



Police Department

Edward A. Flynn
Chief of Police

November 29, 2010

Alderman Robert G. Donovan
8th Aldermanic District
City Hall, Room 205

Re: Public Records Request for "OpenSky" Records

Dear Alderman Donovan:

This letter represents our second response to your October 11, 2010 correspondence in which you have requested records under the Wisconsin Public Records Law. Wis. Stat. §§ 19.31-39. You have requested:

...a copy of all records either currently or formerly in the custody of the individuals listed on the attached sheet pertaining to the Milwaukee Police Department's digital radio system commonly referred to as "Open Sky". For the purpose of this request, records should be taken to include both those in electronic and non-electronic formats and include, but not be limited to, e-mails, letters, phone records, faxes, memoranda, reports, etc.

The time period for this request is January 1, 2003, up to the date of this letter [October 11, 2010].

You have requested records in the custody of (or formerly in the custody of) the following individuals: Edward A. Flynn, Vince Flores, David Go, Nannette Hegerty, Arthur Jones, Mark Meyer, Greg Moore, Judy Pal, Joel Plant, Monica Ray, Sam Steffan, Debra Walwikowski, Andra Williams, and all supervisors of the Milwaukee Police Department's (MPD) Communication Division during the time period of this request.

Acknowledgement of the receipt of your request was documented in our correspondence of October 14, 2010.

As you are aware, the public policy in this state is to give the public the greatest amount of access to government records as possible. Wis. Stat. § 19.32. The presumption of access, however, is not absolute. Access to records can be denied "when there is a

specific statutory exemption to disclosure, Wis. Stat. § 19.36, or when there is a common law or public policy exception.” *Watton v. Hegerty*, 2008 WI 74, ¶ 10 (citation omitted.)

Under the mandates of the public records law, as a public official, you have the same rights as the public to access records created and maintained by our office. Your position as a public official does not mean that you have a legal right to a greater amount of access to these records than the public. Under the law, we are prohibited from considering who the requester is, or why they are making a request. Wis. Stat. § 19.35(1)(h) & (i).

The MPD received a request similar to yours in January, 2009 for all records relating to the MPD’s M/A-COM’s OpenSky radio system. The time parameter of the previous request was limited to records from January 1, 2004 through January 26, 2009. At that time, after conducting an extensive search for potentially responsive records, we determined that there may exist in excess of 24,000 records responsive to that request. That estimate represented only the paper copies of potentially responsive records created or maintained by the Department from 2004 through January 26, 2009. Additionally, as of February, 2009, there were estimated to be many hundreds of potentially responsive e-mail records. The MPD has not had an opportunity to review those records to determine if they were responsive and subject to disclosure under the public records law. Portions of some of the records include confidential information that must be redacted prior to disclosure.

In response to the earlier request we estimated that it would take approximately 1,000 staff hours to search, compile and review the responsive records, and to redact non-disclosable portions of the responsive records. Nondisclosable portions would include, but would not be limited to, information that is protected as a trade secret and is therefore not a record subject to disclosure under the public records law (Wis. Stat. § 19.36(5)), financial account numbers (Wis. Stat. § 19.36(13)), and information that includes critical infrastructure information that cannot be released to the public for safety reasons. The time parameter of your request covers nearly eight years, three more than the earlier request. Accordingly, the estimate of paper and electronic records that may be responsive to your request could be double what was estimated in February of 2009. Due to the extended time parameter of your public records request, the total staff hours to fully comply would also be extended accordingly.

We believe that your request is overly broad. While we understand that we are required to comply with public records requests as soon as practicable, we are not required to stop all other functions in our office in order to comply with public records requests,

especially when they are lengthy in nature. Wisconsin courts have ruled that a public records request that is excessively burdensome can appropriately be denied under the provisions of Wis. Stat. § 19.35(1)(h). Such a request can be denied when responding represents a burden far beyond that which may reasonably be required of a custodian of a public record. *Schopper v. Gehring*, 210 Wis. 2d 208, 210 (Ct. App. 1997). Compliance with a public records request should not “so burden the records custodian that the normal functioning of the office would be severely impaired.” *Id.* at 213. While we fully agree with the policy of this state that government records are open to the public (subject to statutory, common law, and public policy exceptions), we believe your request is excessive.

Compliance would so burden the Department that the normal functions of our offices would be severely impaired. The purpose of the limitation found under Wis. Stat. § 19.35(1)(h) is to “prevent a situation where a request unreasonably burdens a record custodian, requiring the custodian to spend excessive amounts of time and resources deciphering and responding to a request.” *State ex rel Gehl v. Connors*, 2007 WI App 238, ¶ 17, citing *WIREDATA, Inc. v. Village of Sussex*, 2007 WI App 22, ¶ 51, reversed on other grounds, 2008 WI 69. At some point, an overly broad request becomes sufficiently excessive to warrant rejection. The public record law does not impose unlimited burdens on authorities and records custodians. *Gehl*, 2007 WI App 238, ¶¶ 23, 24 (request too burdensome when it would have required production of voluminous records relating to virtually all county zoning matters over a two-year period of time.) Wis. Dep’t of Justice, *Wisconsin Public Records Law: A Compliance Outline*, 12 (2010.)

We have estimated that it will take our staff at least 1,000 to 1,500 hours to process your request. The needs of the City in providing public safety override the need to assign additional staff to the public records section at this time. Accordingly, we are denying your public records request because it is overly broad and burdensome. If you would like to discuss narrowing your request, we would be glad to have this discussion with you.

Pursuant to Wis. Stat. § 19.35(4), our determination denying portions of your request is subject to review by *mandamus* action under Wis. Stat. § 19.37(1) or upon application to the Wisconsin Attorney General or the Milwaukee County Corporation Counsel.

We could, in the alternative, provide you with a copy of the contract between the City of Milwaukee and OpenSky forwarded to you on a CD. Additionally, we can provide you with copies of previously released complaints relating to the radio system. There a total of 504 pages for a total copying cost of \$126.00. Wis. Stat. § 19.35(3). If you are



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interested in receiving a copy of these records or wish to discuss ways in which you could narrow your request, please contact the Milwaukee Police Department Open Records Section.

If you have any questions, please feel free to contact us.

Very truly yours,

EDWARD A. FLYNN
Chief of Police
Milwaukee Police Department

A handwritten signature in black ink, appearing to read "Michael A. Massa".

MICHAEL MASSA
Captain of Police

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