the names of all undercover officers. Disclosure of the identity and assignment of Milwaukee Police Department personnel, serving in an undercover capacity, would subject the undercover officer, and their family, to potential harassment and would additionally put their safety in jeopardy. The public interest in protecting the lives and safety of

police officers who have worked or are presently working undercover outweighs the public's right to know the names and assignments of those undercover officers. *Law Offices of Pangman & Assocs. V. Stigler*, 161 WIS. 2d 828, 840-41 (Ct. App. 1991)

This determination is subject to review by *mandamus* action under Wis. Stat. § 19.37(1), or upon an application to the Wisconsin Attorney General or the Milwaukee County Corporation Counsel.

Sincerely,

EDWARD A. FLYNN
CHIEF OF POLICE


VICKIE GAGLIANO
POLICE SERGEANT

EAF:VG:vg
E13262 ResponseLetter