

Subject: FW: Public Records Law Request (WI-REP-22-0287)
Date: Friday, April 22, 2022 at 1:04:54 PM Eastern Daylight Time
From: Fawcett, Steve
To: AO Records
CC: Blazel, Ted
Attachments: WI-REP-22-0287.pdf

EXTERNAL SENDER

Dear Mr. Winters,

This is in response to your Open Records Request to our office, dated 3/21/22. Your request is attached to this email.

For the reasons explained below, Speaker Vos is denying your request with respect to some documents, the rest of the records have been turned over the Assembly Chief Clerk's Office which you can collect from them.

First, Wisconsin's Open Records Law excludes from the definition of a "record" any "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. Stat. § 19.32 (2); *State v. Panknin*, 217 Wis. 2d 200, 209–10 (Ct. App. 1998); *Voice of Wis. Rapids, LLC v. Wis. Rapids Pub. Sch. Dist.*, 2015 WI App 53, ¶¶ 13–15, 364 Wis. 2d 429, 434, 867 N.W.2d 825, 827. Some of your requests include "drafts, notes, preliminary computations, and like materials" — thus Speaker Vos is denying your request to the extent it seeks such materials.

Second, the Open Records Law recognizes "statutory," "common law" and "public policy exceptions" to disclosure, *Democratic Party of Wis. v. Wis. Dep't of Justice*, 2016 WI 100, ¶ 10, 372 Wis. 2d 460, 888 N.W.2d 584, including exceptions for "attorney-client privilege," *Wis. Newspress, Inc. v. Sch. Dist. of Sheboygan Falls*, 199 Wis. 2d 768, 782, 546 N.W.2d 143 (1996) (citing Wis. Stat. § 905.03); *accord George v. Rec. Custodian*, 169 Wis. 2d 573, 581–82, 485 N.W.2d 460 (Ct. App. 1992), and for "attorney work product," *Seifert v. Sch. Dist. of Sheboygan Falls*, 2007 WI App 207, ¶¶ 27–28, 305 Wis. 2d 582, 602, 740 N.W.2d 177, 187 (citing Wis. Stat. § 804.01(2)(c)1). The attorney-client privilege protects from disclosure any "confidential communications between [the Legislature] and its attorneys," *Wis. Newspress, Inc.*, 199 Wis. 2d at 782–83, and the attorney-work-product doctrine protects from disclosure any "attorney work product, including the material, information, mental impressions and strategies an attorney compiles in preparation for litigation," *Seifert*, 2007 WI App 207, ¶ 28. Accordingly, Speaker Vos is denying your request to the extent that it is seek information that is protected from disclosure by attorney-client privilege and/or the attorney-work-product doctrine.

Finally, the Open Records Law counsels against disclosure when, after applying a “public policy balancing test,” the public-policy interests in nondisclosure outweigh the public-policy interests in disclosure. *Democratic Party*, 2016 WI 100, ¶¶ 28–33. Here, the public-policy interests in nondisclosure outweigh the public-policy interests in disclosure, as your requests seek material related to internal, sensitive communications and analysis. Disclosure of such material risks impeding the necessarily internal processes of the Legislature. Therefore, Speaker Vos is denying your request to the extent it seeks such materials.

We now considers your request closed. You may submit this denial to review via an action for mandamus under Wis. Stat. § 19.37(1), or by application to the local district attorney or the Attorney General. Please contact me if you have any additional questions relating to this request. The Assembly Chief Clerk’s Office will contact you to deliver all other records.

Sincerely,

Steve Fawcett
General Counsel
Office of Assembly Speaker Robin Vos
608.266.3387

From: Rep.Vos <Rep.Vos@legis.wisconsin.gov>
Sent: Monday, March 21, 2022 3:48 PM
To: Fawcett, Steve <Steve.Fawcett@legis.wisconsin.gov>
Subject: FW: Public Records Law Request (WI-REP-22-0287)

From: AO Records <records@americanoversight.org>
Sent: Monday, March 21, 2022 9:52 AM
To: Blazel, Ted <Ted.Blazel@legis.wisconsin.gov>; Rep.Vos <Rep.Vos@legis.wisconsin.gov>
Subject: Public Records Law Request (WI-REP-22-0287)

Dear Public Records Custodian:

Please find attached a request for records under Wisconsin’s public records law.

Sincerely,
Dylan Winters (he/him)
Paralegal
American Oversight
records@americanoversight.org
www.americanoversight.org | @weareoversight

PRR: WI-REP-22-0287