



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. Box 7863
MADISON, WI 53707

May 8, 2015

Jonas Persson
Center for Media and Democracy
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Dear Mr. Persson,

This letter is in response to your public records request for the following:

All communications or contacts between the Office of the Governor, and the following individuals regarding the 2015–17 Executive Budget Bill's changes to ch. 36 of the Wisconsin statutes: Nathan Schwanz, Michael Heifetz, Mike Huebsch.

A search of the records of the Office of the Governor has been completed, and 480 pages of records have been found. These records are included with this letter in PDF format. Note that, although not expressly requested, we are including additional communications we found between the Office of the Governor and other individuals at the Department of Administration, not merely the three individuals listed.

We have withheld some records that consist of privileged attorney-client communications and protected attorney work product. The confidentiality of attorney-client communications and work product are highly valued public policies protected throughout Wisconsin law. *See, e.g., Wis. Newspaper, Inc. v. Sch. Dist. of Sheboygan Falls*, 199 Wis. 2d 768, 782-83 (1996) (recognizing the attorney-client privilege as an exception to the public records law); *Seifert v. Sch. Dist. of Sheboygan Falls*, 2007 Wis. App. 207, at ¶ 28 (protected work product).

Additionally, the public records law incorporates the common-law balancing test, which requires us to weigh the public interest in disclosure against any harm that could result from disclosure. *See, e.g., Wisconsin Newspaper, Inc. v. Sch. Dist. of Sheboygan Falls*, 199 Wis. 2d 768, 777-78 (1996). Applying this standard, we have withheld certain documents consisting of preliminary analysis and deliberations created and exchanged by and among employees of DOA and employees of the Governor's office in preparation of the Governor's budget, before the budget legislation was introduced in the legislature.

By law, the Governor is the one responsible for the state's biennial budget, and the Department of Administration is mandated to prepare the budget under the direction of the Governor. *See Wis. Stats. §§ 16.42–16.47*. A candid, complete, and creative evaluation of the state's finances within DOA and within the Governor's office is inherent to the development of the Governor's executive budget. Making these internal discussions just as open to disclosure as the final version of the budget would inhibit the free exchange of ideas, opinions, proposals, and

recommendations among those involved in deciding what to include in the final legislation. Disclosure of this narrow category of records—limited to discussions within DOA, within the Governor’s office, and between the two--would discourage frank internal discussion and harm the quality of the final executive decision. Further, it would disincentivize the free exchange of emails and written documentation necessary to hone the precise language and calculations that are key to proper budget development. Without a doubt, this would significantly inhibit the efficiency and efficacy of the employees who develop the detailed language and financial calculations for the budget. In addition, disclosure would risk public confusion as a result of publishing non-final proposals, which may not ultimately have been adopted.

The public interests supporting nondisclosure here have long been nationally recognized, including in federal law. *See* Freedom of Information Act (FOIA), 5 USC § 552(b)(5); *Bureau of National Affairs v. U.S. Department of Justice*, 742 F.2d 1484 (D.C. Cir. 1984). Conversely, the public interest in accessing these particular records is limited. All legislation is publicly available once it is introduced, and numerous documents are produced and released to the public explaining and justifying the specifics of the executive budget. Thus, pursuant to the required balancing test, we have concluded that the public interest in protecting the quality of the executive decision-making process and maintaining the efficiency and efficacy of the budget writing process outweighs the public interest in the release of these materials.

Even putting the balancing test aside, these documents are not “records” within the meaning of the public records law. The law specifically exempts from public disclosure drafts, notes, preliminary computations, and like materials prepared for the originator's personal use or prepared by the originator in the name of a person for whom the originator is working. Wis. Stats. § 19.32(2). These preliminary analyses and deliberations are drafts, preliminary computations, and/or similar like materials that are prepared by individuals working for the Governor on creation of the Governor’s biennial budget. Release of these preliminary materials would be contrary to the conduct of government business, running counter to § 19.32(2)’s exclusions and to the declaration of policy in Wis. Stat. § 19.31.

Note that we have not analyzed communications with representatives of UW System or the Legislative Reference Bureau under this reasoning. We are providing these communications because it is our understanding that they are already publicly available.

Pursuant to Wis. Stat. § 19.35(4)(b), these determinations are subject to review by mandamus under Wis. Stat. § 19.37(1) or upon application to a district attorney or the Attorney General.

This letter completes our response to your request. Thank you for contacting the office of Governor Scott Walker.

Sincerely,



David J. Rabe
Assistant Legal Counsel