

FILED
09-09-2024
Clerk of Circuit Court
Kenosha County
2024CV001004
Honorable Heather Iverson
Branch 3

STATE OF WISCONSIN CIRCUIT COURT KENOSHA COUNTY

KEVIN E. MATHEWSON
620 56th St
Kenosha, WI 53140,

Petitioner,

Petition for Writ of Mandamus
Case Code: 30952
Case No. 24-CV-

MICHAEL D. GRAVELEY,
In his official capacity as Kenosha County District Attorney,
912 56th St.
Kenosha, WI 53140,

Respondent.

SUMMONS

THE STATE OF WISCONSIN

To each person named above as a Respondent:

You are hereby notified that the Petitioner named above has filed a lawsuit or other legal action against you. The Petition, which is attached, states the nature and basis of the legal action.

Within 45 days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Petition. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is: **Kenosha County Clerk of Courts, 912 56th St., Kenosha, WI 53140**, and to Kevin E. Matthewson, whose address is: **Kevin Mathewson 620 56th St Kenosha, WI 53142**.

You may have an attorney help or represent you.

If you do not provide a proper answer within 45 days, the court may grant judgment against you for the award of money or other legal action requested in the Petition, and you may lose your right to object to anything that is or may be incorrect in the Petition. A judgment may

be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Respectfully submitted this 9th Day of September, 2024

Kevin E. Mathewson
620 56th St
Kenosha, WI 53140
847-924-7285
kevin.mathewson@yahoo.com

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PETITION FOR WRIT OF MANDAMUS

This is an action to enforce Wisconsin’s Open Records Law, Wis. Stat. §§ 19.31-19.39. State law declares it the public policy of this state that every citizen is presumptively entitled to complete access to the records of state and local government.

Petitioner Kevin E. Mathewson, hereby petitions this Court for a writ of mandamus directing the Respondent, Michael D. Graveley, in his official capacity as Kenosha County District Attorney, to produce records requested by the Petitioner, alleging to the Court as follows:

FACTUAL ALLEGATIONS

Parties

1. Petitioner Kevin E. Mathewson is an adult resident of Wisconsin with an address of 620 56th St, Kenosha, Wisconsin 53140.

2. Respondent Michael D. Graveley is the elected District Attorney of Kenosha County with a business address of 912 56th Street, Kenosha, Wisconsin 53140. Graveley is sued in his official capacity.

3. Graveley is an “elected official” and is therefore an “Authority” under Wis. Stat. § 19.32(1).

Venue & Jurisdiction

4. This Court has jurisdiction to hear this matter under Wis. Stat. § 19.37(1)(a), which provides record requesters a private right to “bring an action for mandamus asking a court to order release of the record.”

5. Venue is proper in this County under Wis. Stat. § 801.50(2), as the action arose in Kenosha County and the Respondent does substantial business in Kenosha County.

Facts

6. On August 29, 2019 a Kenosha woman was arrested and later convicted for OWI 1st, driving at .186 BAC - more than twice the legal limit.

7. Ms. [REDACTED]’s conduct placed the lives of other motorists and pedestrians at risk, as Kenosha Police also cited her for “Reckless Driving – Endangering Safety.”

8. On March 6, 2024, [REDACTED] was once again arrested and the police referred, upon information and belief, one or more felony drug charges to the Kenosha DA’s office.

9. On May 26, 2024, Mathewson made a written records request to Graveley asking for “a copy of all DPAs [Deferred Prosecution Agreements] or similar documents for [REDACTED] [REDACTED]” A true and accurate copy of an email containing that request is attached as Exhibit [A].

10. A short time after Mathewson made this public records request. Graveley and Mathewson spoke on the phone and Graveley told Mathewson his request was denied.

11. During this phone call, Mathewson agreed not to sue while Graveley “researched the law.”

12. Graveley told Mathewson that DPA’s aren’t subject to Wisconsin’s Public Records law.

13. On September 7, 2024, Mathewson learned of a secret court program initiated by Graveley, closed off to the public in a locked room inaccessible to the public, media or anyone else, that allowed illegal aliens to escape criminal charges and keep all records of their unlawful activity secret from the media, taxpayers, and everyone else.

14. Graveley admitted to Mathewson that that this program was only for Spanish-speakers only.

15. Graveley admitted to Mathewson that that this program was only for illegal aliens, and thus was a clear violation of the long-standing concept that all are to be treated equally.

16. On September 7, 2024, Mathewson made a written record request to Graveley asking for “all of your agencies deferred prosecution agreements for the last three months.” A true and accurate copy of that request is attached as Exhibit [B].

17. On September 9, 2024, Graveley and Mathewson spoke on the phone in the early morning.

18. Graveley verbally denied Mathewson’s September 7, 2024 and again, denied Mathewson’s May 26, 2024 request, both on September 9, 2024.

19. During the September 9, 2024 phone conversation, Graveley admitted that Mathewson has “been very patient” with Graveley and Graveley told Mathewson that he has not reconsidered his denial and Mathewson would need a court order to obtain these documents.

20. Graveley denied both requests verbally and not in writing, for what Mathewson believes to be some sort of strategic, legal reasons.

21. Graveley ignored Wis. Stat. §§ 19.35(4)(a) which clearly states that **“Each authority, upon request for any record, shall, as soon as practicable and without delay, either fill the request or notify the requester of the authority's determination to deny the request in whole or in part and the reasons therefor.”**

22. The first request of the DPA of [REDACTED] was easily accessible to Graveley and could have been produced in seconds or minutes.

23. Graveley verbally denied both requests, by arguing something to the effect of “who would enter into a DPA if I release a copy to the public upon request?”

24. Upon information and belief, most or all of the other Wisconsin counties routinely disclose DPAs.

25. One such County is Racine.

26. The Racine County District Attorney released to Mathewson the DPA of a man who was arrested by the Sheriff’s Department. A true and accurate copy of that DPA is attached as Exhibit [C].

27. Graveley denied these requests because he doesn’t want the taxpayers to know about all of the sweetheart deals he gives out to would-be criminals.

**COUNTS I & II – VIOLATION OF WIS. STAT. § 19.35(1)(a)
Unlawful Denial of May 26 and September 7 Requests**

28. Under Wis. Stat. § 19.31, “it is declared to be the public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them.” The statute further provides that “[t]he denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied,” establishing “a presumption of complete public access to government records, consistent with the conduct of governmental business.”

29. The documents requested by Mathewson are “records” under Wis. Stat. § 19.32(2).

30. Mathewson has a clear legal right to receive the records he requested on May 26 and September 7, 2024, and Graveley has a plain legal duty to produce them. Wis. Stat. § 19.35(1)(a) and (b) provide that “any requester has a right to inspect any record” and “to make or receive a copy of a record.”

31. Wis. Stat. § 19.35(4) provides that “Each authority, upon request for any record, shall, as soon as practicable and without delay, either fill the request or notify the requester of the authority’s determination to deny the request in whole or in part and the reasons therefor.”

32. The Court’s task in an open records dispute is to review the authority’s denial to “determine whether [it] was made with the specificity required by § 19.35, Stats., and case law” and is “legally sufficient to outweigh the strong public policy favoring disclosure.” *Village of Butler v. Cohen*, 163 Wis. 2d 819, 826-27, 472 N.W.2d 579 (Ct. App. 1991).

33. Graveley’s denial is not legally sufficient because the public policy interests favoring disclosure of the records requested by Mathewson significantly outweigh any public policy interests favoring their non-disclosure.

34. Under the balancing test, “[i]t is the burden of the party seeking nondisclosure to show that ‘public interests favoring secrecy outweigh those favoring disclosure.’” *John K. MacIver Institute v. Erpenbach*, 2014 WI App 49, ¶14, 354 Wis. 2d 61, 848 N.W.2d 862.

35. The legislative declaration of policy in Wis. Stat. § 19.31 establishes a “strong, legislatively-created presumption in favor of disclosure” of all public records. *Milwaukee Journal Sentinel v. DOA*, 2009 WI 79, ¶59; 319 Wis. 2d 439, 768 N.W.2d 700

36. Graveley’s response suggests that the District Attorney’s office has a blanket policy of never releasing DPAs. But an authority “cannot implement a policy that provides for a blanket exception from the Open Records Law.” *Hempel*, 2005 WI 120, ¶71. Instead, the balancing test requires a “fact-intensive inquiry” and must be performed separately for each record “on a case-by-case basis.” *Id.*, ¶62; *see also State ex rel. Youmans v. Owens*, 28 Wis. 2d 672, 683, [[NW2d]] (“[T]he ultimate decision after conducting the balancing test might be to grant inspection as to certain of the documents and deny it as to others.”).

37. When some information about a matter is already publicly known, that weighs in favor of the release of related records. *Milwaukee Journal Sentinel v. DOA*, 2009 WI 79, ¶61, [[X]]; *Linzmeier*, [[X]], ¶37

38. Substantial damage will result if Mathewson is denied access to records he has a statutory right to view, and he has no other adequate remedy at law to obtain these records.

39. “If an authority withholds a record or a part of a record . . . after a written request for disclosure is made, the requester may . . . bring an action for mandamus asking a court to order release of the record.” Wis. Stat. § 19.37(1), (a).

RELIEF REQUESTED

WHEREFORE, the Petitioner demands a writ of mandamus to issue against the Respondent under Wis. Stat. § 19.37(1):

1. Compelling the Respondent to produce the requested records;
2. Declaring the Petitioner's rights and limiting the Respondent's conduct with respect to the requested records;
3. Awarding the Petitioner his reasonable fees, damages of not less than \$100 for each violation, and other actual costs under Wis. Stat. § 19.37(2);
4. Awarding such other relief as the Court deems appropriate.

Respectfully submitted this 9th Day of September, 2024

Kevin E. Mathewson
620 56th St
Kenosha, WI 53140
847-924-7285
kevin.mathewson@yahoo.com



Kevin Mathewson <kenoshacountyeye@gmail.com>

Public Records Request Dated 5-26-2024

1 message

Kevin Mathewson <kenoshacountyeye@gmail.com>
To: bstuht@da.wi.gov

Sun, May 26, 2024 at 4:12 PM

Inv. Stuht,

Can I please have a copy of all DPAs or similar documents for [REDACTED] (DOB [REDACTED])?

Thanks,

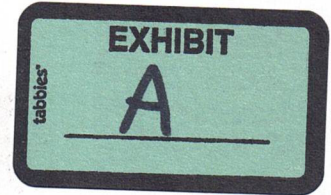
Kevin

--

Kevin Mathewson - Editor, Investigative Journalist
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262-237-8501

Twitter: KenoshaCtyEye
www.kenoshacountyeye.com





Kevin Mathewson <kenoshacountyeye@gmail.com>

Public Records Request Under Wis. Stat. §§ 19.31

1 message

Kevin Mathewson <kenoshacountyeye@gmail.com>
To: Michael Graveley <michael.graveley@da.wi.gov>

Sat, Sep 7, 2024 at 4:23 PM

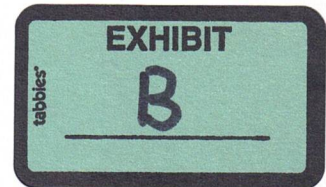
DA Graveley,

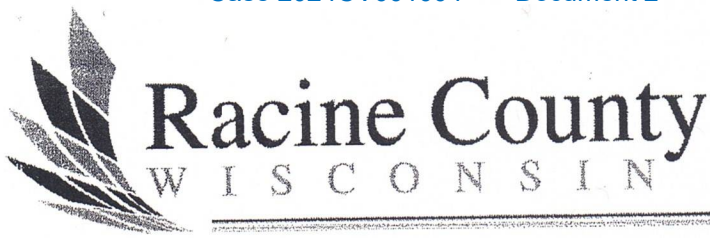
Please provide me with all of your agencies deferred prosecution agreements for the last three months.

Thank you,

Kevin

--

Kevin Mathewson - Editor, Investigative Journalist
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Patricia J. Hanson, District Attorney

Office of the District Attorney

730 Wisconsin Avenue

Racine, WI 53403

262-636-3172

fax: 262-636-3346

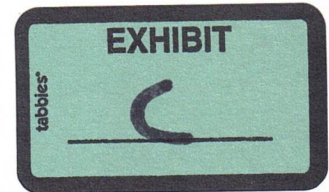
November 25, 2020

RACINE COUNTY DISTRICT ATTORNEY'S OFFICE AGREEMENT FOR PRE-CHARGE DIVERSION

Defendant: Matthew D Eakins DA Case #: 2020RA007544

Kenosha County Sheriff 2020-00340838

- Physical Abuse of Child - Recklessly Cause Bodily Harm



Charges have been recommended to the Racine County District Attorney's Office by the Racine County Law Enforcement Agency and Complaint Number referenced above.

After review of the merit to these charges by the Racine County District Attorney's Office, you are being given an opportunity to avoid having these charges filed in criminal court. In order to avoid criminal court, you are hereby agreeing to comply with the conditions below.

Should you violate the conditions of this Agreement, the Racine County District Attorney's Office may revoke or modify any conditions of this pre-charge diversion program or change the period of supervision, which shall in no case exceed six months. The Racine County District Attorney's Office may release you from supervision at any time. The Racine County District Attorney's Office may at any time within the period of your supervision, reinstate prosecution for this offense should you violate the conditions of this Agreement. You will be given notice specifying the conditions of the agreement which you have violated. By signing this agreement, you understand that this decision is final and is the exclusive decision of the Racine County District Attorney's Office.

After successfully completing your diversion program and fulfilling all the terms and conditions of this agreement, the charges that were recommended will be declined, which means that charges will not be filed now, or in the future.

General Conditions of Diversion Agreement

1. During the period of this agreement, you will not commit new crimes or criminal traffic violations.
2. You will keep in contact, as required, with the Diversion Coordinator. This means that any change in phone number or address will be reported within 48 hours of the change.

3. You will be on time and present for all meetings scheduled with the Diversion Coordinator.

Special Conditions of Deferred Prosecution Agreement

- Community Service at a public agency or a nonprofit charitable organization. The Diversion Coordinator can provide you with ideas if you need them. You will need written proof of the number of hours from someone who can be contacted at the public agency and/or nonprofit charitable organization.
- Number of Hours _____
- Restitution, if requested. Restitution in your case is \$ _____, payable to _____ . A receipt of payment must be provided to the Diversion Coordinator.
- During the period of this agreement you are prohibited from using alcohol or drugs not prescribed for you by a doctor. This is being required of you due to the circumstances of the charge. You are agreeing to drug and alcohol testing as part of this agreement. The testing must be done with your Diversion Coordinator or RCAP, at their request. Any costs associated with the testing will be paid by you.
- You must pay for an complete the TASC program. TASC is an educational program designed for marijuana users, to help you make informed decisions about its use. The Diversion Coordinator will provide you a referral and information about the class.
- You must complete an AODA assessment. If you have an agency of your choice with a licensed AODA treatment provider, that is fine. If you do not have an agency in mind, all Racine County residents may request services from Behavioral Health Services, the Racine County Mental Health provider, located at 1717 Taylor Avenue, Racine, WI. You can call to make an appointment, (262) 767-2900. Proof of the assessment must be provided to the Diversion Coordinator.
- You must contact Racine County Workforce Solutions regarding the 5.09 HSED program. 5.09 HSED is a 15 week classroom based HSED program. The Diversion Coordinator will provide you a referral and location information. Proof of the contact must be provided to the Diversion Coordinator.
- You must enroll in Division of Vocational Rehabilitation (DVR). DVR is an employment program for individuals with a disability. It is located at 1516 S. Green Bay Rd., Suite #100, Mt. Pleasant, WI. You can call to make an appointment, (262) 638-7200.
- X You must complete the following program(s). The Diversion Coordinator will provide you a referral and information about the classes. Proof of completion must be provided to the Diversion Coordinator.
- Children First
 - Focus on Fathers
 - Parenting Class
 - Anger Management
 - Domestic Violence Class
- You must obtain employment or enroll in training to ready you for employment through Racine County Workforce Solutions (WSP), located at 1717 Taylor Avenue, Racine, WI. You can call to make an appointment, (262)767-2900. Proof of efforts must be provided to the Diversion Coordinator.

- X Other: ⁶~~8~~ hours Conflict Resolution online plus knowledge assessment.
- X Continue Anger management and Parenting Classes already in progress with KAFASI with verification of completion.

PARTICIPANT'S STATEMENT

I have read the foregoing document. I fully understand this Agreement. The above Agreement is a complete, true, and correct statement of the agreement between the State and myself. I have no reservations about what I am agreeing to and I confirm that there are no other agreements than what is set forth in this document. I further agree to follow all conditions imposed upon me by this agreement and any future treatment providers. I understand that if this agreement is revoked by the District Attorney's Office, based upon unsuccessful participation in the recommendations, the diverted charges will be filed and notice given of a date before the court.

Dated this 25 day of November, 2020.

Matthew D. E.
Participant

I answered all questions posed to me by the participant and witnessed the voluntary signing of this agreement.

Dated this 25 day of November, 2020.

[Signature]
Diversion Coordinator