

November 11, 2011

VIA OVERNIGHT COURIER

Department Record Custodian  
Kathryn R. Anderson  
Department of Corrections  
P.O. Box 7925  
Madison, WI 53707

RE: Appeal of Denial of WLUK-TV's Open Records Request re Work Release Program

Dear Ms. Anderson,

By this letter, WLUK-TV hereby APPEALS that certain denial notice dated November 9, 2011 and executed by Susan Ross of the Sanger Powers Correctional Center and Winnebago Correctional Center (the "Denial Letter"). A copy of WLUK-TV's original request and the Denial Letter are attached in Exhibit A hereto for your convenience.

In furtherance of its mission to inform the public under the First Amendment and its public interest obligations under the rules and regulations of the Federal Communications Commission, WLUK-TV requested the names of employers participating in a prisoner work release program in Green Bay and Fox Valley on November 2, 2011. According to the Denial Letter, that request was denied by the Department of Corrections (the "Department") because, *inter alia*, the Department fears undefined "security concerns", "potential for escape, harassment, or interference", general disruption at the work place," "safety concerns for the employer, inmates and other employees", and stresses the (perceived) importance of a correctional program.

We believe that the Department's analysis under the Wisconsin common law balancing test is incorrect. Principally, we believe that the Department failed to consider **all** relevant factors in conducting its analysis under the Wisconsin Public Records Act. *See* Woznicki v. Erickson, 202 Wis. 2d 178, 549 N.W.2d 699 (1996) ("it is the duty of the custodian of public records, prior to their release, to consider **all the relevant factors** in balancing the public interest and the private interests.") (*emphasis added*). Second, we believe that the factors referenced by the Department lack merit, and address each in turn.

As you are surely aware, Wisconsin's public records law contains as a bedrock principle a "presumption of complete public access . . ." and an admonition that "denial of public access generally is contrary to the public interest . . ." Wis. Stat. § 19.31. Yet, contrary to this presumption and the legal requirement that all relevant factors be analyzed, it appears that the Department wholly ignored at least two important public policy rationales that comport with the emphasis on public openness in Wisconsin law.

First, the Department ignores the important public policy rationale that the public should be aware when and where convicted criminals supposed to be imprisoned are out and about in the public sphere. Second, the Department fails to address the public's strong policy interest in exercising oversight over "the affairs of government and the official acts of those officers and employees who represent them . . ." by reviewing the activities of a work release program spearheaded by public officers. Wis.

Stat. § 19.31. Despite the laundry list of factors the Department cites to ostensibly favor secrecy (each addressed in turn below), the Department nowhere mentions these two strong public policy arguments in its analysis.

While WLUK-TV believes that the Department's failure to review all relevant factors in this situation dooms the Denial Letter on its face, WLUK-TV also disagrees with each of the factors that the Department does include in its written analysis within the Denial Letter. Even in review of each listed factor, WLUK-TV finds that the Department has ignored further relevant factors in its haste to maintain secrecy.

- *Undefined "security concerns"* – WLUK-TV believes that the security concerns that come with the mere existence of the program are of equal, if not greater, importance to the security concerns that come with disclosure. The public has a right to know when and where individuals that are supposed to be imprisoned could have access to the public's money, belongings, or even worse – children. Should, for example, imprisoned individuals be allowed access to a public venue or a store frequented by minors, the public should be able to protect itself from potential threats from past criminal offenders.
- *"[P]otential for escape, harassment, or interference"* – The Department fails to note how disclosure of the employers would cause any more risk of escape, harassment, or interference than a Department vehicle dropping off work release individuals in plain daylight. Indeed, existing public availability of information to the public who views such placements weakens any argument for the withholding of such information. *See Milwaukee Journal Sentinel v. Wisconsin Dep't of Admin.*, 319 Wis. 2d 439, 768 N.W.2d 700 (2009).
- *General disruption at the work place," and "[s]afety concerns for the employer, inmates and other employees"* – Again, WLUK-TV believes that there are general safety concerns for the public when interacting with an employer, inmates, or other employees in the presence of inmates that are just as important as the Department's proposed factor. Indeed, to the extent that other employees do not currently know of the safety concerns they face by working side-by-side with convicted inmates, disclosure would actually foster more safety for the employer and other employees.
- *The importance of a correctional program (to the Department)* – If the correctional program is important to the Department, then it is likely also important to the Department's employers – the voting public. The voting public should be afforded the opportunity to determine for itself if the program's purported benefits, such as a source of revenue to pay restitution, lessons in responsibility and fulfillment in obligations, and room, board, and travel expenses outweigh the risk of allowing convicted inmates into the general populace. The voting public can only do so if it knows where and in what type of locations these inmates are currently allowed to work.

For the reasons described above, WLUK-TV requests that the Department release information on the employers participating in the work release program in the Green Bay and Fox Valley areas. Furthermore, due to the importance of citizen oversight, WLUK-TV attaches a Supplemental Request as Exhibit B hereto. In addition to the information that WLUK-TV hopes will be released in response to this appeal, the information requested in the Supplemental Request will help WLUK-TV to serve the First Amendment, Wisconsin Open Records Act, and public interest goals of newsgathering and reporting. Failure by the Department to disclose the activities and actions of public officers, however, would run

contrary to those interests. The right to publish news necessarily depends on the media's ability to gather news.

WLUK-TV hopes that you will see the Department's error here and reverse the Denial Letter's determinations in response to this appeal. WLUK-TV, however, reserves all rights in this matter and reminds you that under the Wisconsin Open Records statute, a governmental body may be held responsible for any costs and attorneys fees of a prevailing party in litigation over improperly withheld documents.

While we reserve all rights, we remain open to a negotiated settlement in this matter. Should you wish to discuss such a negotiated settlement, please contact the undersigned counsel.

Very truly yours,



Joshua N. Pila

Enclosures

CC (with enclosures): Kathryn.Anderson@wisconsin.gov (*via electronic mail*)  
Linda.Eggert@wisconsin.gov (*via electronic mail*)  
608-240-3306 (*via facsimile*)  
WLUK-TV Newsroom (*via electronic mail*)  
Reporters Committee for the Freedom of the Press (*via electronic mail*)  
blueders@wisconsinwatch.org (*via electronic mail*)

**EXHIBIT A**

Request and Denial Letter

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## Lisa Manning

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**From:** Eggert, Linda R - DOC [Linda.Eggert@wisconsin.gov]  
**Sent:** Wednesday, November 09, 2011 2:43 PM  
**To:** Rice, Mark A - DOC  
**Subject:** Open Records Request WLUK TV

**From:** Robert Hornacek [mailto:Robert.Hornacek@wluk.com]  
**Sent:** Wednesday, November 02, 2011 4:02 PM  
**To:** Eggert, Linda R - DOC  
**Subject:** Request

Ms. Eggert,

This email is to request the following records under the state's Open Records Law (19.31-39, Wisconsin Statutes):

I am requesting the specific names of the employers in the Green Bay and Fox Valley area who are employing work release inmates. According to information previously supplied by the Department of Corrections, there are 19 such employers in the Green Bay and Fox Valley area.

Please also be aware that the Open Records law "shall be construed in every instance with the presumption of complete public access consistent with the conduct of governmental business. The denial of access generally is contrary to the public interest and only in exceptional cases can access be denied." If you deny my request, the law requires you to do so in writing and state what part of the law you believe entitles you to deny my request. Wis. Stat. § 19.35(4)(a).

I look forward to your response "as soon as practicable and without delay."

Thank you for your time.

Robert Hornacek

Special Assignment Reporter

WLUK-TV, FOX 11

Host, CW 14 Focus

787 Lombardi Ave

Green Bay, WI 54307

Desk: 920-490-1537

Cell: 920-619-5831

"Your Station for Balanced News  
and Severe Weather Coverage"

# RECORD REQUEST RESPONSE

**INSTRUCTIONS:** Please print (use a pen) or type this response. Prepare an original and one copy for file.

## YOUR APPEAL RIGHTS

If your request was made in writing and all or a portion of the request was denied, you may appeal the denial by writing to the **Department Record Custodian, Kathryn R. Anderson at Department of Corrections, P.O. Box 7925, Madison, WI 53707-7925**. Please include a copy of your original request as well as a copy of this form. If the Department Record Custodian upholds this decision, you can further appeal by petitioning the Circuit Court for a writ of mandamus ordering release of the record(s), or you may apply to the Attorney General or the District Attorney of the county where the records are held.

REQUESTER NAME Robert Hornacek  
ADDRESS 787 Lombardi Ave  
CITY, STATE, ZIP CODE Green Bay, WI 54307

TELEPHONE NUMBER 920-490-1537	FAX NUMBER	E-MAIL ADDRESS Robert.Hornacek@wlu.com	NAME OF COUNTY WHERE RECORDS ARE HELD Winnebago
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<b>REQUEST INFORMATION</b>	DATE OF REQUEST 11/02/2011	DATE REQUEST RECEIVED 11/02/2011
REQUEST FORMAT - Your Request Was: (Check One) <input type="checkbox"/> ORAL <input checked="" type="checkbox"/> IN WRITING		
RECORDS REQUESTED - You Asked For: (Check One) <input checked="" type="checkbox"/> Record(s) as described in the attached copy of your request. (ATTACH COPY) <input type="checkbox"/> The following record(s): _____		

## RESPONSE (Check all that apply)

**GRANT OF REQUEST** See "ADDITIONAL COMMENTS" section for details about the manner in which you will receive record access.  
 Your ENTIRE request is granted. See "Additional Comments" section for details about the manner in which you will receive record access.  
 The following PART of your request is granted:

**INSUFFICIENTLY LIMITED REQUEST** Your request is not reasonably limited as to subject matter or length of time represented by the record(s). Therefore, the request does not qualify under Wisconsin's Open Records Law. However, if you revise your request, it will be re-evaluated.  
 Your ENTIRE request is insufficiently limited.  
 The following PART is insufficiently limited:

**STATUTORY "RECORD" DEFINITION** Wisconsin's Open Records Law applies only to materials within the statutory definition of a "record". Requests for materials exempt from the "record" definition do not qualify under the Open Records Law.  
 Your ENTIRE request asked for material which is exempt from the "record" definition because:  
 The following PART of your request asked for material which is exempt from the "record" definition because:

**NO DOCUMENTS**  
 NO DOCUMENTS or other materials were found meeting your description.  
 For the following PART of your request we found no documents or other materials:

**DENIAL OF REQUEST**  
 Your ENTIRE request is denied.  
 The following PART of your request is denied:

Continued

REASON FOR DENIAL

CONFIDENTIALITY LAW. Your access to the record(s) is prohibited by the following statutes, rules, or regulations:

COMMON LAW BALANCING TEST (where no confidentiality law applies). Your access to the record(s) would be so harmful to the public interest as to outweigh any presumed right to access to the record(s). Disclosure would be of overriding harm for the following reason(s):

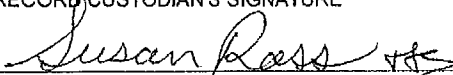
- An INVESTIGATION in progress would be impeded by the record access.
- INFORMANTS described in the record(s) would be jeopardized by the record access by being subject to retaliation, discouraging future informants.
- The RECORD SUBJECT may be jeopardized by being subject to harassment or other intimidation of a nature contrary to the public interest.
- A BREACH OF SECURITY would result from the record access.
- OTHER:  
The potential for significant impairment of an important correctional program.

**ADDITIONAL COMMENTS:**

The Department has determined that there is a stronger public interest served by not disclosing the names of all work release employers in a geographical area than by disclosing those names. There are security concerns regarding the public and others being aware of the names and addresses of work release employers. Specifically, the disclosure of the daily travel route enhances the potential for escape, harassment, or interference with the trip by the public, friends or family of the inmate. In addition, the disclosure of the names and work addresses increases the potential for general disruption at the work place and its operations, disruption and safety concerns for the employer, inmates and other employees, as well as the public.

There is also the potential for significant impairment of an important correctional program which assists offenders in gaining employment experience for successful reentry into the community upon release. It is difficult to recruit employers to participate in the program. Notoriety may cause the loss of current employers who are fearful of being seen or are seen in a negative light by the public for participating in the program. There is a concern that there could be harassment of the employer, employees, inmates, or the public in the work place due to the disclosure of the names and addresses of the work release employers. The correctional work release program provides inmates with a source of revenue to pay restitution and other court ordered obligations, including child support. Inmates who participate in this important correctional program defray the cost of incarceration by paying for their room, board and travel related expenses. Finally, the work release program teaches inmates responsibility and fulfillment of obligations.

For the reasons articulated above, the Department has determined in applying the balancing test that the public interest in nondisclosure outweighs the public interest in disclosure. The Department has fully cooperated with the requester by providing all other requested information and has provided statewide statistics on the DOC work release program, including the number of employers statewide and in the Fox Valley/Green Bay area, total number of inmates in the work release program statewide and in the Fox Valley/Green Bay area, and financial information on wages recouped for inmate room, board, travel and all other obligations. In addition, DOC has and continues to work with all employers in the correctional program in the Fox Valley/Green Bay area to facilitate a potential interview between the requester and the employer. To date, none has agreed to take part in such an interview.

PRINT OR TYPE RECORD CUSTODIAN'S NAME	OFFICE / FACILITY REPRESENTED
Susan Ross	Sanger Powers Correctional Center Winnebago Correctional Center
RECORD CUSTODIAN'S SIGNATURE	DATE SIGNED
	November 9, 2011

## **EXHIBIT B**

### *Supplemental Request*

Pursuant to Wis. Stat. §§ 19.31-19.39, WLUK-TV hereby submits the following supplemental open records request related to the inmate work release program implemented by the Wisconsin Department of Corrections (the "Department") in the areas of Green Bay and Fox Valley (the "Program"):

- Any and all electronic mail correspondence related to the Program, including, but not limited to:
  - Electronic mail correspondence to outside organizations involved in the Program or prospective organizations regarding future potential involvement in the Program
  - Electronic mail correspondence from individual managers or employees of the Department to other managers or employees of the Department regarding or related to the Program
- Any and all financial records regarding or related to the Program, including, but not limited to:
  - Budgets
  - Invoices
  - Wire transfers
  - Checks
  - Spreadsheets
  - Tax Documents (including any applicable W9s or similar documents)
- A list and description of any individuals removed from the Program since 2005, with an explanation of the reason(s) for such removal
- Any and all annual, semi-annual or other reviews of the Program, whether created by the Department or by third parties, including, but not limited to any and all consultant reports related to the Program

Should you have any questions about this Supplemental Request, please contact

Joshua.Pila@linmedia.com.