

GRANT F. LANGLEY
City Attorney

LINDA ULISS BURKE
VINGENT D. MOSCHELLA
DANIELLE M. BERGNER
MIRIAM R. HORWITZ
Deputy City Attorneys



Milwaukee City Hall Suite 800 • 200 East Wells Street • Milwaukee, Wisconsin 53202-3551
Telephone: 414.286.2601 • TDD: 414.286.2025 • Fax: 414.286.8550

STUART S. MUKAMAL
THOMAS J. BEAMISH
MAURITA F. HOUREN
JOHN J. HEINEN
SUSAN E. LAPPEN
JAN A. SMOKOWICZ
PATRICIA A. FRICKER
HEIDI WICK SPOERL
KURT A. BERLING
GREGG C. HAGOPIAN
ELLEN H. TANGEN
JAY A. UNORA
MARYNELL REGAN
KATHRYN Z. BLOCK
ADAM B. STEPHENS
KEVIN P. SULLIVAN
THOMAS D. MILLER
JARELY M. RUIZ
ROBIN A. PEDERSON
JEREMY R. MCKENZIE
MARY L. SCHANNING
PETER J. BLOCK
NICHOLAS P. DESIATO
JOANNA GIBELEV
JENNY YUAN
KAIL J. DECKER
ALLISON N. FLANAGAN
LA KEISHA W. BUTLER
PATRICK J. LEIGL
Assistant City Attorneys

August 19, 2015

To the Honorable
Common Council of the
City of Milwaukee
Room 205 – City Hall

Re: *Milwaukee Police Association v. City of Milwaukee*
Case No. 2014-CV-10455

Dear Council Members:

Enclosed is a proposed resolution and fiscal note authorizing payment of attorney fees and costs in the above-referenced matter. We request that the enclosed documents also be referred to the appropriate committee or committees for review.

This case was brought as a petition for *writ of mandamus* under the Wisconsin Public Records Law (Wis. Stat. §§ 19.31-39) as a result of a public records request made by the Milwaukee Police Association (MPA) to the City of Milwaukee Fire and Police Commission (FPC). The request was for records pertaining primarily to the officer-involved shooting at Red Arrow Park on April 30, 2014.

In the petitioner, the MPA alleged, among other things, that the FPC failed to produce records already in the public domain and failed to produce records for arbitrary and capricious reasons. After the petition was filed, the FPC, upon further investigation, found that it had neglected to disclose copies of responsive records that had previously been released to other requesters or had otherwise already been made public.

In Wisconsin, if a petition for a *writ of mandamus* is filed under the public records law, and a record custodian later produces responsive records, the petitioner is entitled to the statutorily mandated attorney fees and costs, if it filed the *mandamus* action because of a denial or delay in responding to a request. *Racine Educ. Ass'n v. Board of Educ.*, 129 Wis. 2d 319, 323-24 (Ct. App. 1986). A recent Wisconsin Court of Appeals decision ruled that a record custodian is liable for attorney fees and costs for failure to produce a responsive record, even if it voluntarily releases a responsive record after a *mandamus* is filed. *Journal Times v. City of Racine Board of Police and Fire Commissioners*, 2014 WI App 67, ¶¶ 10-13, *overturned on other grounds*, 2015 WI 56.



Under the public records law, a court "shall" award reasonable attorney fees and damages of not less than \$100 to a prevailing party under Wis. Stat. § 19.37(2)(a). Because the Fire and Police Commission located responsive records after the *writ of mandamus* was filed, we recommend settlement of this matter. Attorneys for the MPA initially sought \$20,000.00, representing its attorney fees and costs in litigating this case, as well as statutory and punitive damages. The MPA argument for statutory and punitive damages is based on the fact that this is the second time in a few months that the FPC neglected to disclose requested records to the MPA. Through negotiation with our office it has agreed to reduce the amount to \$13,000.00

The City Attorney's office believes that payment of the attorney fees is legally necessary, and recommends payment of this negotiated amount. Consistent with our recommendation, we have enclosed an appropriate resolution for your consideration.

Very truly yours,



GRANITE LANGLEY
City Attorney



PETER J. BLOCK
Assistant City Attorney

Enclosures

c James Owczarski, City Clerk

218495/1081-2014-3251