



The Wisconsin Transparency Project

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Public Records Custodian
Wisconsin Department of Health Services, Division of Quality Assurance
dhsdqarecordsrequest@dhs.wisconsin.gov
VIA EMAIL

January 28, 2022

Re: Bill Lueders Record Request

Dear Records Custodian of the Division of Quality Assurance:

I represent Bill Lueders, editor of The Progressive magazine and President of the Wisconsin Freedom of Information Council, regarding two record requests he made to the Wisconsin Department of Health Services' Division of Quality Assurance ("DQA"). I am writing to insist that you cease delaying your response and provide the records Mr. Lueders requested as required by law.

First Record Request – On November 18, 2021, Mr. Lueders made a request for "Records regarding all enforcement actions brought against residential care providers by the Division of Quality Assurance from Jan. 1, 2019 to the present." He asked for these records for the various categories of residential care providers identified by the DQA in its [Provider Search tool](#), including Residential Care Apartment Complexes and nursing homes.

Mr. Lueders' request was emailed to Hillary Holman, Regional Director of the Southern Region for the Bureau of Assisted Living within the DQA. Ms. Holman had specifically told Mr. Lueders to make the request to her during a November 18 phone conversation, in order to obtain records showing how often providers are cited for violating the state's rules regarding the discharge of residents. Mr. Lueders also let DHS spokesperson Elizabeth Goodsitt know he had made this request.

On November 29, Ms. Holman, in a phone conversation with Mr. Lueders, acknowledged receipt of the request and indicated that she had forwarded it to the appropriate parties to respond. On December 20, 2022, Mr. Lueders followed up with Ms. Goodsitt, indicating that he was trying to find out how many times residential care providers had drawn enforcement actions for discharge violations and that if DQA could give him that number, he would consider the request fulfilled. (Ms. Holman, in her November 18 call, had acknowledged that her office did produce reports that tally up enforcement actions.)

To date, DQA has provided no responsive records or even an estimated time frame for fulfilling Mr. Lueders' request.

Second Record Request & Amendment – on December 20, 2021, Mr. Lueders made a three-part request:

1. A copy of the report submitted on or about November 10, 2021 by Geralyn Spitzer regarding the eviction of Mr. Lueders' mother by ProHealth Care Regency Senior Community in New Berlin
2. Communications between DQA and representatives of Regency/Pro Health
3. Internal communications regarding his complaint

Mr. Lueders' request was emailed to Ms. Holman and he cc'd Dan Perron, Director of the Bureau of Assisted Living within the Division of Quality Assurance and Ms. Goodsitt. On January 5, Mr. Lueders sent a follow-up email asking for a status update. This prompted a January 6 response from Perron: "Ms. Holman's office does not have access to record request information. Please send your inquiry to the DHS record request email below," providing the DHSDQARecordsRequest@dhs.wisconsin.gov address.

On January 6, 2022, Mr. Lueders forwarded his record request to that email address, making a few small adjustments to reduce the request's scope. Specifically, he limited his second and third requests to a timeframe of October 28, 2021 to the present and suggested search terms of "Elaine Benz" and "Bill Lueders" for the third request.

To date, DQA has provided no responsive records or even an estimated time frame for fulfilling Mr. Lueders' request.

It has been more than two months for the first request and more than a month for the second request and DQA has not provided the requested records to Mr. Lueders or even updated him on the status of his request. That is an unacceptable amount of time to wait, and my client asks that the records he requested be provided immediately.

The law requires you to fulfill record requests "as soon as practicable and without delay." Wis. Stat. § 19.35(4)(a). The Attorney General of Wisconsin has consistently counseled that "10 working days generally is a reasonable time for responding to a simple request for a limited number of easily identifiable records." Wis. Dep't of Justice, Attorney General Josh Kaul, *Wisconsin Public Records Law Compliance Guide*, October 2019, at 15. "Requests for public records should be given high priority." *Id.*

I understand that COVID has made responding to record requests more difficult. But responding to record requests is a basic function of all levels of government in Wisconsin, Wis. Stat. § 19.81, and your responsibilities under the Open Records Law cannot be ignored, even in an emergency. In fact, during emergencies transparency becomes even more crucial if the government wants to keep the trust of the people in a tumultuous time.

These requests are not unusually complex. The second request asks for a single report and communications on a very narrow topic. The first request, while on a broader topic and

timeframe, could be fulfilled simply by providing Mr. Lueders with the number he requested or a single record showing how many such enforcement actions there have been. In short, the records could have been located within a week of Mr. Lueders' requests, had somebody looked for them. There is no justification for this delay, and I remind you that an arbitrary or capricious delay is punishable in court by a forfeiture of up to \$1,000 and punitive damages.

Furthermore, I am concerned by DQA's response to Mr. Lueders' second request that these records are not in Ms. Holman's possession. Leaving aside the question of how Holman could lack access to records of her own communications, the December 20 request included standard language stating, "If you are not the records custodian for this information, please forward this request to the appropriate person."

Furthermore, there is no provision in the Open Records Law that allows an authority to deny or refuse to respond to a record request unless it is made to the "correct" person. While the law does establish that every "authority" must have a "custodian" who is responsible for carrying out the legal duties of the authority, *see* Wis. Stat. § 19.33(4), it does not establish that requests must be made specifically to that "custodian." Rather, the language of the Open Records Law and caselaw makes it clear that a request must be made only to an "authority." *See, e.g.,* Wis. Stat. § 19.35(1)(em) ("If an authority receives a request"); § 19.35(4)(a) ("Each authority, upon request for any record"); *Seifert v. Sch. Dist. of Sheboygan Falls*, 2007 WI App 207, ¶39 (A request "is sufficient if it is directed at an authority and reasonably describes the record or information requested") (emphasis added).

It is not acceptable for a government employee to tell a requester they must make their request to somebody else and suggest that the request will not be fulfilled until that happens. While an employee may ask that future requests be made to a specific person, their proper response should be "Our agency will fulfill your request, but in the future please send requests to this person." Denying a request made to the "wrong" person is unlawful.

Therefore, my client insists that the records be produced no later than a week from today's date. I look forward to hearing back from you and would be happy to answer any questions you may have.

Sincerely,



Thomas Kamenick
President & Founder, Wisconsin Transparency Project

cc: Atty. Anne M. Bensky
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