

March 31, 2010

Andy Naze
Kewaunee County District Attorney
613 Dodge Street
Kewaunee, WI 54216-1322

Dear Mr. Naze:

Re: Mandamus Action

I am writing to request that you bring a mandamus action against the government of Manitowoc County pursuant to Wis. Stat. § 19.37(1)(b), in order to require the county to comply with an open records request I submitted related to contracted services for the expo center.

I have appealed to your office as a citizen to intervene on my behalf, in recognition that ordinary citizens do not have access to the legal resources of a government agency.

It is the position of Manitowoc County that my open records request of March 11, 2010, has been fulfilled by virtue of County Clerk Jamie Aulik responding that the county clerk's office itself does not possess the requested records. This request was directed to Manitowoc County as a whole, and I am requesting that you intervene on my behalf to require Manitowoc County to accept and fulfill it.

The last paragraph of my March 11 request read, "If you are not the records custodian for this information, please forward this request to the appropriate person. Also, please let me know if I can clarify or refine this request." Manitowoc County rejected this request to forward my open records request to the appropriate custodian(s).

Would it have been sufficient if I had said, "please forward this request to every records custodian?"; Or "forward this request to every department head?"; Or if I had listed every department separately?; Or if I had listed the name of every name records custodian?; Or is it necessary for me to copy my request to each custodian?

At what point does the county deem my request sufficiently specific or redundant to for them to accept?

In his March 29 correspondence to you, Atty. Rollins states, "Mr. Kossik's feigned inability to determine the appropriate records custodian is curious, given his statement in the same email that he would be checking to see that each authority in Manitowoc County had posted the notice required by Wis. Stat. § 19.34."

Atty. Rollins' statement is not factual. I did not state that would be "checking" for notices, nor did I imply that I could identify each authority, as Atty. Rollins states. The actual statement in my March 11 email to County Clerk Jamie Aulik was, "I will also be inquiring [of Atty. Rollins] if all of these hypothetical records custodians are in compliance with Statute 19.34." In fact, I did make this inquiry to Atty. Rollins, and he admitted that all records custodians did not have the proper notices, but that it was being corrected.

I am puzzled that from this inquiry, Atty. Rollins somehow concluded that I have knowledge of all Manitowoc County records custodians.

As an aside, I object to Atty. Rollins use of the word "feigned" to impugn my words and actions. I have been direct and honest in every communication.

Manitowoc County has created bureaucratic barriers to make it more difficult for a citizen to request information from the county. Atty. Rollins is apparently suggesting that my expertise with open records and/or my experience as an elected official should allow me to overcome these obstacles. Atty. Rollins proposes a "Catch 22" for a citizen attempting to request information from Manitowoc County. A citizen lacking expertise in the use of open records or lacking knowledge of the organization of county government would be successfully deterred or impeded by these obstacles from obtaining public information. On the other hand, Atty. Rollins appears to be claiming that a citizen who has such expertise should be able to overcome these barriers. It is my belief that Wisconsin law requires Manitowoc County to accept and fulfill a citizen's attempt to request information, regardless of their expertise.

The option to establish most of the records custodians of Manitowoc County is within the administrative discretion of the county. Manitowoc has elected to designate approximately 20 custodians roughly corresponding to the number of county departments. Expecting a citizen to submit 20 open records requests to Manitowoc County in order to obtain a complete response is clearly an unreasonable and effective deterrent. This is especially onerous given that Manitowoc County cannot or will not produce a list of purported records custodians.

Mr. Ziegelbauer has publicly made false and hostile statements regarding my open records request and Request for Mandamus. The most flagrant of these has been his repeated allegation, that I almost immediately went to the district attorney because the county had not completely fulfilled my open records request in one day. To me, this allegation is silly on its face, however many people appear to believe it. Mr. Ziegelbauer is using his position as Manitowoc County Executive to deter citizens from exercising their right to submit legitimate requests for public information, and to deter them from using appropriate legal recourse as provided by Wisconsin Statutes. These false and hostile allegations are especially troubling given Mr. Zeigelbauer's stature as both county executive and as a legislator representing the State of Wisconsin.

Mr. Ziegelbauer's allegation is a complete fabrication, which is easily determined from the Request for Mandamus itself, which includes the statement, "The failure of the county to fulfill my rightful request for public information has already resulted in nearly a week of delay in releasing the requested information." Obviously, this action could not have been taken "one day" later, since the Request for Mandamous itself says, "has already resulted in nearly a week of delay."

It is curious and troubling that Atty. Rollins has adopted this political fabrication as the legal position of Manitowoc County.

Attorneys have a responsibility to tell the truth. More importantly, by embracing Mr. Ziegelbauer's political posturing, Atty. Rollins appears to be representing Mr. Ziegelbauer, and neglecting his duty to represent all of Manitowoc County.

Manitowoc County exists. It has single governing body, a single executive, and it has a single, comprehensive budget, however, Atty. Rollins is claiming that for the purpose of accepting and fulfilling open records requests, Manitowoc County cannot function as a single entity.

Thank you for your attention to this matter. I remain available for any follow up on my part that may be helpful.

Sincerely,

Ronald Kossik
702 New York Avenue
Manitowoc, WI 54220
Cell: 414-704-4571