

FILED
09-28-2022
Clerk of Circuit Court
Kenosha County
2022CV001006
Honorable Bruce E.
Schroeder
Branch 3

STATE OF WISCONSIN CIRCUIT COURT KENOSHA COUNTY

KEVIN E. MATHEWSON
P.O. Box 2295
Kenosha, WI 53141,

Petitioner,

Petition for Writ of Mandamus
Case Code: 30952
Case No. 22CV

DEBBIE FORD,
In her official capacity as Chancellor, University of Wisconsin-Parkside,
900 Wood Rd
Kenosha, WI 53144,

and

TANNETTE ELIE,
In her official capacity as Records Custodian, University of Wisconsin-Parkside,
900 Wood Rd
Kenosha, WI 53144,

and

UNIVERSITY OF WISCONSIN-PARKSIDE
900 Wood Rd
Kenosha, WI 53144

Respondents.

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 20 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 Mathewson, whose address is: **P.O. Box 2295 Kenosha, WI 53141**

You may have an attorney help or represent you.

If you do not provide a proper answer within 20 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 28th day of September, 2022

Kevin E. Mathewson
P.O. Box 2295
Kenosha, WI 53141
262-237-8501
kevin.mathewson@yahoo.com

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UNIVERSITY OF WISCONSIN-PARKSIDE
900 Wood Rd
Kenosha, WI 53144

Respondents.

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 Respondents Debbie Ford, in her official capacity as Chancellor, University of

Wisconsin-Parkside and Tannette Elie, in her official capacity as Records Custodian, and University of Wisconsin-Parkside and University of Wisconsin-Parkside 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 P.O. Box 2295, Kenosha, Wisconsin 53141.

2. Respondent Debbie Ford is the Chancellor of University of Wisconsin-Parkside with a business address of 900 Wood Rd Kenosha, WI 53144. Ford is being sued in her official capacity.

3. Ford is an “Authority” under Wis. Stat. § 19.32(1).

4. Respondent Tannette Elie, is the University of Wisconsin-Parkside Records Custodian with a business address of 900 Wood Rd Kenosha, WI 53144. Elie is being sued in her official capacity.

5. Elie is an “Authority” under Wis. Stat. § 19.32(1).

6. Respondent University of Wisconsin-Parkside is a state college with a business address of 900 Wood Rd Kenosha, WI 53144.

7. University of Wisconsin-Parkside is an “Authority” under Wis. Stat. § 19.32(1).

Venue & Jurisdiction

8. 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.”

9. 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.

Summons and PetiFacts

10. On September 4, 2022, Petitioner Mathewson sent a public records request to Respondent Tannette Elie via asking for “any document(s) in the possession of the UW system that contains the date of hire, position, salary, and employment application for a Sharmain S. Harris. (DOB 9/7/1988).

11. A true and accurate copy of the email from ¶10 is attached hereto and incorporated herein as **EXHIBIT 1**.

12. On September 13, 2022 at 8:31am, Respondent Tannette Elie send an email to Petitioner Kevin Mathewson saying in part “You will find the requested information in the attached document with an attachment.”

13. A true and accurate copy of the email attachment from ¶12 is attached hereto and incorporated herein as **EXHIBIT 2**.

14. In the attachment from ¶12, Respondent Elie provided Petitioner with Mr. Harris’ date of hire, position and for salary, noted only “\$3,009.00” without any time frame, and denied providing petitioner Mathewson with Mr. Harris’ job application.

15. Petitioner then emailed Respondent Elie the same day 14 minutes later at 8:45am asking Respondent Elie “Is that salary monthly?”

16. Neither Respondent Elie nor anyone else from University of Wisconsin-Parkside has ever told Petitioner Mathewson the timeframe for the \$3,009.00 salary.

17. A salary is not complete without both an amount *and* a time frame.

18. \$3,009.00 is an amount that would be reasonable for a college professor weekly, bi-weekly, monthly or bi-monthly.

19. On September 20, 2022 University of Wisconsin-Parkside Chancellor Debbie Ford emailed Plaintiff Mathewson to clarify the denials.

20. A true and accurate copy of the email from ¶19 is attached hereto and incorporated herein as **EXHIBIT 3**.

21. In the email from ¶19, Chancellor Ford ignores the issue of the salary and tells Petitioner Mathewson that Mr. Harris' job application was denied due to Wis. Stat. §19.36(10)(a).

22. On September 20, 2022 Petitioner Mathewson sent a demand letter to Respondent Ford giving a deadline to reconsider of September 28, 2022.

23. Ford elected to not reconsider or respond to this demand.

COUNTS I & II – VIOLATION OF WIS. STAT. § 19.35(1)(a)
Unlawful Denial of September 4, 2022 Requests

24. 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.”

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

26. Mathewson has a clear legal right to receive the records he requested on September 4, 2022, and Respondents 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.”

27. 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.”

28. 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).

29. Respondent’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.

30. 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.

31. 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

32. “The public has a very strong interest in being informed about public officials who have been derelict in their duty.” [[Hempel, ¶68]]. ““All officers and employees of government are, ultimately, responsible to the citizens, and those citizens have a right to hold their employees accountable for the job they do.”” [[Linzmeier, ¶28, check quotation of other

source – J/S v. Shorewood]]. “The public has an interest in knowing about such allegations of [employee] misconduct.” *Zellner* [[¶53.]]

33. “When individuals become public employees, they necessarily give up certain privacy rights and are subject to a degree of public scrutiny.” Local 2489 [[¶26]]

34. Respondent’s claim that Wis. Stat. §19.36(10)(a). prohibits them from releasing the records is troubling and legally absurd.

35. Wis. Stat. §19.36(10)(a) prohibits a government employee’s home address, home electronic mail address, home telephone number, or social security number of an employee, unless the employee authorizes the authority to provide access to such information.

36. Wis. Stat. § 19.36(6) states that “If a record contains information that is subject to disclosure under s. 19.35 (1) (a) or (am) and information that is not subject to such disclosure, the authority having custody of the record shall provide the information that is subject to disclosure and delete the information that is not subject to disclosure from the record before release.”

37. Respondents should have simply redacted information that cannot be released under §19.36(10)(a) and released the rest to Petitioner Mathewson.

38. Respondents’ failure to provide a time from for the \$3,009.00 salary doesn’t allow Plaintiff to know how much Mr. Harris makes.

39. 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.

40. “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.

September 28, 2022

Respectfully submitted,

Kevin E. Mathewson
P.O. Box 2295
Kenosha, WI 53141
262-237-8501
kevin.mathewson@yahoo.com



Kevin Mathewson <kenoshacountyeye@gmail.com>

Public records request dated September 4th 2022

Kevin Mathewson <kenoshacountyeye@gmail.com>

Sun, Sep 4, 2022 at 4:26 PM

To: elie@uwp.edu

Hi Elie,

I will notate in the upcoming article your name, your role, and that Parkside did not want to comment as to hiring a violent felon.

I hereby request under the Wisconsin public records statute any document(s) in the possession of the UW system that contains the date of hire, position, salary, and employment application for a Sharmain S. Harris. (DOB 9/7/1988)



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Kevin Mathewson
Editor, Investigative Journalist
Kenosha County Eye

kenoshacountyeye@gmail.com
262-237-8501

Twitter: KenoshaCtyEye
www.kenoshacountyeye.com

----- Original message -----

From: Kevin Mathewson <kenoshacountyeye@gmail.com>

Date: 8/30/22 9:58 PM (GMT-06:00)

To: elie@uwp.edu

Subject: Request for Comment / Sharmain Harris

Miss Elie,

Last week, a man named Sharmain Harris bragged on Facebook about being hired by the University of Wisconsin Parkside as a professor. He said that Kenosha District Attorney Michael Gravely got him the job

Can you confirm if this is true?

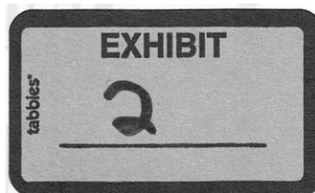
If you didn't know, Sharmain is a violent felon.

He was convicted of crack-selling in two cases. Judge Mary K. Wagner went easy on him, giving him 4 years of probation for the two felony convictions.

Four months after he was caught selling crack, he was charged with 6 felonies and 2 misdemeanors for a gang-land assault in the 4600 block of 36th Ave. According to the criminal complaint, and a source, on May 17, 2009, Harris was accused of beating a man with a baseball bat. He then threw a brick through the window of a house hitting a woman and nearly missing a child. Harris was with about 30 other people, all alleged to be members of the same street gang. Believe it or not, Wagner gave him only 2 more years of probation on top of the 4 already imposed. No jail.

In 2011, Harris was charged for yet another incident of violence. He was charged with 1 felony and 3 misdemeanors. According to the criminal complaint, Harris kicked in the door to his ex-girlfriend's home and entered it without permission. The victim told police he was upset looking for drugs and money. When Harris realized she was on the phone with 9-1-1, he strangled her and dragged her around the home by her throat and hair. He then took the phone from her. He then took her wallet and left the home. This case revoked his probation and sent him to prison. He was given an over-generous plea deal again.

Sharmain was also caught fraudulently displaying fake endorsements on his website.

**University Relations**900 Wood Road | P.O. Box 2000
Kenosha, WI 53141-2000262-595-3262
www.uwp.edu

September 6, 2022

Kevin Mathewson
Kenosha County Eye

Re: Open Records Request

Dear Mr. Mathewson,

Per your request, below is the position information you requested regarding Mr. Harris:

Date of Hire: 8/22/2022

Position: Lecturer - Criminal Justice

Salary: \$3,009.00

Pursuant to 230.13(2), additional details about specific job searches are confidential, and we are unable to share any additional information.

To the extent this response is a denial of your request, the determination is subject to review by mandamus under s. 19.37(1) or upon application to the attorney general or a district attorney.

Sincerely,

A handwritten signature in cursive script that reads "Tannette Elie".

Tannette Elie
Executive Director University Relations
Records Custodian



Kevin Mathewson <kenoshacountyeye@gmail.com>

RE: Media Inquiry / Request for Comment

1 message

University of Wisconsin-Parkside Office of the Chancellor <chancellor@uwp.edu>

Tue, Sep 20, 2022 at 5:02 PM

To: Kevin Mathewson <kenoshacountyeye@gmail.com>

Cc: "Ford, Deborah L" <ford@uwp.edu>



Mr. Mathewson,

Thank you for your email. In response to your request, the University of Wisconsin–Parkside performs criminal background checks on every candidate recommended for hire (as required by UW Board of Regents policy) and makes all offers of employment contingent on successful criminal background checks. Candidates with a criminal history cannot be automatically disqualified from employment to comply with Wisconsin fair employment law, which prohibits an employer from discriminating against a candidate on the basis of conviction record unless a conviction is substantially related to the position.

For candidates with a criminal history, UW–Parkside considers the nature of the crime and its relationship to the position, time since the conviction, and whether hiring the applicant would pose an unreasonable risk to the university, employees, or students. UW–Parkside analyzed Mr. Harris's history and the circumstances of the part-time criminal justice lecturer position and determined he was eligible for appointment.

Regarding your request for Mr. Harris's employment application, Wis. Stats. § 19.36(10)(a) prohibits UW–Parkside from providing records including the home address, home electronic email address, home telephone number, or social security number of an employee. Therefore, we are unable to produce records in response to your request.

Thank you,

Debbie Ford

**Debbie Ford**

Chancellor

University of Wisconsin-Parkside

900 Wood Road | Kenosha, WI 53144

262-595-2211 | ford@uwp.edu

apply today

