

FILED
04-20-2022
CIRCUIT COURT
DANE COUNTY, WI
2021CV003007

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY
BRANCH 8

AMERICAN OVERSIGHT,

Petitioner,

v.

Case No.: 21-CV-3007

Petition for Writ of Mandamus

Case Code: 30952

ASSEMBLY OFFICE OF SPECIAL COUNSEL,
ROBIN VOS, in his official capacity,
EDWARD BLAZEL, in his official capacity,
and WISCONSIN STATE ASSEMBLY,

Respondents.

**PETITIONER'S NOTICE OF MOTION AND MOTION
FOR TEMPORARY INJUNCTION**

TO: Assembly Office of Special Counsel
c/o Attorney James Bopp, Jr.
Attorney Courtney Turner Milbank
Attorney Cassandra Dougherty
The Bopp Law Firm, PC
1 South 6th Street
Terre Haute, IN 47807

Attorney Michael D. Dean
Attorney David J. Craig
Michael D. Dean, LLC
P.O. Box 2545
Brookfield, WI 53008

Robin Vos,
Edward Blazel, and
Wisconsin State Assembly,
c/o Attorney Ronald Stadler
Attorney Jonathan Sacks
Kopka Pinkus Dolin PC
N19 W24200 Riverwood Dr., Ste 140
Waukesha, WI 53188

PLEASE TAKE NOTICE that pursuant to Wis. Stat. §§ 808.07(2)(a)2., 3., 781.02, and 813.02, Petitioner American Oversight, through its counsel Pines Bach LLP, hereby moves the Court for a temporary injunction to enjoin Respondent Office of Special Counsel from deleting and destroying records while the Court considers Petitioner's motion to modify the Court's Order, filed herewith, and pending appeal. This motion will be heard at a date and time to be set by the Court.

The grounds for this motion are set forth in the accompanying Brief in Support of Motion for Temporary Injunction.

WHEREFORE, Petitioner respectfully requests that the Court grant its motion for a temporary injunction, as set forth above.

Respectfully submitted this 20th day of April, 2022.

PINES BACH LLP

Electronically signed by Christa O. Westerberg

Christa O. Westerberg, SBN 1040530
Eduardo E. Castro, SBN 1117805
122 West Washington Ave., Suite 900
Madison, WI 53703
(608) 251-0101 (telephone)
(608) 251-2883 (facsimile)
cwesterberg@pinesbach.com
ecastro@pinesbach.com

AMERICAN OVERSIGHT

Electronically signed by Sarah Colombo

Melanie Sloan*
Sarah Colombo*
1030 15th Street NW, B255
(202) 869-5246
msloan@americanoversight.org
sarah.colombo@americanoversight.org
*Appearing Pro Hac Vice

Counsel for Petitioner American Oversight

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Respondents.

**PETITIONER'S BRIEF IN SUPPORT OF
MOTION FOR INJUNCTIVE RELIEF**

Petitioner American Oversight (“Petitioner”) moves this Court for a temporary injunction while the Court considers Petitioner’s motion to modify the judgment, filed herewith, and pending appeal of this matter. Wis. Stat. § 808.07(2)(a) permits the Court to grant an injunction during the pendency of an appeal or make “any order appropriate to preserve the existing state of affairs or the effectiveness of the judgment subsequently entered.” *Id.* § 808.07(2)(a)2, 3; *see also* Wis. Stat. § 781.02 (permitting temporary relief in cases seeking extraordinary remedies). Wis. Stat. § 813.02 (1)(a) similarly permits the Court to order temporary relief “when during the litigation it shall appear that a party is doing or threatens or is about to do, or is procuring or suffering some act to be done in violation of the rights of another party and tending to render the judgment ineffectual.” *Id.* Such orders are necessary in this case.

Petitioner has learned that Respondent Office of Special Counsel (“Respondent” or “OSC”) has been regularly deleting records under its clearly incorrect view that it is not required to retain records—a view that was explicitly rejected more than six months ago by the Wisconsin Legislative Council and that finds no support in Wisconsin law. Furthermore, Petitioner has also learned that Respondent deleted records that would have fallen within the Court’s January 25, 2022, order to OSC to “file all records, documents, and things responsive to Petitioners’ requests under the Open Records law.” (Doc. 110 at 2.). This conduct is alarming and should be stopped immediately before OSC does further damage to the efficacy of this Court’s orders and to the public’s right to know.

The Court should grant this motion and order Respondent to stop deleting records while the Court considers whether to modify the judgment to provide Petitioner with additional relief, and pending the appeal of this matter.

BACKGROUND¹

This is an enforcement case under the Wisconsin Open Records law, Wis. Stat. § 19.31 *et seq.*, to obtain records related to the Wisconsin Assembly’s investigation into the 2020 presidential election. (Doc. 5; *see generally* Doc. 165 at 3-5.) After signing an alternative writ of mandamus (Doc. 42), the Court held a show cause hearing and issued several related rulings, memorialized in a January 25 order. (Doc. 110.) Among other things, the Court required OSC to “file all records, documents, and things responsive to Petitioners’ requests under the Open Records law” by January 31 for *in camera* review. (*Id.*

¹ The factual background relevant to this motion and Petitioner’s motion to modify the Court’s order is the same. Petitioner repeats that background in both motions for ease of reference.

at 2.) The OSC subsequently filed 761 pages of records. (*See* Doc. 165 at 35-36; *see also* Docs. 142-47, 149, 161-64.)

After additional briefing, the Court reviewed the records and rejected Respondent's reasons for non-disclosure, and further found that the public interest balancing test did not bar release. (*See generally* Doc. 165.) The Court denied the motion to quash the alternative writ of mandamus as to all respondents except Assembly Chief Clerk Edward Blazel; found Petitioner was a prevailing party for purposes of granting attorneys fees and costs under Wis. Stat. § 19.37(2); and further found that OSC, Assembly Speaker Robin Vos, and the Assembly "each arbitrarily and capriciously denied or delayed access to records." (Doc. 165 at 51.) The Court awarded punitive damages under Wis. Stat. § 19.37(3) to deter such conduct in the future. (*Id.*)

Petitioner did not obtain access to the records until six days later, after the Court had considered and denied Respondent OSC's request for a stay pending appeal. (Doc. 177 at 15.) At the March 8, 2022, hearing on that motion, the Court stated that "[a]s far as I'm concerned, there are no further proceedings in the circuit court" and that the Court planned to issue a final order for purposes of appeal. (Doc. 182 at 74:14-15.) The Court noted that Petitioner would also need to review the records:

Now if American Oversight can demonstrate by other sources that there were documents that should have been produced that were in the Office of Special Counsel's possession that are not contained in these, then you're able to file a motion, I presume it would be a motion for contempt, because it was the Court's order that Mr. Gableman and the Office of Special Counsel file those documents which it says it has. If it hasn't, that's not a reason for me to keep this case open and to cause the respondents to participate in further litigation. So by issuing a final order for purposes of appeal, I don't mean to suggest that you have no other ancillary remedies to any other kind of facts that come to the Court. Obviously, you can move [] under 806.07 for such

further and additional relief as further investigation and determination warrant . . .

(Doc. 182 at 74:25-75:15.) Later that same day, the Court issued a written order denying the request for stay, which was final for purposes of appeal, and Petitioner obtained access to the records that had been filed with the Court in January. (*See* Doc. 177 at 15.)

Upon review, Petitioner determined there were numerous gaps in the records OSC had filed with the Court in response to its January 25, 2022, Order. (Doc. 110.) For example, email messages were frequently missing their attachments, no contracts or subcontracts were provided (even for attorneys of record and other persons known to be working on the investigation), and the production lacked any calendars or text messages. (*See* *Westerberg Aff.*, Ex. A at 2-3.) Petitioner identified these deficiencies to Respondent in a March 25, 2022, letter, reminded OSC of its duty to retain records, and further stated that “[i]f OSC’s violation of the Court’s January 25 Order is due to failure to retain records as required by Wisconsin law, Petitioner may ask the Court to issue remedial sanctions on that basis.” (*Id.*, Ex. A at 3.) The letter requested that OSC immediately search for and produce the records American Oversight had identified as missing, and that it further explain its process for searching for and preserving records, including those OSC may have deleted. (*Id.*, Ex. A at 4.)

The OSC responded on April 8, 2022, in a letter that contained three major revelations. (*Westerberg Aff.*, Ex. B.)

First, OSC admitted it failed to produce some records in response to the Court’s January 25 order, including subcontracts with persons working on the investigation,

calendars, additional email messages, and attachments to emails. (*Id.*, Ex. B at 3.) The letter was accompanied by 97 pages of these “inadvertently” omitted records. (*Id.* ¶ 5.)

Second, Respondent said it had deleted records responsive to Petitioner’s request; namely, attachments to email messages it had previously disclosed. (Westerberg Aff., Ex. B.) In what it claimed was an “oversight,” OSC stated that at the time of its initial, pre-litigation response to Petitioner on December 4, 2021, it printed copies of all responsive emails, neglected to print any email attachments, preserved only the printed copies of responsive emails, and deleted the electronic copies. (*Id.*, Ex. B at 2-3, 6-8.) This meant that many attachments were deleted, despite the fact that they were responsive to Petitioner’s requests, after those requests were made. OSC also admitted that it been aware of such omitted records since at least January 2022 (*see id.*, Ex. B at 2 & n.2 (“The OSC did not discover that such hard copies failed to include certain attachments until counsel reviewed the documents *prior to* its January 31, 2022, production; however, the identical digital copies had already been deleted, per routine office procedure.” (emphasis added))); yet OSC did not inform Petitioner—or the Court—of that issue until its April 8 letter.

Third and most alarmingly, OSC stated that it continues to delete records it deems irrelevant to the election investigation and declared itself exempt from any requirement to retain records—despite a Wisconsin Legislative Council memo that had reached the opposite conclusion months before. (*Id.*, Ex. B at 4-6; *see also* Doc. 134.) Absent a pending Open Records request, it said, OSC “routinely deletes documents and text messages that are not of use to the investigation.” (Westerberg Aff., Ex. B at 5.) OSC defines documents that are “irrelevant or useless” as including documents that it “is not intending to further investigate, and is not intending to rely upon for its recommendations or reports.” (*Id.*, Ex.

B at 5 & n.5.) The logical extension of OSC's position is that if it receives evidence or engages in communications that do not further its intended results, the public may never even have the chance to see those records.

The OSC's position on records deletion had been hinted at in its motion to quash. (*See* Doc. 99 at 4, 21-22.) Petitioner raised the issue at the show cause hearing on January 21, 2022, but the Court did not take it up at that time and OSC was not prepared to argue the issue. (Doc. 148 at 69:7-71:13.) However, the Court did suggest the matter could be revisited after records were submitted for *in-camera* review. (*Id.* at 71:3-13.)

LEGAL STANDARD

A court may grant relief pending appeal under Wis. Stat. § 808.07. Such relief includes the grant of an injunction or any other order “appropriate to preserve the existing state of affairs or the effectiveness of the judgment subsequently to be entered.” *Id.* § 808.07(2)(a)2., 3.²

The award of temporary injunctive relief is within a trial court's sound discretion. *State v. C. Spielvogel & Sons Excavating, Inc.*, 193 Wis. 2d 464, 479, 535 N.W.2d 28 (Ct. App. 1995). To obtain a temporary injunction, the movant must show: (1) a reasonable probability of ultimate success on the merits, (2) that the movant would suffer irreparable harm in the absence of a temporary injunction, (3) that a temporary injunction is necessary to preserve the status quo, and (4) that the movant has no other adequate remedy at law.

² Petitioner understands that the standards for stays pending appeal in *Waity v. LeMahieu* are not applicable to this motion because Petitioner is not seeking to stay the Court's prior decision. *See* 2022 WI 6, ¶ 49, 400 Wis. 2d 356, 969 N.W.2d 263; *Scullion v. Wis. Power & Light Co.*, 2000 WI App ¶ 24, 237 Wis.2d 498, 614 N.W.2d 565 (observing the legislature gave circuit courts “wide discretion” under Wis. Stat. 808.07(2) to consider “any other factors it considered relevant in the circumstances of the particular case”). Rather, this motion intends to effectuate that decision. Regardless, the factors for a temporary injunction are similar to those in *Waity*. *See* 400 Wis. 2d 356, ¶ 49.

Werner v. A.L. Grootemaat & Sons, Inc., 80 Wis. 2d 513, 520-21, 259 N.W.2d 310 (1977); *Milwaukee Deputy Sheriffs' Ass'n v. Milwaukee Cty.*, 2016 WI App 56, ¶ 20, 370 Wis. 2d 644, 659 883 N.W.2d 154. “Where the complaint states a cause of action, and the motion papers disclose a reasonable probability of plaintiff’s ultimate success, *it is well-nigh an imperative duty of the court to preserve the status quo*... if its disturbance [will] cause serious and irreparable injury to one party; especially if injury to the other is slight.” *Halsey, Stuart & Co. v. PSC*, 212 Wis. 184, 248 N.W. 458 (1933) (emphasis added).

ARGUMENT

The Court should grant this motion and enjoin OSC from deleting records in violation of the law while the Court considers Petitioner’s motion to modify the judgment under Wis. Stat. § 806.07 and while Respondent’s recently-filed appeal is pending.

I. Petitioner has a reasonable likelihood of prevailing on the merits of the motion modify the judgment and on its argument that OSC cannot delete records.

Petitioner has concurrently filed a motion to modify the judgment, to bring to the Court’s attention deficiencies in the Respondent’s records production that demonstrate a violation of the Court’s January 25, 2022, order to produce “all records, documents, and things responsive to Petitioner’s requests under the Open Records law.” (Doc. 110 at 2.) The motion explains that based on these deficiencies, the Court should reopen the judgement to consider whether additional relief to Petitioner or sanctions against Respondent are warranted. Petitioner is likely to succeed on the merits of this motion, given Respondent’s admitted failure to produce all responsive records despite the Court’s order; its admission that it deleted other responsive records after they were requested and

after this litigation was filed contrary to Wis. Stat. § 19.35(5); and that it continues to delete records under an unprecedented and erroneous reading of the law, *see* Section II, *infra*.

Petitioner is also likely to succeed on the merits of its argument that OSC may not destroy its records; OSC's novel position is as alarming as it is wrong. In OSC's words, "the Wisconsin Public Records Retention Law does not apply to the OSC." (Westerberg Aff., Ex. B at 4.) That bold statement is inaccurate—and has serious practical consequences—for a number of reasons.

First, as the Wisconsin Legislative Council explicitly stated on October 1, 2021 (Doc. 134), OSC must comply with Wisconsin's Public Records Retention Law, Wis. Stat. § 16.61. This law:

generally requires that state agencies maintain records in accordance with prescribed schedules established by the Public Records Board ("PRB"). Public records are the property of the State and may not be disposed of without the approval of the PRB. [s.16.61(4)(a), Stats.]

Under the Public Records Retention Law, a "state agency" is broadly defined to include "any officer, commission, board, department or bureau of state government." [s. 16.61(2)(b), Stats.] For the purposes of records retention under s. 16.61, Stats., "public records" generally includes most items made or received in connection with the transaction of public business, subject to certain specified exceptions, including an exception for "records and correspondence of any member of the legislature."

(Doc. 134 at 2 (footnote omitted).)³ It is true that the "records and correspondence of any member of the legislature" are excluded from the definition of "public records," but this shows that the Legislature intended all other records of the Legislature to be included. As the Legislative Council concluded, the absence of any specific legislative rules to the

³ This Court has already observed that the Legislative Council memo advised the OSC "not to arbitrarily destroy records." (Doc. 165 at 30 n.15.)

contrary regarding the general disposition of legislative records indicates that the intent of this section was to apply the retention requirements to legislative agencies and bodies that are not members of the Legislature or their offices. (*Id.*) This extends not only to the Assembly Special Counsel himself (*id.* at 2-3), but also the OSC as an “agency” under the Public Records Retention Law.

As this Court has recognized, the Assembly passed 2021 Assembly Resolution 15 directing the Assembly Committee on Campaigns and Elections to investigate the administration of elections in Wisconsin. (Doc. 165 at 16 (citing Doc. 101).) The OSC was then created by the adoption of a motion by the Assembly Committee on Organization on August 30, 2021, which also appointed the previously named Assembly Special Counsel to oversee this office. (Docs. 102, 103.) Specifically, the motion provides:

It is moved that the Committee on Assembly Organization authorizes the Speaker of the Assembly to designate the legal counsel hired pursuant to the May 28, 2021, ballot adopted by the Committee on Assembly Organization, as special counsel to oversee an Office of Special Counsel. The special counsel shall direct an elections integrity investigation, assist the Elections and Campaign Committee, and hire investigators and other staff to assist in the investigation.

(Doc. 103 at 2.)

The OSC claims that the Wisconsin Legislative Council’s opinions are not binding and are incorrect because the OSC is merely an “independent contractor contracted by the Assembly to assist in the investigation of the 2020 Election.” (Westerberg Aff., Ex. B at 4-5.) This self-serving assertion ignores that the Assembly Special Counsel is himself an officer and the OSC an “office,” regardless of the fact that the position and office are *staffed* by independent contractors. It also ignores that OSC regularly holds itself out as an office or “authorized agency of the State of Wisconsin” (Doc. 135 at 7). (*See also, e.g.*, Docs. 133

& 160 (utilizing the State seal on OSC websites); Docs. 135 & 171 (utilizing same on interim reports).) In any event, nothing in the above resolutions and motions exempts the Assembly Special Counsel or persons staffing the OSC from records retention requirements, just as nothing in these documents suspended the Open Records law or required the OSC to keep records confidential. (Doc. 165 at 16-19.) Being an independent contractor of state government—even if that were OSC’s status—is not license to destroy the public’s records, and Respondent is subject to the Public Records Retention Law requirements.

Respondent also points to the definition of “authority” in Wis. Stat. § 19.32(1) and notes that it, unlike Wis. Stat. § 16.61, specifies that “formally constituted subunit[s]” of an authority are subject to the Open Records law. (Westerberg Aff., Ex. B. at 4.) From this, Respondent claims that it, as a subunit, must not need to retain records under Wis. Stat. § 16.61. (*Id.*) This interpretation is both legally incorrect and absurd. The definition of a “public record” in Wis. Stat. § 16.61(2)(b) is broad, encompassing “all books, papers, maps, photographs, films, recordings, optical discs, electronically formatted documents, or other documentary materials, regardless of physical form or characteristics, made or received by any state agency or its officers or employees **in connection with the transaction of public business**” (emphases added). It encompasses the Assembly Special Counsel and the OSC, as officers and employees or officers of state government who are transacting public business. If Respondent were correct, public records could be destroyed based on which level of bureaucracy is storing them. This cannot be and is not the law.

The OSC also appears to have overlooked the separate requirements of Wis. Stat. § 19.21(1), which impose an obligation on “[e]ach and every officer of the state...[to] safely keep and preserve all property and things received from ... persons and required by law to be

filed, deposited, or kept in the officer's office, or which are in the lawful possession or control of the officer or the officer's deputies, or to the possession or control of which the officer or the officer's deputies may be lawfully entitled, as such officers." This law applies to legislative officials just as it does to executive and judicial officials; "at common law, public records were considered to include legislative and judicial as well as executive records." 66 Wis. Op. Atty. Gen. 203 (1977). Consequently, the officers and other employees of the OSC have a duty to preserve records in possession or control of them, in their engaged capacity, under this statute as well.

Finally, OSC completely ignores its obligations under litigation discovery rules to retain records relevant to threatened or pending litigation. *See Am. Family Mut. Ins. Co. v. Golke*, 2009 WI 81, ¶ 21, 319 Wis. 2d 397, 411, 768 N.W.2d 729, 735 ("Every party or potential litigant is duty-bound to preserve evidence essential to a claim that will likely be litigated."). OSC has been aware of Petitioner's claims in this case since at least December 9, 2021 (*see* Doc. 5) and it is a party to at least two other lawsuits pending in the Wisconsin courts,⁴ yet OSC appears to have made no effort to retain relevant evidence to any of those cases. This is a further basis for the Court to modify its judgment and impose additional sanctions on Respondent.

Respondent's expressed belief that it is not required to preserve the State's records of its business, and its past and ongoing destruction of those records, necessitates an order from this Court restraining any further such destruction.

⁴ *See Michael J. Gableman v. Eric Genrich et al*, Waukesha Cnty. Case No. 21-cv-1710 (filed Dec. 2, 2021); *Wis. Elecs. Comm'n et al v. Wis. State Assembly et al.*, Dane Cnty. Case No. 21-cv-2552 (filed Oct. 21, 2021). (*See also* Doc. 171 at 121-30.)

II. Petitioner has suffered, and will continue to suffer, irreparable harm if a temporary injunction is not granted.

Destruction of a record is irreparable: once it is gone, there is no way to restore it, and money is no substitute for the loss, particularly when the document is part of the public record to which members of the public are entitled access. An order from this Court is necessary to ensure Respondent does not delete any other potentially responsive records or other records of the OSC to which the public is entitled.

As this Court knows, Wisconsin codifies a strong presumption in favor of public access to records in Wis. Stat. § 19.31, which recognizes that “a representative government is dependent upon an informed electorate” and that “all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them.” Wis. Stat. § 19.31. Denial of public access is generally contrary to the public interest. *Id.*; see also *Newspapers, Inc. v. Breier*, 89 Wis. 2d 417, 426-27, 279 N.W.2d 179 (1979).

By reviewing the public record, members of the public may serve as “an effective check on government power and give force to the democratic system.” Leanne Holcomb and James Isaac, *Wisconsin’s Public-Records Law: Preserving the Presumption of Complete Public Access in the Age of Electronic Records*, 2008 Wis. L. Rev. 515. “[O]pen access to the inner workings of government is vital for a functional democracy;” access to information helps the electorate understand the workings of government, hold officials accountable, and “tempers the surreptitious influence” of special interests in government. *Id.* at 517, 525-26. These policy goals are at the bedrock of American democracy. *Id.* at 525-26.

Of course, these policy goals can only be achieved if records are properly retained. Hence, failure to preserve documents may very well result in irreparable harm. *Palmer v.*

City of Chicago, 755 F.2d 560, 577 (7th Cir. 1985) (affirming grant of preliminary injunction to preserve files of certain criminal defendants). The harm need not be immediate; as long as it is “threatened or imminent,” a temporary order should issue. *Jt. Sch. Dist. No. 1 v. Wis. Rapids Educ. Assoc.*, 70 Wis. 2d 292, 312, 234 N.W.2d 289 (1975).

Such is the case here: Respondent admits it is destroying public records that it deems “irrelevant or useless” to its investigation, by which it means records the OSC “is not intending to further investigate” or “rely upon for its recommendations or reports.” (Westerberg Aff., Ex. B at 5 & n.5.) Regardless of whether the OSC deems records “useless,” they are still the public’s records and cannot be destroyed. For example, these records will help the public assess the quality of the OSC’s investigation, exercise appropriate oversight, and understand the extent to which the investigation and the conclusions and recommendations stemming from it are affected by partisan considerations, nepotism, or other impediments to an impartial investigation. Respondent also claims it lacks staff and storage space for records, but providing the public with governmental information “is declared to be an essential function of a representative government and an integral part of the routine duties of officers and employees whose responsibility it is to provide such information.” Wis. Stat. § 19.31. Even if this fear of overwhelming storage requirements were not so dubious on its face, Respondent cannot discard its duty because it would rather allocate resources elsewhere.

Respondent’s actions harm Petitioner, and the public. Respondent admits that it has already destroyed records that would have been responsive to Petitioner’s requests in violation of the Open Records law—namely, electronic copies of records that Petitioner has specifically requested and attachments to those records. (Westerberg Aff., Ex. B at 2-3.)

Petitioner is concerned OSC may still be deleting responsive records that are encompassed in Petitioner's requests. Indeed, OSC's self-described "standard procedure" is to delete records (*id.*, Ex. B at 5); that practice, combined with its (at best) extremely careless responses to Open Records requests creates a perfect storm to deny the public access to records to which it is entitled.⁵ Finally, any destruction of a public record is a blow to democracy, because as Wis. Stat. § 19.31 recognizes, it is through records that citizens can understand government and make decisions about how to participate in democracy.

Enjoining continuing document destruction until the Court renders its decision on the motion to modify the judgment creates no harm to the Respondent; it is barely an imposition. *Pure Milk Products Co-op v. Nat'l Farmers Org.*, 90 Wis. 2d 781, 800, 280 N.W.2d 691 (1979) (providing that since injunctive relief is discretionary, the circuit court should reconcile "competing interests" and movants should show that on balance, "equity favors issuing the injunction"). All OSC need do is nothing: leave the documents as they are and turn off any auto-delete functions in software containing electronic documents. This will preserve the public record pending resolution of Petitioner's motion and Respondent's appeal, and the ability of the public to oversee the affairs of its government, including the activities of the OSC.

III. A temporary injunction is necessary to protect the status quo.

Wisconsin law recognizes that when a plaintiff shows a reasonable probability of success on the merits and the prospect of serious or irreparable injury, "it is well-nigh an

⁵ Moreover, Petitioner has continued making the same Open Records requests of Respondent, for records from more recent time periods, and is concerned that, unless enjoined, Respondent will delete records subject to their ongoing requests and unfulfilled requests. This concern is particularly acute as OSC has, to date, persisted in making the same types of broad denials and unjustified delays that led Petitioner to file this case in the first place.

imperative duty of the court to preserve the status quo by temporary injunction.” *Shearer v. Congdon*, 25 Wis. 2d 663, 668, 131 N.W.2d 377 (1964) (internal quotation marks omitted). “[C]ourts define ‘status quo’ as the last peaceable, uncontested status of the parties which preceded the actions giving rise to the issue in controversy.” *Praefke Auto Elec. & Battery Co. v. Tecumseh Prod. Co.*, 123 F. Supp. 2d 470, 473 (E.D. Wis. 2000); accord, e.g., *Stemple v. Bd. Of Educ. of Prince George’s Cty.*, 623 F.2d 893, 898 (4th Cir. 1980).

Respondent admits it “routinely deletes documents and text messages that are of no use to the investigation.” (Westerberg Aff., Ex. B at 5.) A temporary injunction is necessary to preserve the status quo, which would preserve the records OSC possesses now. Every day that passes without the Court’s intervention is a day when more records are deleted and the status quo is irreparably altered. Petitioner has satisfied this factor.

IV. Petitioner has no adequate remedy at law.

“To obtain an injunction, a plaintiff must show a sufficient probability that future conduct of the defendant will violate a right of and will injure the plaintiff. To invoke the remedy of injunction the plaintiff must moreover establish that the injury is ... not adequately compensable in damages.” *Johnson Controls, Inc. v. Emp’rs Ins. of Wausau*, 2003 WI 108, ¶ 42, 264 Wis. 2d 60, 90, 665 N.W.2d 257.

As detailed above, Petitioner faces irreparable harms stemming from Respondent’s practice of routinely destroying records, whether they be responsive to Petitioner’s prior requests, current requests, or even requests made by other individuals that would inform Petitioner and the public about the investigation. The loss of records is not compensable in damages: it is a harm to democracy and the public’s right to know, and it needs to stop now.

CONCLUSION

For the reasons above, the Court should grant Petitioner's motion for a temporary injunction and other relief pending appeal, Wis. Stat. § 808.07(2)(1)2, 3, and enjoin the OSC from destroying any further documents.

Respectfully submitted this 20th day of April 2022.

*Electronically signed by:
Christa O. Westerberg*

Christa O. Westerberg, SBN 1040530
Eduardo E. Castro, SBN 1117805
122 West Washington Ave., Suite 900
Madison, WI 53703
(608) 251-0101 (telephone)
(608) 251-2883 (facsimile)
cwesterberg@pinesbach.com
ecastro@pinesbach.com

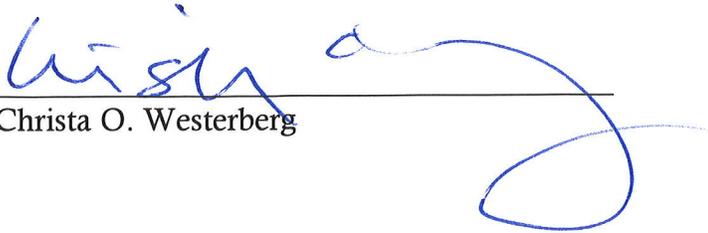
AMERICAN OVERSIGHT

*Electronically signed by:
Sarah Colombo*

Sarah Colombo*
Melanie Sloan*
1030 15th Street NW, B255
Washington, DC 20005
(202) 869-5246
msloan@americanoversight.org
sarah.colombo@americanoversight.org

**Appearing Pro Hac Vice*

5. Respondent also enclosed 97 pages of records with the correspondence marked as Exhibit B.

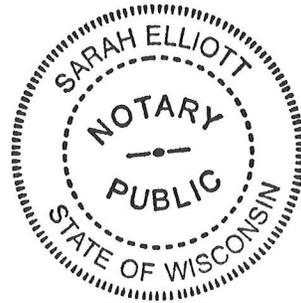


Christa O. Westerberg

Subscribed and sworn to before me
this 19th day of April, 2022.



Sarah Elliott
State of Wisconsin, Notary Public
My Commission Expires June 3rd, 2024





Pines Bach LLP
122 W Washington Ave, Ste 900
Madison, WI 53703

608.251.0101 Phone
608.251.2883 Fax
pinesbach.com

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2021CV003007

Attorney Christa O. Westerberg
cwesterberg@pinesbach.com

Attorney Aaron G. Dumas
adumas@pinesbach.com

March 25, 2022

VIA EMAIL

Michael D. Dean
Michael D. Dean, LLC
P.O. Box 2545
Brookfield, WI 53008
miked@michaelddeanllc.com

James Bopp, Jr.
Courtney Turner Milbank
The Bopp Law Firm, PC
1 South 6th Street
Terre Haute, Indiana 47807
jboppjr@aol.com
cmilbank@bopplaw.com

Re: American Oversight v. Assembly Office of Special Counsel, et al.
Case No. 21CV3007

Dear Counsel:

Petitioner American Oversight has reviewed the documents released by the Dane County Circuit Court on March 8, 2022 in the above-captioned case. (Docs. 142–47, 149, 161–64), the “Production”).¹ American Oversight understands that 761-page Production to be the complete set of materials the Assembly Office of Special Counsel (OSC) submitted to the Court on January 31, 2022, pursuant to the Court’s January 25 order to “file all records,

¹ A consolidated version of the Production is available on Petitioner’s website, with water-marking and bates stamping added by Petitioner, at American Oversight, *Wisconsin Assembly’s Office of Special Counsel Election Investigation Records* (Mar. 8, 2022), <https://www.documentcloud.org/documents/21398319-wisconsin-assemblys-office-of-special-counsel-election-investigation-records>. References to specific page numbers are to the PDF page numbers of the consolidated Production.

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documents, and things responsive to Petitioners' requests under the Open Records law." (Doc. 110, the "January 25 Order.") As you are aware, the Court held a hearing on March 8, 2022 during which it found the submitted records must be released without further delay, and thereafter Petitioner was granted access to the Production, with one set of redactions applied. (*See* Docs. 165, 177.) The Court also indicated during the hearing that if American Oversight identified deficiencies in OSC's Production, it would consider a motion for contempt. (*See, e.g.*, Doc. 182 at 74:25–75:18; 90:7–17.)

Upon review, it is clear the Production does not comply with the Court's January 25 Order to produce "all records, documents, and things" responsive to Petitioner's requests at issue in this case. The January 25 Order intentionally used the "broadest term[s]" possible (Doc. 148 at 83:17), yet the Production appears to represent only a narrow set of records, and entirely omits certain requested document categories. We write today to identify the basic deficiencies in the Production so that you may attempt to correct these issues with your client before we seek relief from the Court.² (*See also* Doc. 169 at 13–14 & n.9; Doc. 159 at 12–13.)

First, the Production omits numerous documents explicitly referenced in the Production itself. The Production frequently omits email attachments even where an attachment is expressly referenced or indicated in a cover email. (*See, e.g.*, Production at 1, 6, 40, 43, 49, 57–58, 68, 69, 84, 100, 101, 102, 104, 111, 302, 305, 306, 369, 400, 416, 419, 430.) Petitioner's requests for "electronic communications" specifically asked for "email attachments" as well as emails. (*See* Docs. 17, 19 & 25 (Exs. F, H & N to the Petition, respectively).) Some of these are indicated in GoogleDrive or Dropbox folders, but it is unclear if a comprehensive search of these file-sharing sites has been conducted. The Production also does not include a number of other responsive materials that were referenced within documents contained in the Production. For instance:

- Records reflecting work being done regarding a substantial number of OSC subpoenas and subpoena-related work product (*see, e.g.*, Production at 8, 195–96; *see also* Docs. 8, 15, 21, 23 (Exs. B, D, J & L to the Petition, respectively))
- Records reflecting "reports" or other work products (such as collected data, information, and notes) being created and exchanged (*see, e.g.*, Production at 17, 18, 19, 24, 29, 32, 35, 41, 44, 45, 303; *see also* Docs. 15 & 23 (Exs. D & L to the Petition, respectively))
- Records of "budget info" or a "budget doc" (*see* Production at 39; *see also* Docs. 8 & 21 (Exs. B & J to the Petition, respectively))

Please produce these records.

Second, the Production appears to entirely ignore large portions of Petitioner's requests. By way of example only, no contracts, sub-contracts, or retainers (including for attorneys appearing to act as legal counsel) for any of the more than ten individuals staffing OSC have

² While this letter is directed at deficiencies in OSC's compliance with the January 25 Order, Petitioner notes that it reserves the right to pursue remedial remedies against other Respondents.

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been produced, except for that of Michael Gableman. Those documents are directly responsive to Petitioner's requests for any "written agreement[s]" including with "any assistants, consultants, counsel, formal or informal advisors, temporary workers, or unpaid volunteers." (*See* Docs. 8 & 21 (Exs. B & J to the Petition, respectively).) More broadly, the Production does not include any calendars or calendar entries for Mr. Gableman or any of OSC's staff. (*See* Docs. 17 & 25 (Exs. F & N to the Petition, respectively).) Nor does the Production include a *single* text message (*see* Docs. 17, 19 & 25 (Exs. F, H, & N to the Petition, respectively)), despite evidence that OSC staff have been communicating regarding OSC work through that medium. (*See, e.g.*, Production at 25, 43, 58.)³ It also appears that at most four email accounts were searched, but OSC had significantly more staff during the time period of Petitioner's requests.⁴ It is simply not credible that OSC would not have any of these categories of records and, coupled with the small number of pages produced as compared to the scope of Petitioner's requests and the investigation, these omissions raise serious questions regarding the quality of OSC's efforts to comply with the Court's January 25 Order.

If responsive records have been deleted, OSC should take steps to recover them. As the Wisconsin Legislative Council has stated, OSC is generally required to retain records under Wis. Stat. § 16.61. (*See* Doc. 134 at 2–3.) OSC also is specifically required to retain records responsive to open records requests after they are submitted. Wis. Stat. § 19.35(5). If OSC's violation of the Court's January 25 Order is due to a failure to retain records as required by Wisconsin law, Petitioner may ask the Court to issue remedial sanctions on that basis.

³ Petitioner has also obtained from other sources text messages between Mr. Gableman and individuals listed on the October External Communications Request identified in the Petition. (*See, e.g.*, American Oversight, Wisconsin State Assembly *Communications Between Speaker Vos's Office and External Entities Investigating the 2020 Election*, at 50–55 (Mar. 11, 2022), <https://www.documentcloud.org/documents/21410136-wisconsin-state-assembly-communications-between-speaker-voss-office-and-external-entities-investigating-the-2020-election#document/p50> (texts between Mr. Gableman and Speaker Robin Vos's staff); American Oversight, *Arizona Senate Records Regarding County Election 'Audit' PART 50/50*, at 1580–81 (Nov. 1, 2021), https://www.documentcloud.org/documents/21053139-arizona-senate-records-regarding-maricopa-county-election-audit-part-9_part3#document/p1580/a2052929 (texts apparently between Mr. Gableman and Randy Pullen).) Such text messages are responsive to American Oversight's requests. (*See also* Doc. 19 (Ex. H to Petition).) Speaker Vos and Steven Fawcett, Vos's legal counsel, also both confirmed in a separate litigation that they have texted with Mr. Gableman.

⁴ Petitioner has not identified any emails in the Production that do not include one of four addresses, coms@wispecialcounsel.org, mgableman@yahoo.com, wijustice@protonmail.com, or 3@wispecialcounsel.org. This indicates that only these four accounts were searched for responsive records. But the Production contains evidence that additional accounts have been used for work on the investigation, including other accounts having the domain of @wispecialcounsel.org (*e.g.*, Production at 17 (6@wispecialcounsel.org); 24 (7@wispecialcounsel.org)), as well as evidence of several other individuals conducting work for the OSC (*e.g., id.* at 24 (Dan Eastman); 25 (Harry Wait); 68 (Erick Kardaal); 334–35 (identifying other staff including, for example, Andrew Kloster and Clint Lancaster)). These accounts must also be searched for responsive records.

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Further, Petitioner is concerned that OSC's representatives have made public statements that call into question its willingness to comply with its judicially-mandated and statutory obligations. These include posts to OSC's website, wielectionreview.org, which are hostile to the Court and its January 25 Order. (*See* Doc. 160, Ex. A at 7 ("The Office of Special Counsel has now been ordered by Dane County Circuit Court Judge Frank Remington to produce all records for an under-camera review by Judge Remington himself. This order has raised many legal and ethical concerns on if this order follows the law. The Special Counsel is continuing to fight for fairness in this case and will provide an update soon."); *see also* Office of Special Counsel, *Records*, WI Election Review, <https://www.wielectionreview.org/Resources/Records> (last visited Mar. 25, 2022) (OSC "is working to release records that will not impede further investigation after the conclusion of litigation").) Petitioner is concerned that OSC's reticence to comply with its open records obligations helps to explain the paucity of records turned over to the Court.

In light of the above, we ask that OSC immediately search for and produce the records and categories of records American Oversight has identified as missing, or that were otherwise overlooked in OSC's initial search. Additionally, please confirm:

- What steps OSC took to comply with the Court's January 25 Order, including whose records were searched and how; and
- What steps OSC has taken to preserve records responsive to Petitioner's requests since the requests were submitted, and to the extent records have been deleted, what steps OSC has taken to recover them.

Given that your client is already in violation of the Court's January 25 Order, having failed to produce "all records, documents, and things responsive to Petitioners' requests" by January 31, we will expect a response by the close of the business on Monday, April 4, 2022.

Thank you for your prompt attention to this matter. Please let us know if you would like to discuss any of the foregoing.

Sincerely,

PINES BACH LLP



Christa O. Westerberg

Aaron G. Dumas

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CC (via email):

Ronald S. Stadler
Kopka Pinkus Dolin PC
rsstadler@kopkalaw.com

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JAMES BOPP, JR
jboppjr@aol.com

THE BOPP LAW FIRM, PC
ATTORNEYS AT LAW

COURTNEY TURNER MILBANK
cmilbank@bopplaw.com

THE NATIONAL BUILDING
1 South Sixth Street
TERRE HAUTE, INDIANA 47807-3510
Telephone 812/232-2434 Facsimile 812/235-3685
www.bopplaw.com

April 8, 2022

Christa O. Westerberg
Aaron G. Dumas
Pines Bach LLP
122 W Washington Ave, Suite 900
Madison, WI 53703
cwesterberg@pinesbach.com
adumas@pinesbach.com

Re: *American Oversight v. Assembly Office
of Special Counsel, et al.*, Case No.
21CV3007

Dear Counsel:

We are in receipt of your letter addressing certain alleged deficiencies in The Office of The Special Counsel's ("OSC") production ("AO Letter"). The OSC disputes the allegation that its production "does not comply with the Court's January 25 Order[.]" It further disputes that statements have been made which call into question the OSC's willingness to comply with the Court's order. The OSC has made every effort to comply with the Court's order and will continue to do so.

In addition, in an effort to ensure transparency, the OSC has voluntarily released additional records (not requested) on their website. This release is a continued fulfillment of the Special Counsel's pledge—first made before the investigation started—to make available to all members of the public every document the OSC relied upon in forming its conclusions. The Special Counsel has routinely honored and reaffirmed this pledge as he has repeatedly and publicly stated that he does not want to ask the public to take his word for any of the OSC's conclusions, but rather wants the public to be able to judge for itself whether its conclusions are sound.

This does not suggest an effort to disregard the Court's order. Instead, it suggests a willingness for the OSC to pursue transparency in *all* records in its possession (not just those requested by AO), so long as the disclosure of such additional records will not impinge further investigation by the OSC.

Finally, the OSC also affirmed—and continues to affirm—that it will release *all* records relevant to its reports and recommendations at the conclusion of its investigation.

**EXHIBIT
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I. American Oversight Requests

In September and October of 2021, American Oversight (“AO”) propounded multiple public records requests upon the OSC. The Court summarized the seven requests as follows:

- “Any contracts between the legislative respondents and the OSC; resumes, applications, work proposals, and the like; any records related to ‘the scope of the investigative authority of’ OSC; any records ‘detailing the steps or procedures to be followed in each aspect of the investigation;’ invoices in connection to the investigation; and ‘criteria, schedule, or other guidelines’ for completion of the investigation.”
- “An updated request identical to the above but for a new date range.”
- “Interim reports, analyses, and other work product related to election fraud.”
- “An updated request identical to the above, but for a new date range.”
- “‘All electronic communications’ between OSC staff, plus any ‘calendars or calendar entries’ relating to the investigation.”
- “An updated request identical to the above, but for a new date range.”
- “Communications between the respective authority and forty-four entities, which American Oversight specified by name and email address.”

Opinion, ECF 165, at 3-4 (internal citations to the record omitted). Each request asked for documents from the date the request was submitted through the date the search was conducted.

The OSC performed their searches on all accounts and databases at the beginning of December. These searches produced a total of 761 pages of documents. Despite denying the requests, these responsive documents were printed and saved in accordance with Wis. Stat. § 19.35(5), in case production was later ordered. The digital copies of the documents were then deleted as a matter of routine procedure. *See* Part II.B.2.d (describing the OSC’s process for retaining or deleting documents).¹ Thereafter, the Circuit Court required that the OSC produce these documents to the Court by January 31, 2022.²

In accordance with the Circuit Court’s order, the OSC produced all of these responsive documents to the Court on January 31, 2022. This production included the printed versions of all

¹The OSC only deleted digital documents that were identical to retained hard-copy documents.

² The OSC did not discover that such hard copies failed to include certain attachments until counsel reviewed the documents prior to its January 31, 2022, production; however, the identical digital copies had already been deleted, per routine office procedure. *See* Part II.B.2.d.

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responsive documents that the OSC found and saved while performing their required searches. The documents were released to AO following the hearing on March 8, 2022.

II. Alleged Deficiencies

AO has alleged multiple deficiencies, which the OSC responds to in turn. First, the OSC addresses records that were not previously produced due to an oversight and attaches those documents still in its possession to this response. Second, the OSC disputes the other issues raised by AO. As a preliminary note, OSC disputes that AO's allegation that only "four email accounts were searched[.]" *See* AO Letter, at 3. All OSC e-mail accounts and databases were searched and any responsive documents were saved, and subsequently produced in accordance with the Court's order.

A. Documents not previously produced due to an oversight.

In seeking to comply with the Court's order, the OSC produced all documents which were found and saved from its searches. For certain documents, the OSC inadvertently failed to include the attachments to e-mails. The OSC has searched again for all such unprinted attachments and is producing those still in its possession. These include documents for Production at 43, 69, 306, 400. Documents still in its possession include documents that the OSC separately saved or archived because the investigation related to those documents is ongoing or because the documents were relevant to the OSC's reports/recommendations. These attachments are produced from those saved/archived documents.

It also inadvertently failed to include a few contracts and two calendars³. The OSC attaches each of these documents to this response. Mr. Lancaster has redacted personal information, which is not related to the OSC or its investigation, from his calendar.

Finally, the OSC directs AO to its website for a copy of all subpoenas. *See* <https://www.wielectionreview.org/Resources/Records>.

B. The OSC did not "ignore" portions of AO's requests, it simply did not have any responsive documents.

AO alleges that certain categories of records were "entirely ignore[d.]" AO Letter, at 2. But the OSC produced all documents responsive to AO's pending public records requests. It has found no other responsive records.

1. The OSC is not required to create records.

"The open records law affords the right to inspect and make or receive a copy of a 'record.'" *George v. Record Custodian*, 169 Wis. 2d 573, 579, 485 N.W.2d 460, 462 (Ct. App. 1992). "A non-existent record cannot be inspected or copied. The open records law does not require the custodian to collect or compile statistics or create a record for the benefit of a requester." *Id.*

³Note that only two persons in the OSC maintained a calendar.

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Accordingly, the OSC cannot and did not produce any documents that did not exist, and was under no obligation to create such records (such as additional calendars).

- 2. The OSC lawfully deleted records prior to the public records requests being submitted.**
 - a. The public records law does not require a custodian or authority to retain records prior to a request being submitted.**

Prior to the submission of a public records request, the OSC was not required to retain documents, even if those documents would otherwise fall under the category of “records.” The public records law does require custodians or authorities to retain documents or records (except in limited circumstances when a request is pending⁴). *See also State ex rel. Gehl v. Connors*, 306 Wis. 2d 247, 257 (Wis. Ct. App. 2007) (“The public records law addresses the duty to disclose records; it does not address the duty to retain records.”).

Accordingly, any argument that suggests that the OSC was to retain records prior to a records request being submitted is without legal support.

- b. The Wisconsin Public Records Retention Law does not apply to the OSC.**

The Wisconsin Public Records Retention Law (“**retention law**”) does not impose a duty upon the OSC to retain documents.

Under Wis. Stat. § 16.61 the public records board is required to preserve records of state agencies; however, the retention law *only* applies to state agencies. Wis. Stat. § 16.61. A state agency is defined as “any officer, commission, board, department or bureau of state government.” Wis. Stat. § 16.61(2)(d). The OSC is not a state agency subject to the retention law, as it is clear that the OSC is not a “commission, board, department or bureau of state government.” Rather, it is an independent contractor contracted by the Assembly to assist in the investigation of the 2020 Election. As such, it is also not an officer for purposes of the public records retention law.

And unlike Wis. Stat. § 19.32(1), relating to public records, which states that an authority “means any of the following . . . the assembly or senate . . . or a *formally constituted subunit of any of the forgoing*,” (W.S. § 16.61(2)(d) (emphasis added)), such language is notably absent from the retention law. So, even if the OSC could be considered a formally constituted subunit of a state agency, the retention law does not apply to such subunits. Put simply, the OSC is not contesting its obligation to comply with established public records law, it is plainly not subject to the retention law, notwithstanding the memo produced by the Legislative Council.

Further, the Legislative Council Memo which opines that the OSC is subject to the retention law cites no precedent and provides no precedential value. A legislative council memo offers insight

⁴ *See* Wisc. Stat. § 19.35(5).

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into the legislative history/intent in passing a statute, “to be resorted to in cases of ambiguity.” *Mullen v. Coolong*, 132 Wis. 2d 440, 449 (Wis. Ct. App. 1986) (quoting *State v. Beets* 124 Wis. 2d 372, 382 n. 6 (1985)) (overruled on other grounds). The controlling statute here is not ambiguous. Nor does the Legislative Council Memo offer any insight into the knowledge available to legislators at the time of drafting. *See* Doc. 134. Therefore, it does not offer the court “any valuable information about the knowledge available to legislators.” *State v. Cole*, 264 Wis. 2d 520, 547 n. 12 (Wis. 2003).

c. Retention obligations are issues considered separately from public records compliance and AO’s efforts to improperly intermingle the two is not in conformity with law.

A public records lawsuit does not consider whether a state agency complied with the public records retention law. *See State ex rel Gehl*, 306 Wis. 2d at 249. An attempt to seek relief under the public records law for an alleged violation of the records retention law is unavailing “because . . . an agency’s alleged failure to keep sought-after records may not be attacked under the public records law.” *Id.* at 256 (citing *State ex rel. Zinngrabe v. Sch. Dist. of Sevastopol*, 146 Wis. 2d 629, 634-635 (Wis. Ct. App. 19988)). “The public records law addresses the duty to disclose records; it does not address the duty to retain records Accordingly, [courts] decline to reach [] arguments regarding the [respondent’s] records retention practices” in a public records request lawsuit. *Id.* at 257.

The OSC’s retention of documents is not a proper issue in this lawsuit.

d. The OSC lawfully and properly deleted documents.

Unlike the DOJ or other large governmental bureaucracies, the OSC does not have an abundance of administrative personnel. In fact, the OSC has one staff member to manage documents, and document management is only one of countless administrative responsibilities that fall upon that staff member. Nor does the OSC have unlimited filing space. Accordingly, in order to accomplish efficient record keeping, by retaining only those documents whose retention is necessary for office administration and oversight, the OSC does not retain any unnecessary documents.

When a document comes to the OSC, the OSC evaluates whether the document is of use to the investigation. If it is, that document is downloaded and kept for further investigation, or for use in the OSC’s reports and recommendations. If the document is irrelevant or useless to the investigation, the OSC deletes that document.⁵ In light of this standard procedure, the OSC routinely deletes documents and text messages that are not of use to the investigation.

⁵An irrelevant or useless document includes documents that the OSC is not intending to further investigate, and is not intending to rely upon for its recommendations or reports.

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This standard procedure ensures that the OSC is not overrun by irrelevant and useless documents, and keeps any documents that are essential and necessary to the investigation and its reports/recommendations in order. This also ensures that the OSC is not required to navigate a large number of documents that are of no use or relevance to the investigation.⁶

So, just like in the *Gehl* case, these documents “were lawfully deleted consistent with appropriate records retention laws” and cannot be challenged under the public records statute. *State ex rel. Gehl*, 306 Wis. 2d at 251.

At the time AO submitted its requests through the date of search:

- the OSC had no previously unreleased text messages, *see* AO Letter, at 3.
- the OSC had no previously unreleased documents related to subpoena work product, *see* AO Letter, at 2.⁷
- the OSC did not have any previously unreleased documents related to “reports” or “other work products,” *see id.*
- the OSC did not have any previously unreleased documents related to “budget info” or “a budget doc,” *see id.*⁸

In sum, there are no additional documents to produce for the above categories.

3. The OSC inadvertently failed to attach some e-mail attachments.

As recited at the beginning of this response, when OSC produced earlier emails, it left unredacted reference to several attachments in those disclosed emails, however, it did not produce the physical attachments. As shown above (Part I), the OSC performed their required searches at the beginning of December, producing more than 700 pages of documents. Despite denying the requests, these responsive documents were printed and saved in accordance with Wis. Stat. § 19.35(5), in case production was later ordered.

After the OSC saved the responsive documents, thereby completing their obligations to save and retain documents under the public records law, the OSC continued their standard procedure of deleting the digital versions of any saved documents that were not relevant or of further use to

⁶The OSC does not delete any sought-after documents when a public records request is pending, unless an identical record exists in hard-copy or electronic copy.

⁷The OSC does not retain drafts of subpoenas; however, finalized versions can be found on its website. *See* Part II.A.

⁸It is irrelevant whether other entities or persons have produced documents (i.e. text messages), as the OSC was not and is not required to retain documents prior to a public records request being submitted.

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the OSC, that is, documents that were not related to the ongoing investigation or the OSC's reports/recommendations.⁹ The deleted digital documents were identical to the retained hard-copy documents.

However, the OSC has discovered that some hard copies failed to include certain attachments that were referenced in the publicly-disclosed emails. The OSC has again searched for these attachments and has produced any and all attachments in its possession (i.e. any documents that were separately saved or archived because they relate to an ongoing investigation or to the OSC's reports/recommendations). *See* Part II.A.

The following is a summary of the produced documents for which no attachment can be found:

1. Digital copy was deleted after hard-copy was saved for production. *See* Part II.B.3.
6. Digital copy was deleted after hard-copy was saved for production. *See id.* The OSC does not typically retain older drafts of documents, but only saves finalized versions. *See* Part II.B.2.
40. Digital copy was deleted after hard-copy was saved for production. *See* Part II.B.3.
49. Digital copy was deleted after hard-copy was saved for production. *See id.* Any expenses would have been submitted to Ted Blazel, so a copy of such expenses can be obtained from him.¹⁰
- 57-58. Digital copy was deleted after hard-copy was saved for production. *See id.* The OSC does not typically retain older drafts of documents, but only saves finalized versions. *See* Part II.B.2.
68. Digital copy was deleted after hard-copy was saved for production. *See* Part II.B.3.
84. Digital copy was deleted after hard-copy was saved for production. *See id.*
100. Digital copy was deleted after hard-copy was saved for production. *See id.*
101. Digital copy was deleted after hard-copy was saved for production. *See id.*
102. Digital copy was deleted after hard-copy was saved for production. *See id.*
104. Digital copy was deleted after hard-copy was saved for production. *See id.*
111. Digital copy was deleted after hard-copy was saved for production. *See id.*

⁹*See* Part II.B.2.d.

¹⁰For some requests that are no longer in OSC's possession, the OSC notes, in good faith, that these records could be obtained through records requests to the original source. This is not to suggest that such request must be made by AO, but offers another route for obtaining the desired information.

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302. Digital copy was deleted after hard-copy was saved for production. *See id.*

305. Digital copy was deleted after hard-copy was saved for production. *See id.* However, Production 306 is the same with a typographical error corrected. The attachment to 306 is attached to this response.

369. Digital copy was deleted after hard-copy was saved for production. *See Part II.B.3.* The complaint against Meaghan Wolfe is publicly available and would contain the attachments. *See n. 10.*

400. Digital copy was deleted after hard-copy was saved for production. *See Part II.B.3.* Any expenses would have been submitted to Ted Blazel, so a copy of such expenses can be obtained from him. *See n. 10.*

416. Digital copy was deleted after hard-copy was saved for production. *See Part II.B.3.* Any expenses would have been submitted to Ted Blazel, so a copy of such expenses can be obtained from him. *See n. 10.*

419. Digital copy was deleted after hard-copy was saved for production. *See Part II.B.3.* This clerk list can be obtained from WEC. *See n. 10.*

430. Digital copy was deleted after hard-copy was saved for production. *See Part II.B.3.* The OSC does not typically retain older drafts of documents, but only saves finalized versions. *See Part II.B.2.*

In an effort to remedy the issue of any unprinted attachments, the OSC is contacting each of the persons in the emails above and asking such persons to re-send the attachment. The OSC will produce any attachments obtained as soon as it receives them.

Sincerely,

THE BOPP LAW FIRM, PC



James Bopp Jr.
Courtney Turner Milbank