



OFFICE OF THE CORPORATION COUNSEL

May 29, 2008

Elizabeth Bennett

VIA EMAIL

RE: Open Records Request

Dear Ms. Bennett:

In an email dated May 1, 2008 to Joseph Norwick, you requested "access to and a copy of any and all e-mails sent and received by all employees of the Dane County Public Safety Communications (9-1-1) Center, that mention or pertain to a 911 call made by Brittany Zimmerman."

Be advised that as Corporation Counsel, I coordinate open records responses where there are multiple county records custodians and/or multiple requests. In this instance, I have consulted with and am responding on behalf of the Dane County Public Safety Communications Center.

The records that satisfy your request consist of 116 pages. The actual and necessary cost of photocopying these documents at .25 per page is \$29.00. If you want the documents mailed, the actual and necessary cost of postage will be \$4.80. We do not have your home mail address, so please provide same. If you wish to pick the documents up, you may pick them up during normal business hours at the Dane County Corporation Counsel's Office. If you wish to have the documents mailed, please contact me at 266-4159 and remit payment, in the amount of \$33.80, payable to Dane County.

Payment should be remitted to:

Dane County Corporation Counsel
210 Martin Luther King Jr. Blvd., Room 419
Madison, Wisconsin 53703

Some of the records responsive to your request have been redacted or access is denied. In reaching a determination of whether to disclose a requested record in whole or in part, along with the records custodians, I considered all relevant factors and balanced the public interests in disclosure versus the public interests in non-disclosure and have carefully reviewed all relevant statutory exemptions. It is my conclusion that the public interest in non-disclosure of the redacted or withheld information far outweighs the public interest in disclosure. Further, Wis. Stat. § 19.36(1) provides that records specifically exempt from disclosure by state or federal law are exempt from disclosure under the Open Records Law except to the extent that disclosable information can be separated from non-disclosable information. With regard to your request,

Corporation Counsel

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policy considerations as well as provisions of the Wisconsin Statutes preclude release of the redacted or withheld information. The specific reasons are as follows:

- Certain communications to and from the Office of the Dane County Corporation Counsel have not been provided as they contain privileged communications. Wis. Stat. §19.35(1)(a) provides that records specifically exempt from disclosure by any other statute are exempt from disclosure under the Open Records Law. Wis. Stat. § 905.03 prohibits disclosure of attorney-client communications.
- Drafts and personal notes have either been redacted or access is denied. Wis. Stat. §19.32(2) provides that drafts, notes, preliminary computations or like materials prepared for the drafter's personal use or prepared by the originator in the name of a person for whom the originator is working are not records and thus not subject to disclosure. In addition, any draft prepared by the Dane County Corporation Counsel's Office is a privileged attorney-client communication and thus exempt from disclosure.
- The City of Madison Police Department and the Dane County District Attorney's Office have directed that records containing information pertaining to the investigation of the Zimmermann death must remain confidential. These records are an integral part of an active criminal investigation. Release of these records could compromise the on-going investigation and have a detrimental impact on both crime detection and the criminal prosecution. Such information has been redacted pursuant to Wis. Stat. §9.35(1)(am)1., as that information was collected and is being maintained in connection with an on-going investigation which may lead to an enforcement action or court proceeding. Additionally, records have been redacted pursuant to Wis. Stat. § 19.85(1)(d) as made applicable to records by Wis. Stat. § 19.35(1)(a). At the present time, these requested records are being used strategically for the purpose of crime detection in this particular matter. Release of the records at this time could seriously impair law enforcement in those efforts.
- Records responsive to the request that contain personnel information on a specific employee with regard to a possible disciplinary matter currently under investigation have been redacted. There has not yet been a disposition or any determination regarding any misconduct by the employee related to this matter, and thus information relating to the current investigation of the employee is explicitly precluded from release by Wis. Stat. §19.36(10)(b). Records containing personally identifiable information which was collected and is being maintained pursuant to an investigation which may result in an administrative proceeding, an arbitration proceeding or some other personnel action or proceeding are exempt from disclosure pursuant to Wis. Stat. § 19.35(1)(am)1. and have also been redacted.

You have several additional outstanding open records requests at this time. Wis. Stat. §19.35(4)(a) provides that a response must be provided to an open records request as soon as practicable and without delay. Be aware that Dane County is currently responding to multiple requests for information. There are numerous staff working on the many requests, and the

County is responding as quickly as possible, given the volume of requests and the number of documents involved.

Pursuant to Wis. Stat. § 19.35(4)(b), I am required to inform you that if you disagree with any determinations contained in this letter you may seek review by mandamus under Wis. Stat. §19.37(1), or by application to the attorney general or a district attorney.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Marcia MacKenzie". The signature is written in a cursive style with a large, looping initial "M".

Marcia MacKenzie
Dane County Corporation Counsel

cc: Joe Norwick, Public Safety Communications (without enclosure)