



Madison Police Department

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Bill Lueders, News Editor
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Mr. Lueders,

I am writing in response to your written open records request dated February 26, 2008. While assessing your request, I begin with the presumption of complete public access, and have weighed the public interest in disclosure against the public interest in nondisclosure. I also recognize that the public needs to know what type of misconduct is occurring within the Madison Police Department and that the Department is taking appropriate corrective action to remedy discovered misconduct. I further understand that an employee in the public sector does not forfeit all rights of privacy.

Your request was for "records in the possession of the Madison Police Department regarding an allegation of sexual assault against a Madison Police Officer with the initials [REDACTED], and the department's subsequent internal probe surrounding this matter." I will not confirm at this point whether any records exist of the type that you requested regarding any particular employee of this department.

I will confirm that the Department has concluded an internal investigation into whether an off duty Madison Police Officer committed a felony in a jurisdiction outside of Wisconsin. We determined that the allegation was not sustained. A finding of not sustained means that an allegation is not supported by a preponderance of evidence.

Concurrent with the completion of this investigation, the complainant contacted the jurisdiction where the criminal act allegedly took place. That jurisdiction has recently initiated a criminal investigation. I have spoken with the lead investigator and he has requested that I provide him with copies of my reports and access to any evidence that I have obtained. I will be providing him with access to those materials and with support for any investigation he intends to conduct in the Madison area.

Thus, even though the Madison Police Department internal investigation is concluded (this decision may be subject to reversal depending upon developments in the criminal investigation), it is nonetheless part and parcel of an ongoing criminal investigation. Therefore, those specific records cannot be released at this time. Wisconsin Law prohibits release of these records (Wis. Stats. 19.36 (10)(b)), and release of these records would jeopardize the integrity of the criminal investigation.

It is my experience that the release and publication of these records could disclose sensitive investigative strategies and impede his investigation. Disclosing such information could inhibit the cooperativeness of witnesses who may be reluctant to speak with the police if potential evidence is being reported in the

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media before the conclusion of this investigation. In fact, witnesses have been reluctant to cooperate in the department's internal investigation and have cited concerns for the media coverage that has already occurred regarding this matter. Public release of heretofore undisclosed details of this internal investigation could compromise the criminal investigation in other ways as well. One example of this is that witnesses would be able to review other witnesses' statements and reconcile differences between their accounts. Such actions may make it impossible to tell which witness is credible and accurate and which is not. I am also concerned about the due process rights of the targets of investigations who may have their reputations unduly tarnished if evidence is released piecemeal to the public prior to the completion of an investigation. These are all compelling grounds for withholding these records at this time. In short, I conclude that the public's interest in conducting a thorough investigation and the public's interest in maintaining the integrity of this investigation clearly outweighs the public's interests in reviewing these records at this time.

In addition, I recognize that the allegations at issue involve a sensitive and traditionally under-reported crime. Victims of sensitive crimes are often reluctant to come forward and report these crimes to the police. Their reluctance is based upon many factors but most noteworthy are their fears of embarrassment if their victimization becomes public knowledge and their fears that they may not be believed. These fears are only intensified when the crime was allegedly perpetrated by a police officer. Society has a strong interest in encouraging such victims to report these crimes. We do not want to take any actions that would dampen this or any other complainant's willingness to report these crimes and to cooperate with such investigations.

Furthermore, this case was brought upon the complaint of one police officer raising allegations about the conduct of another police officer. Your newspaper has already resolved the question of your access to such materials through the holding in *Wisconsin State Journal, et al v. Chief Richard K. Williams*, No. 96-CV-1137, (Wis. Cir. Ct. Dane County Feb. 3, 1998). Please be assured that once this criminal investigation is completed, this Department intends to honor its obligations under that court decision.

Pursuant to section 19.35(4)(b) of the Wisconsin Statutes, I advise you that this determination not to disclose portions of the information requested is subject to review by mandamus under section 19.37(1) of the Wisconsin Statutes, or upon application to the Attorney General or Dane County District Attorney. If you have any questions please call me at 266-6502.

Sincerely,



Lieutenant Kristen Roman
Professional Standards and Internal Affairs

cc: City Attorney, Mayor's Office