



Department of Administration Human Resources Division

Toni Hohlfelder, Human Resources Director

October 3, 2023

Eric Chaloux
News Reporter
KSTP-TV
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re: September 21, 2023 Public Records Request

Dear Eric:

This letter is written in response to your September 21, 2023 email correspondence to me requesting certain public records from Chippewa County. You requested, “any publicly available documents regarding the County Board, or county's actions regarding their inquiry into the County Sheriff”. I called on September 22, 2023 to clarify the request, leaving a voicemail explaining that I have Sheriff Travis Hake’s investigation report and believe that this will meet the needs of your request. You replied via email confirming that this meets the request.

This investigation directed by the County Board of Chippewa County at their meeting on Tuesday, June 20, 2023 involved allegations of unwanted, inappropriate text messages by Sheriff Travis Hakes and several concerns involving Sheriff Hakes’ honesty, the imposition of his authority, and his leadership. As this investigation involved allegations of misconduct by an elected official of Chippewa County, the County Administration brought this matter to the attention of the County Board for the Board to authorize and direct this investigation on June 20, 2023. Administration was given a directive by the board to investigate a complaint by a County employee pursuant to Chapter 7, Section 69 of the County’s Human Resources Policy Manual, investigate Sheriff Hakes’ alleged conduct, and investigate issues arising during the investigation, using means determined by County Administration, and the Board directed County Administration to take rapid and constructive remedial action during the investigation and afterwards as contemplated by Chapter 7, Section 69 of the Policy Manual.

This investigation has taken a significant toll on the Sheriff’s Department employees of the County, on the complainant and the witnesses who cooperated. Throughout this matter, remedial efforts to protect County employees have been taken by County Administration as directed by County policy. This matter has also been of high public interest, stirred up by a September 20, 2023 statement issued by Sheriff Travis Hakes where he made certain statements suggesting no formal complaint was ever filed against him and suggesting that he was not afforded the opportunity to tell his side of the story. His attempt to add fuel to this matter weakens the public’s interest in confidentiality of the report and weighs in favor of the public knowing Sheriff Hakes was informed by County Administration about the complaint and the unwanted, inappropriate text messages not once, but six times before the County Board voted to authorize this investigation. Sheriff Hakes was provided an opportunity to meet with the County Administrator, Corporation Counsel, the County Board Chair and me to provide a response to the texts prior to deciding to discuss the need for an investigation in the County Board’s June 19, 2023 closed session meeting, to which he accepted and provided a response. In addition, during the formal investigation directed by the County Board, Sheriff Hakes rejected multiple opportunities to be interviewed. Sheriff Hakes’ rights have been respected throughout this process. His right to augment this report has also been respected. Pursuant to Wisconsin Statute 19.356(9), Sheriff Hakes was afforded more than five business days after receiving written notice from me on September 22, 2023 to submit his augmentation

before this report is released. Sheriff Hakes has submitted his augmentation to this report, which is included with the release of the requested records.

While much of this report is being released, specific information is being withheld for reasons where the public would favor the County not disclosing such sensitive information. First, identifiable information of the complainant and cooperative witnesses have been redacted. These individuals deserve full and complete protection from retaliation as a matter of decency and also as a matter of County policy expectation.

Their cooperation involving these very difficult issues put upon them by an elected official in a position of great power deserves significant consideration. The public has a strong interest in these individuals fully cooperating and not being subjected to retribution of any kind. As such, the public has a strong interest in not disclosing information that identifies the complainant, certain witnesses, or targets involved in the investigations. Such identifiable information has been redacted to include names and other unique details that may identify an individual. The release of such information could also cause these individuals to feel an increased level of emotional strain were their names and identifiable information to be released, making them apprehensive or less likely to cooperate or to timely or fully come forward with concerns or information. That strain may also hinder the performance of their important employment responsibilities, reduce productivity and efficiency, and reduce the opportunity for these employees to have fulfilling careers with the County. The release of such information could cause future complainants, targets and witnesses to be less cooperative, to be less likely to report such conduct, and to be less likely to make candid and frank statements. Release may also undermine efforts to properly address allegations of misconduct, particularly if employees choose silence over disclosure for fear of being classified as a “victim,” “whistleblower,” or otherwise unfairly labeled, vilified, or subject to retaliation for doing the right thing and reporting allegations of wrongful conduct. Furthermore, the release of such information could cause a loss of morale within the County and Sheriff’s Department.

The release of such information may also impose a harmful chilling effect undermining the ability of employees to come forward or to express concerns and disruptions, thereby undermining professional wellbeing and development and undermining the employer’s ability to address such concerns. In turn, unaddressed concerns could lead to larger work-related and personal issues that could result in harm to our employees or the general public. The public has a strong interest in avoiding such a result. This is made clear by numerous court decisions that discuss the paramount importance of protecting and ensuring employee safety. *See, e.g., Linzmeyer v. Forcey*, 254 Wis. 2d 3271; *State ex rel Morke v. Records Custodian*, 159 Wis. 2d 722, 465 N.W.2d 235 (Ct. App. 1990); *Klein v. Wisconsin Res. Ctr.*, 218 Wis. 2d 487, 496-97, 582 N.W.2d 44 (Ct. App. 1998); and *Law Offices of Pangman & Assocs. v. Stigler*, 161 Wis. 2d. 828, 840 – 41 (Ct. App. 1991).

Other reasons favor the redaction of this information. Release of this information also runs contrary to County policy and normal accepted EEOC guidance regarding the confidential nature of such investigations and protecting witnesses and complainants from retaliation. Likewise, employee confidence in the credibility of the County to receive and investigate these complaints may be undermined. The County’s objective of being the best place to work in the Chippewa Valley is also at stake as the County’s ability to attract quality candidates for future employment opportunities could be greatly diminished if such information was released, as candidates may perceive the County as readily willing to compromise the interests of employee complainants, targets, and witnesses, and release information that applicants may believe are highly serious, sensitive, and personal in nature. All of these public policy principles have been recognized as weighing heavily in favor of nondisclosure of personally identifiable information of harassment targets and witnesses by the Wisconsin Supreme Court. *Hempel v. City of Baraboo*, 2005 WI 120, ¶¶ 70–75. These reasons apply with equal force in this situation. Additionally, to the extent individuals named within the enclosed records constitute informants under Wis. Stat. § 19.36(8) and 19.35(1)(am), I am prohibited from disclosing such information.

The public has a strong interest in the nondisclosure of identifiable information about children. Images of children have been redacted to further the public’s interest in protecting reputational interests of children and their safety. Wis. Stat. § 950.055 evinces the Legislature’s intent to provide children with additional protection and different

treatment than that usually afforded adults, and the provisions of other students designed to promote and protect the best interests of children.

The public has a strong interest in the nondisclosure of information pertaining to an employee's or private citizen's physical, mental, emotional, and medical conditions. Wisconsin courts and various federal and state statutes and regulatory provisions provide support for this proposition. *See generally Watton v. Hegerty*, 306 Wis. 2d 542 (2007); *Milwaukee Deputy Sheriff's Assn. v. Department of Wauwatosa*, 327 Wis. 2d 206 (2010); Wis. Stat. §§ 51.30 and 146.82; the Genetic Information Nondiscrimination Act (29 U.S.C. § 1635.9); the Americans with Disabilities Act (29 C.F.R. §1630.14(b)(1)); the Family Medical Leave Act (29 C.F.R. § 825.500(g)); and the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320d-6. Even though such information is not contained in medical or treatment records, the aforementioned laws evince strong public policy considerations in favor of maintaining confidentiality of information that would otherwise be considered confidential if contained in medical or treatment records. In other words, the public policy considerations contained in the above-mentioned laws demonstrate that the public has a strong interest in protecting personal medical and treatment information regardless of where such information is located. Moreover, the public's interest in respect for personal privacy and reputations in this situation greatly supports the nondisclosure of this information. Regard for the wellbeing of others necessitates nondisclosure.

In closing, three other matters are of importance. First, while not specific to the records you requested, it is important to note that many of the records that you might request related to the recent investigation may be prohibited from release by attorney-client privilege and work product protection. As the County Board authorized and directed disclosure of the investigation report for purposes of the District Attorney determining whether law enforcement investigation may be warranted, the report itself is no longer treated as privileged. However, all other privileged records retain all privileges and work product retains similar non-disclosure protection.

Second, the County has taken significant remedial efforts to protect our workforce and help our workforce move forward. We are protecting our employees and those persons involved in this investigation. It is the right thing to do from a decency standpoint, from the standpoint of protecting them from retaliation, and from the standpoint of helping them and our Sheriff's Department move forward. Your respect and discretion for this approach is important to us and to them.

Third, Sheriff Hakes received the opportunity to review this report and augment the release of it pursuant to Wis. Stat. § 19.356(9). His augmentation is attached.

If you have any questions regarding this letter, please feel free to contact me. Wisconsin Statutes require that I notify you of your rights under Wisconsin's Public Records Law to seek review of my decision through the Wisconsin Department of Justice, the Chippewa County District Attorney or through a circuit court action for mandamus.

Sincerely,



Toni M. Hohlfelder, SHRM-CP, PHR
Human Resources Director