

# CALUMET COUNTY SHERIFF'S DEPARTMENT

MARK R. OTT, SHERIFF  
Brett J. Bowe, Chief Deputy



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March 9, 2016

Re: Public Records Request dated February 26, 2016

Dear [REDACTED]

Please accept this correspondence as the Calumet County Sheriff's Department response to your series of records requests dated February 26, 2016.

## Request Number 1

Your Request Number 1 asked for copies of the following records in the custody of the Sheriff's Department:

Property Tag No.	Description	Sealed?
8482	Officer crime scene log	No
8775	Incident group time logs	Yes
9270	Entry/exit log for residence	Yes
9271	Entry/exit log for residence	Yes
8952	Original Avery interview	Yes
8629	8mm video tape from Det. Jacobs	Yes
8642	8mm video tape	Yes
8512	CD interview Roger Radovenz	Yes
7838	Copy of microcassettes contained in envelope	Yes
8044	Camcorder tape of property	Yes
8087	8mm digital camcorder cassette	Yes
14927	Digital photos/video	Yes
14930	CD of photos	Yes
14929	CD of video	Yes
14931	2 microcassettes	Yes
14928	VHS tapes	Yes
8494	Permission to search form	Yes

7830	2 receipts from inmate treasures	Yes
8755	Letter found at Green Bay Post Office	Yes
8756	Container envelope the letter was in	Yes
14921	Film negatives	Yes
8680	Two letters	Yes
8935	Map drawn by Kayla Avery	Yes
8934	Note from Robin Litersky	Yes
8933	Map drawn by Robin Litersky	Yes

You will note that we have included a column indicating whether the requested record is “sealed.” This notation refers to the particular record’s status within the Sheriff’s Department. If it is noted as “sealed,” the record is being maintained in its original packaging with an evidence seal that establishes chain of custody.

The presumption of public access to records maintained by the Sheriff’s Department may give way to statutory or specified common law exceptions, or, if there is an overriding public interest in keeping the record confidential. *See Hathaway v. Joint Sch. Dist.*, 116 Wis. 2d 388, 397, 342 N.W.2d 682 (1984). The existence of a statutory exception or common law limitation indicates that the legislature or the supreme court have predetermined that the harm to the public interest from inspection outweighs the benefits. *Mayfair Chrysler-Plymouth, Inc. v. Baldarotta*, 162 Wis.2d 142, 156, 469 N.W.2d 638 (1991).

As it relates to records maintained by a law enforcement agency, our courts and the Wisconsin Attorney General have repeatedly recognized legitimate public policy reasons for an agency’s refusal to disclose records of an investigation that could be the subject of criminal or related proceedings. *See, e.g., Milwaukee Journal v. Call*, 153 Wis. 2d 313, 318-322, 450 N.W.2d 515 (Ct.App.1989) (police and sheriff’s departments’ records regarding a pending homicide investigation); *Journal/Sentinel, Inc. v. Aagerup*, 145 Wis.2d 818, 822-24, 429 N.W.2d 772 (Ct.App.1988) (autopsy report in an ongoing criminal case); *Newspapers, Inc. v. Breier*, 89 Wis.2d 417, 426-28, 279 N.W.2d 179 (1979) (police daily arrest records); and *Beckon v. Emery*, 36 Wis.2d 510, 516-19, 153 N.W.2d 501 (1967) (pending municipal citations); *Wisconsin Public Records Law Compliance Guide*, Wisconsin Department of Justice, Attorney General Brad D. Schimel (Nov. 2015) at 39-40.

In addition to considering the common law limitations on disclosure of law enforcement records cited above, the Sheriff’s Department is required to determine if the public’s interest in disclosure of the requested records is outweighed by the public’s interest in not disclosing the requested records. In particular, the Department has considered and weighed the public’s strong interest in preserving evidence and the chain of custody in an on-going criminal proceeding, and related proceedings, and finds it outweighs the strong public interest in providing access to public records generally.

It is our understanding, based upon correspondence the county’s counsel received from the Wisconsin Department of Justice, that matters surrounding the investigation of Teresa Halbach’s death (and related matters) are the subject of ongoing, as well as reasonably contemplated, court proceedings. As a result, the evidence that the Sheriff’s Department continues to maintain in a “sealed” state is, or reasonably could be, evidence utilized in a current or future court proceeding.

In its communication to the county's counsel in relation to the evidence maintained in a "sealed" evidence container, the Department of Justice indicated that it "believes that the release of the requested records could likely adversely impact the ongoing [Halbach-related] litigation. Release of the requested records at this time would compromise DOJ's ability to effectively investigate and litigate this matter. Additionally, in a case in which the integrity of evidence is at issue, removing the requested items from their original packaging and seal could have a likely adverse impact on the litigation."

The public has a legitimate interest in the fair and complete presentation of evidence in relation to a criminal or related proceeding. Evidence is collected by law enforcement officials in a manner designed to ensure the integrity of the evidence and the manner by which it was collected. Included within the collection effort are mechanisms designed to ensure chain of custody of all physical evidence. One of these mechanisms is the placement of evidence in a sealed container, which seal is not intended to be broken until the evidence is utilized in a trial or related proceeding. Evidence that is introduced without the benefit of a seal is subject to increased scrutiny based upon chain of custody, authenticity and allegations of evidence spoliation or tampering.

Based upon the Department of Justice's concerns, coupled with the Sheriff's Department performing its own balancing test, the Sheriff's Department concludes that the public's interest in maintaining the integrity of evidence that will be, or is reasonably anticipated to be, utilized in a criminal or related proceeding outweighs any interest the public may have in disclosing the records maintained in "sealed" evidence containers. Therefore, the Sheriff's Department must deny your request for access to the records that are noted above as being maintained in a "sealed" evidence container.

As it relates to Property Tag No. 8482, which consists of 133 pages, the Sheriff's Department is evaluating how to best create a copy of the record given sensitivities surrounding the authenticity of the record in its original state. We will supplement this response once we have any opportunity to determine the best method by which to make a copy. The charge for the copies will be \$33.25.

### **Request Numbers 2 through 6**

In response to your Request Number 2 for "fly-over of the Manitowoc area and Avery Salvage Yard," the Sheriff's Department is in possession of one (1) DVD. A copy of that DVD is available for a charge of \$10.00.

In response to your Request Number 3, the Sheriff's Department maintains the "anonymous letter and envelope found at Green Pay post office" in a sealed container. Therefore, based upon the analysis set forth above, which is incorporated by reference herein, the Sheriff's Department must deny your request for access to the records requested in your Request Number 3.

In response to your Request Number 4 for "interviews of George Zipperer," the Sheriff's Department has a report consisting of three (3) pages. A copy of that report is available for a charge of \$0.75.

In response to your Request Number 5 for "interviews of Barb Janda," the Sheriff's Department has five (5) pages of responsive records. Copies of those records are available for a charge of \$1.25.

In response to your Request Number 6 for "records or reports produced by Leslie Eisenberg," the Sheriff's Department is not in possession of any records response to your request. We would suggest that you contact Dr. Eisenberg or the Manitowoc County Clerk of Courts to ascertain whether either of them are in possession of the requested records and would be able to fulfill your request.

In summary, the Sheriff's Department will provide a copy of the DVD from Request Number 2, the records from Request Number 4 and the Records from Request Number 5 upon receipt of your payment of \$12.00. Please remit payment to my office at the address indicated on the first page of this letter. Upon receipt, we will mail the copies to you. As indicated above, we will also supplement this response once we have determined the best method by which to copy the record identified as Property Tag No. 8482.

You are advised that you may challenge the Sheriff's Department's partial denial of your requests in an action for mandamus pursuant to Wis. Stat. § 19.37(1), or by application to the Calumet County District Attorney or Attorney General. If you have any further questions or concerns relating to your requests or the Sheriff's Department's response herein, please contact our outside counsel, Andrew Phillips, at (414) 287-1570.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mark R. Ott".

Mark R. Ott, Sheriff  
Calumet County Sheriff's Dept.

Enclosure