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December 17, 2015

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

Re: *Milwaukee Journal Sentinel, et al. v. City of Milwaukee*  
Case No. 2014-CV-5573

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 *writ of mandamus* under the Wisconsin Public Records Law (Wis. Stat. §§ 19.31-39) as a result of public records requests made by the Milwaukee Police Association (MPA) to the City of Milwaukee Fire and Police Commission (FPC). The request was for records that identified the political affiliation of each Fire and Police Commissioner, and records of all training documents provided to FPC Commissioners during any training sessions.

On June 27, 2014, the MPA filed *writ of mandamus* in circuit court alleging, among other things, that the FPC failed to identify the political affiliation of each FPC Commissioner, and also failed to provide documentation of any training that the Commissioners had received as provided in Wis. Stat. § 62.50(1h). After the lawsuit was filed, the FPC, upon further investigation, found that it had inadvertently neglected to disclose copies of responsive training documents that had been provided to Commissioners.

In Wisconsin, if a *mandamus* action is filed under the public records law, and a record custodian later produces responsive records, the requester 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.

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 charged \$15,423.48 in total for their attorney fees and costs in litigating this case. Through negotiation with our office they have to reduce that total amount to \$11,000.00

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

Very truly yours,

GRANT F. LANGLEY  
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Assistant City Attorney

MJR:wt:210877

Enclosures

c James Owczarski, City Clerk  
Brendan P. Matthews, Attorney for MPA

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