



Milwaukee Police Department
Police Administration Building
749 West State Street
Milwaukee, WI 53233
<http://www.city.milwaukee.gov/police>
Jeffrey B. Norman
Chief of Police

May 21, 2025

WI Right Now
Jessica McBride

Dear Jessica McBride:

This letter is in response to your public records request pursuant to the provisions of the Wisconsin Public Records Law (Wis. Stat. § 19.31-39). In your email dated April 25, 2025, you requested the following information:

See Attached Request

The public policy in this state is to give the public the greatest amount of access to public records as possible. Wis. Stat. § 19.32. The general presumption is that public records are open to the public unless there is a clear statutory or common law exception. If there is no clear statutory or common law exception the custodian must “decide whether the strong presumption favoring access and disclosure is overcome by some even stronger public policy favoring limited access or nondisclosure.” *Hempel v. City of Baraboo*, 2005 WI 120, ¶ 28. Notwithstanding the presumption of openness, the public’s right to access to public records is not absolute. *Journal/Sentinel v. Agerup*, 145 Wis. 2d 818, 822 (Ct. App. 1988).

At this time, your request for the body worn camera video you identified has been denied, pursuant to the Wis. Stat. § 19.35(1)(a) balancing test. The public policies supporting the denial are set forth below, but the denial was based in large part on the fact that the investigation into the incident at issue in the requested footage is still open and ongoing. In *Linzmeier v. Forcey*, 2002 WI 84, ¶ 30, 254 Wis. 2d 306, the Wisconsin Supreme Court opined that when an investigation is on-going the “general presumption of openness will likely be overcome.” Law enforcement records pertaining to ongoing investigations can be particularly sensitive. In this instance, release of the requested records related to the on-going investigation, prior to its completion, could compromise or prejudice additional investigation, could impact the ability of law enforcement to gain cooperation from potential witnesses, and could infringe on the reputation and privacy of victims and witnesses. The requested videos also contain raw investigation data gathered from witnesses of varying degrees of reliability that has not yet been properly verified. *Id.* at ¶¶ 30-39; *see also Agerup*, 145 Wis. 2d 818 (Ct. App. 1988).

In applying the balancing test, public policies in favor of keeping strategies for crime detection and prevention confidential were also considered. The exceptions to the requirement of a government body to meet in open session under Wis. Stat. § 19.85 are indicative of public policy and may be used as grounds for denying a public records request after application of the balancing test. Wis. Stat. § 19.35(1)(a). In this instance, we looked to the exception set forth in Wis. Stat. § 19.85(1)(d), which allows a body to convene in closed session to discuss strategies for crime detection and crime prevention. This exception has been interpreted by courts as being representative as a public policy favoring nondisclosure of records related to ongoing criminal investigations. *See e.g. Agerup*, 145 Wis.2d at 825.

In applying the balancing test, we also considered whether disclosure of the records that relate to the ongoing investigation would reveal investigation or prosecutorial techniques or strategies. "Public records containing prosecution strategies and police tactics are not specifically excepted from disclosure by Wisconsin statutes, but records custodians can properly consider such content when determining 'whether the presumption of openness ... is overcome by another public policy.'" *Democratic Party of Wisconsin v. Wisconsin Dep't of Justice*, 2016 WI 100, ¶ 18, 372 Wis.2d 460.

Although the Freedom of Information Act (FOIA) 5 USC § 552 does not apply to Wisconsin, Wisconsin Courts have held that FOIA exceptions may be considered when applying the balancing test. See *Linzmeier*, 2002 WI 84, and *Kraemer Bros. v. Dane County*, 229 Wis. 2d 86, 103 (Ct. App. 1999), review denied, 231 Wis. 2d 375 (1999). The relevant FOIA exception that was considered in this instance is 5 USC §§ 552(b)(7)(E). This exception, which is indicative of public policy, allows an authority to deny access under FOIA to records which disclose techniques, procedures or guidelines for law enforcement investigations.

Consequently, after weighing the above public policies against the general policies of openness and transparency in government records and the statutory presumption in favor of disclosure, we have determined that the balance weighs in favor of the nondisclosure of the requested body camera footage while the investigation it relates to is still ongoing. If you wish, you may resubmit your request once the investigation has concluded. If you choose to do so, your request will be re-evaluated at that time.

The determinations above are subject to review by mandamus action under Wis. Stat. § 19.37(1), or upon an application to the Wisconsin Attorney General or the Milwaukee County Corporation Counsel.

Sincerely,

JEFFREY B. NORMAN

CHIEF OF POLICE

s/ 
JAY KARAS
POLICE LIEUTENANT

JBN: JK: sw

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