



GREG BROCKMEYER
Director of Administration

COUNTY OF DANE
DEPARTMENT OF ADMINISTRATION

RISK MANAGEMENT

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DAN LOWNDES
Risk Manager &
Records Control Officer

April 21, 2023

Dane County Board Supervisor Heidi Wegleitner
via email to: Wegleitner.Heidi@countyofdane.com

Re: Request for Records

Dear Supervisor Wegleitner:

I have been asked to respond to your recent request for records. You initially asked for:

1. The list of final 4 candidates interviewed to become the next Director of Dane County Department of Human Services (DCDHS);
2. Their applications;
3. The rankings from hiring panel;
4. References listed; and
5. Notes from reference checks.

Then you sent a follow up request for:

6. Copies of all 26 applications.

Your first request (for the names of the final candidates) is technically a request for information. While there is no responsive record, in the spirit of open government, the names of the final candidates (in alphabetical order) are:

April Heim
Astra Iheukumere
Sheila Stubbs
Regina Vidaver

This information is public under Wis. Stats. § 19.36(7)(b). *See also Milwaukee Journal v. UW Board of Regents*, 472 NW 2d 607, 163 Wis.2d 933, 939 (1991) ("...while there might be valid reasons to give the secretary some discretion to allow the names of that large group of initial applicants for classified jobs to be kept confidential, the state has no business shielding the names of the finalists for public positions from public view").

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I will now apply Wisconsin's balancing test to your second request (for the finalists' application). Starting on page 31, the Wisconsin Attorney General's Public Records Law Compliance Guide (found here: <https://www.doj.state.wi.us/sites/default/files/office-open-government/Resources/PRL-GUIDE.pdf>) instructs records custodians to balance the strong public interest in disclosure of a particular record against any public interest favoring non-disclosure of that record. Records custodians must perform the balancing test upon a fact-intensive, case-by-case basis. *Kroeplin v. Wis. Dep't of Nat. Res.*, 2006 WI App 227, ¶ 37, 297 Wis. 2d 254, 725 N.W.2d 286 citing *Hempel v. City of Baraboo*, 2005 WI 120, 284 Wis.2d 162 ¶ 63, 699 N.W.2d 551 ("[A]n 'exceptional case' ... exists when the facts are such that the public policy interests favoring nondisclosure outweigh the public policy interests favoring disclosure, notwithstanding the strong presumption favoring disclosure"). While the *private interests* of the applicants is not a proper element in the balancing test, I am required to see if there is a *public interest in protecting an individual's privacy*. *Linzmeier v. Forcey*, 2002 WI 84, ¶ 31, 254 Wis. 2d 306, 646 N.W.2d 811.

The Wisconsin Supreme Court has recognized that disclosure of certain public records might result in fewer qualified applicants for public positions. *Village of Butler v. Cohen*, 163 Wis. 2d 819, 831, 472 N.W.2d 579 (Ct. App. 1991). *See also* Wis. Stat. § 230.13 (2) (protecting records of applicants for employment at the State of Wisconsin from disclosure) and the Wisconsin Attorney General's Public Records Law Compliance Guide at page 24. Therefore, the public interest in a public employer receiving applications from a high number of qualified candidates can, sometimes, outweigh the strong presumption favoring disclosure of the applications for public positions.

However, the particular position your request relates to is one of the most important in the County. The Director of DCDHS will (indirectly) supervise hundreds of employees and manage about half of the County budget. Therefore, I have determined that the public's interest in releasing the finalists' applications outweighs the public's interest in keeping the finalists' applications confidential. Redacted copies of the finalists' applications are attached to this email. Note that I have redacted the finalists' contact information (such as home addresses, email addresses and phone numbers) as I have determined that the public's interest in keeping this information confidential (as described in the *Village of Butler* case) outweighs the public's interest in releasing this information.

Turning to your third request (the rankings from hiring panel), Dane County's Civil Service Ordinance specifically requires Dane County Employee Relations to inform each individual candidate where they initially ranked. § 18.09(10). However, the Director of DCDHS is not a Civil Service position and Employee Relations did not rank the applicants. Because there is no responsive document, this part of your request is denied.

Regarding your fourth request (finalists' references), the names and positions of references listed by the finalists appear on their applications. Note that I have redacted the finalists' references' contact information (such as addresses, email addresses and phone numbers) as I have determined that the public's interest in keeping this information confidential (as described in the *Village of Butler* case) outweighs the public's interest in releasing this information.

Regarding your fifth request (notes from reference checks), that request is denied there are no responsive documents.

Regarding your final request (for the copies of applications of non-finalists), that request is denied under the balancing test as well. Dane County should be pleased that we received 25 applications for the Director position (and one duplicate, for a total of 26). I have a good faith belief that if the identities of the 21 non-finalists were released, Dane County would receive fewer qualified applications for high level positions in the future.

I understand that a requestor may only want to know qualifications (not the identities) of the 21 non-finalists. However I have a good faith belief that I could not sufficiently redact the 21 non-finalists' applications so that their identities would be released even if no one could see their names. I have reviewed the applications and Dane County received applications from people holding positions across a wide variety of County and State governments, departments (for example, Health Services, Justice, Safety and Professional Services, and Administration), and firms in the private sector. Positions that applicants held/hold ranged from Department Head and Executive Director, to Director of Operations and College Professor. Under these circumstances, I believe that redacting the names of the non-finalists would be dramatically insufficient to protect their identities.

To prove my point, look to the finalists' applications I am enclosing. There is only one person who is representing District 77 in the State Assembly and there is only one person who is the Interim Director of DCDHS. If Sheila Stubbs and Astra Iheukumere were not finalists, I would not be able to hide their identities simply by redacting their names. In order to truly protect their identities, I think I would have to redact a vast majority of their applications. In fact, I have a good faith belief that I would have to redact so much information from their applications that no one would be able to figure out how they were even qualified for the position.

Therefore, based upon the policies articulated in statutes protecting the privacy of applicants for jobs at the State of Wisconsin and the policies set forth in case law cited above, I am convinced that the public's interest in Dane County receiving applications from a high number of qualified candidates outweighs the strong presumption favoring disclosure of the applications of the 21 non-finalists.

Pursuant to Wis. Stat. § 19.35(4)(b), I am required to inform you that if you disagree with any determinations contained in this letter, you may seek review by mandamus under Wis. Stat. §19.37(1) or by application to the attorney general or a district attorney.

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Sincerely,

A handwritten signature in black ink, appearing to read "D. Lowndes", with a long horizontal flourish extending to the right.

Dan Lowndes
Risk Manager & Records Control Officer

Enclosures

cc: Greg Brockmeyer (via email and with enclosures)