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Wisconsin Stat. § 19.77 Annual Summary

MADISON, Wis. – The following is a summary of public records case law-related decisions for 2024, which the Wisconsin Department of Justice is required to compile pursuant to Wis. Stat. § 19.77.

The statute says that annually, the Attorney General shall summarize case law and attorney general opinions relating to due process and other legal issues involving the collection, maintenance, use, provision of access to, sharing or archiving of personally identifiable information by authorities. The Attorney General shall provide the summary, at no charge, to interested persons.

I. CASE LAW

Cronwell v. City of Glendale, 2022AP1308 (Wis. Ct. App. March 5, 2024) (unpublished)

This case addressed whether the circuit court properly applied the public records balancing test.

Robert Cronwell (Cronwell) made a verbal public records request to the City of Glendale (City) for a copy of an application for a license to sell alcohol beverages filed by PrimeTime Events, LLC through its managing member, Nicholas Marking (Marking). The City provided a copy of the application with redactions of Marking's personal phone number, personal email address, and date of birth. Cronwell then submitted a written public records request for an unredacted copy of the application and additional application materials. The City denied the request for an unredacted copy stating it "do[es] not provide personally identifying information that can be employed for other purposes." Cronwell filed a petition for writ of mandamus seeking unredacted copies of the application materials. In applying the balancing test, the

circuit court concluded that the City was not justified in redacting Marking's personally identifiable information. The circuit court granted Cronwell's motion for summary judgment and ordered the City to provide unredacted records in response to Cronwell's public records request. The City appealed the circuit court's order arguing that the circuit court misapplied the public records balancing test.

The court of appeals affirmed the circuit court's order. The court declined to "recognize the absolute right of access" to personally identifiable information under Wis. Stat. § 125.04(3)(i)1., and instead concluded that "under the balancing test, Cronwell is entitled to unredacted copies of the documents that he requested." The court noted that Marking "chose to engage the City and submit an application . . . . By so doing, we consider that [Marking] consented to a certain level of inspection by the public by virtue of its own choice to sell alcohol beverages." The court stated that it would "take more than the mere possibility of identity theft and the mere possibility of a chilling effect to outweigh the public's interest in knowing the details of the applications to sell alcohol beverages submitted to the government."

***Kuhnke v. Waupaca County Sheriff's Department*, 2023AP1383 (Wis. Ct. App. March 7, 2024) (unpublished)**

This case addressed whether the circuit court properly dismissed the petition for a writ of mandamus.

Leroy Kuhnke (Kuhnke), incarcerated at the time, submitted a public records request to the Waupaca County Sheriff's Office (Sheriff's Office) for all documents related to the investigation of two murders for which he had been a suspect. The Sheriff's Office denied the request stating that disclosure of the records would interfere with an "ongoing prosecution" of an "open case." Kuhnke filed a petition for writ of mandamus. The circuit court dismissed the petition because the requested documents related to an ongoing case. Kuhnke appealed, pro se, the circuit court's dismissal.

The court of appeals affirmed the circuit court's decision to dismiss the petition concluding that Kuhnke "does not have a clear legal right" to the records he requested. The court stated that the Sheriff's Office properly denied Kuhnke's request because the records "fall squarely within the exception in WIS. STAT. § 19.35(1)(am)1." The court continued, "Although the Sheriff's Office did not expressly invoke the exception under WIS. STAT. § 19.35(1)(am)1., its response referring to 'an ongoing prosecution' and 'open case' was adequate to identify an applicable exception."

***Libit v. University of Wisconsin-Madison et al.*, Dane County Case No. 2024CV511 (Aug. 26, 2024)**

This case addressed whether Libit's pleadings stated a claim for which relief may be granted under the public records law.

Daniel Libit (Libit) submitted a public records request to the University of Wisconsin-Madison (University) for a copy of the current contract between the University and Altius Sports Partners (Altius). The University responded stating that the requested contract "resides with the UW Foundation, not the [U]niversity." Libit subsequently submitted a public records request to the UW Foundation for a copy of the current contract between UW's Athletic Department and Altius. The UW Foundation responded stating that it is a "private entity" that is not subject to the public records law. Libit filed a petition for writ of mandamus asking the circuit court to order the UW Foundation to provide the requested records. The University and UW Foundation filed motions to dismiss, arguing Libit failed to make a claim upon which relief can be granted.

In its decision, the circuit court stated that "there are no responsive records to Libit's requests" because "there is no contract between Altius and the University's Athletic Department." There is a contract between the UW Foundation and Altius, but this was not the contract Libit requested. The court continued, "The University and the UW Foundation cannot be compelled to produce a nonexistent record, nor can the court find that the respondents improperly withheld responsive records."

Libit argued that in response to his request, the University and UW Foundation should have provided the contract between Altius and the UW Foundation because his request "reasonably described such contract." The court stated, "Libit made two narrow and specific records requests . . . . It is unreasonable to require a records custodian to assume that Libit intended to obtain a different contract, one between the UW Foundation and Altius."

The circuit court denied Libit's petition stating, "Given that no responsive records were withheld, due to their non-existence, the Court finds that Libit's pleadings fail to state a claim for relief." The court granted the University and UW Foundation's motions to dismiss.

***State ex rel. Wolfe, Jr. v. Opper*, 2023AP322 (Wis. Ct. App. Aug. 8, 2024)**

This case addressed whether the circuit court properly dismissed a petition for writ of mandamus per *State ex rel. Richards v. Foust,* 165 Wis. 2d 429, 433-434, 477 N.W.2d 608 (1991), in which the Wisconsin Supreme Court concluded that "the

common law provides an exception which protects the district attorney's files from being open to public inspection."

Ronald Wolfe, Jr. (Wolfe) filed a petition for writ of mandamus requesting the circuit court order the Waukesha County District Attorney Susan Opper (DA) to provide him with requested records from the prosecutor's file in his criminal case. The circuit court denied Wolfe's petition stating that per *Foust*, prosecutor's files are not subject to the public records law. Wolfe appealed the circuit court's decision, pro se, claiming that the circuit court erred in denying his request and refusing to conduct an *in camera* review.

The court of appeals summarily affirmed the circuit court's decision stating that the records were properly withheld per *Foust*. The court stated, "Our supreme court concluded in *Foust* that 'the common law provides an exception [to the Wisconsin Public Records Law] which protects the district attorney's files from being open to public inspection.'" The court also stated that no *in camera* review of the records was required because the records were denied "pursuant to the *Foust* exception, not the balancing test."

***Turner v. Kaiser*, 2023AP370 (Wis. Ct. App. Nov. 14, 2024) (unpublished)**

This case addressed whether the circuit court properly dismissed a petition for writ of mandamus per *Foust*.

Delmarco Turner (Turner) filed a petition for writ of mandamus asking the circuit court to order the Dane County District Attorney's Office (DA) to provide him with "written exchanges" regarding his criminal case between his defense attorney and the DA's office. The circuit court dismissed his petition based on the common law exception that "protects district attorney files from public inspection." Turner appealed the circuit court's decision, pro se, stating that the common law exception does not apply to the records he had requested.

The court of appeals summarily affirmed the circuit court's decision stating, "As our supreme court explained in *Foust*, this exception 'protects the district attorney's files from being open to public inspection,' . . . and the exception applies even to 'a defendant wanting to see [the defendant's] own file.'"

***Wisconsin Manufacturing and Commerce v. Wisconsin Department of Justice*, Dane County Case No. 2023CV3275 (Nov. 27, 2024)**

This case addressed whether an authority's response to a public records request was proper.

Wisconsin Manufacturing and Commerce (WMC) submitted a public records request to the Wisconsin Department of Justice (DOJ) for records regarding a law firm that was hired by the government to investigate environmental contaminants. A year and a half after WMC requested the emails, DOJ denied the request. WMC filed a petition for writ of mandamus arguing that DOJ violated the public records law by "fail[ing] to respond without delay" and by "fail[ing] to produce responsive records." DOJ moved for judgment on the pleadings on WMC's "delay claim" and summary judgment on WMC's "denial claim."

Regarding the "delay claim," DOJ argued that "because it initially found no records responsive to WMC's request . . . it is entitled to judgment as a matter of law dismissing WMC's claim based on its delayed response." The circuit court agreed, stating "DOJ's delay does not, by itself, entitle WMC to any relief because our supreme court has unambiguously held [in *J. Times*] that 'the language of the public records law does not specifically require such a response.'" The court concluded "WMC does not state a claim based exclusively on the government's delay in providing a response for non-existent records." The court concluded, "although discouraged, the public records law allows the government to ignore requests for information that does not exist."

The circuit court granted summary judgment in WMC's favor on WMC's "denial claim" because, though WMC did not file its own motion for summary judgment, "DOJ has now conceded that it improperly denied access to multiple responsive records." The court ordered DOJ to produce records that were "unlawfully withheld."

WMC has filed an appeal as to the "delay claim" with the court of appeals and the appeal is pending.

II. ATTORNEY GENERAL OPINIONS

In 2024, the Attorney General issued no formal or informal opinions within the scope of Wis. Stat. § 19.77.