



Middleton Police Department

7426 Hubbard Avenue Middleton, WI 53562

Brad Keil - Chief of Police

February 4, 2010

Mathew S. Bowman
Legal Counsel
Alliance Defense Fund

Re: Public Records Request

This is in response to your faxed public records request, dated January 19, 2010, seeking "access to and a copy of the report prepared and given to the Middleton Police Department by a United States Department of Homeland Security Intelligence and Analysis representative in or around February, 2009, discussing a threat assessment regarding a local demonstration by pro- and anti-abortion groups." Your request goes on to explain that, "The event may be but was not necessarily at the University of Wisconsin Hospital and Clinics Authority Board meeting in Middleton on February 4, 2009." You further note that the report in question is referred to in a document released publicly by the Department of Homeland Security, and you provided a copy of that document, which describes a threat assessment report prepared by the Department of Homeland Security's Office of Intelligence and Analysis representative to the State of Wisconsin Fusion Center during the first week of February 2009, and notes that a copy of the report was provided to the local police department. You do not assert any enhanced right of access.

The Middleton Police Department has identified a copy of the responsive report within its records and reviewed it. This report is a Daily Intelligence Briefing received from the Wisconsin Department of Justice's (DOJ) Wisconsin Statewide Information Center (WSIC). Information contained in the WSIC records is contributed by various law enforcement departments and intelligence agencies from Wisconsin, other states, the Federal Bureau of Investigation and other federal agencies or departments, including the Department of Homeland Security. The report in question contains the following notice:

"This information should be considered LAW ENFORCEMENT SENSITIVE. Further distribution of this document is restricted to law enforcement agencies, intelligence agencies and Department of Defense organizations only, unless prior approval from the Wisconsin Statewide Information Center is obtained. Persons or organizations violating distribution restrictions will be prohibited from receiving future documents and will be removed from the distribution lists. NO REPORT OR SEGMENT THEREOF MAY BE RELEASED TO ANY MEDIA SOURCES."

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It is clear from this notice that the information contained in this record was provided with the understanding that it would not be disseminated publicly. Therefore, our agency contacted the DOJ to determine whether approval for release of the Briefing could be obtained.

We were advised by the DOJ that it does not allow the release of information contained in the Daily Intelligence Briefings from WSIC. The disclosure or partial disclosure of the specific record at issue was not approved. Furthermore, disclosure of the record at issue by the Middleton Police Department would likely result in the Middleton Police Department not receiving future documents and removal from the distribution lists. The reason for this position is that if these WSIC records were publicly disclosed contrary to these prohibitions, it would jeopardize other law enforcement agencies' willingness to share sensitive law enforcement intelligence with WSIC. This in turn would undermine WSIC's function, which is to share such information with other law enforcement agencies, and would make it more difficult for agencies to work collaboratively in preventing crime. This same concern applies to the intelligence records provided by, or sent to, other law enforcement agencies. If we were to disclose these records in violation of the restrictions imposed by WSIC, it would jeopardize this department's ability to obtain this intelligence information from the DOJ and other state and federal agencies, which would in turn undermine this department's ability to insure public safety.

In addition, granting requests such as yours could result in the identification and public disclosure of groups or individuals who may constitute a security threat or are under surveillance, what information has been gathered about them, how that information was obtained, and the extent of law enforcement's intelligence capabilities. Disclosure of this information could compromise individual sources and jeopardize law enforcement's ability to effectively protect its citizens in the future.

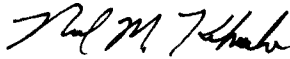
Disclosure would result in the identification and public disclosure of individuals affiliated with groups on both sides of the issue, which could place them in danger from opposing radical extremists. For example, an activist was murdered in Owosso, Michigan on September 11, 2009. *Linzmeier*, 254 Wis. 2d 306, ¶ 30

We were also informed by the DOJ that the Department of Homeland Security (DHS) objects to the public disclosure of the record you have requested. It is their position that, because a portion of the records responsive to your request may have originated with DHS, those records are federal records and are not subject to Wisconsin's public records laws. DHS information is shared with several states in the interest of coordinating state and federal homeland security efforts that are subject to restrictions on the release of U.S. National Security Classified Information and other sensitive unclassified information restrictions. Aside from not being subject to this state's public records laws, it is DHS's position that the records you requested may also be exempt from public release pursuant to one or more exemptions pursuant to the federal Freedom of Information Act (FOIA), 5 U.S.C. sec. 552. The DHS records shared with this department may contain information in draft form, information that is deliberative in nature, or information that reveals vulnerabilities to critical infrastructure and techniques of law enforcement that could enable those seeking detection to do so. If so, it is their position that the records you are seeking remain the property of DHS. As such, these records would be subject to processing and release by DHS only pursuant to a request made directly to DHS under FOIA.

In light of the public interests identified above, applying the public records balancing test, I have determined that these public interests in effective law enforcement and public safety outweigh the public's interest in the inspection of this intelligence information. *Linzmeier v. Forcey* 2002 WI 84, 254 Wis. 306, 646 N.W. 2d 811. For this reason, and for the statutory exemptions identified by DHS, I am denying your request.

Denials of public records requests are subject to review in an action for mandamus under Wis. Stat. 19.37(1), or by application to the District Attorney or Attorney General (Wis. Stat. 19.35(4)(b)). Chief of Police Brad Keil is the legal custodian for Police Department records. Administrative Captain Noel Kakuske is the designated deputy legal custodian.

Sincerely,



Capt. Noel Kakuske
Administrative Officer
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