

STATE OF WISCONSIN : CIRCUIT COURT : MILWAUKEE COUNTY
CIVIL DIVISION

SHADÉ SWAYZER,

2646 N. 34th Street,
Milwaukee, WI 53210,

Petitioner,

v.

Case No.

SHERIFF DAVID A. CLARKE JR.,

Milwaukee County Sheriff's Office,
821 West State Street,
Milwaukee, WI 53233,

And,

CAPTAIN CATHERINE TRIMBOLI,

Milwaukee County Sheriff's Office,
821 West State Street,
Milwaukee, WI 53233,

Respondents.

Writ of Mandamus: 30952

PETITION FOR WRIT OF MANDAMUS

NOW COMES, Petitioner Shadé Swayzer, by and through her attorneys, **JUDGE, LANG & KATERS, LLC**, and respectfully files this Petition for Writ of Mandamus pursuant to Wis. Stat. §§ 19.35(1)(a) & 19.37(2). In support thereof, Petitioner alleges and shows the Court as follows:

PARTIES

1. The Petitioner, Shadé Swayzer (“Swayzer”), residing at 2646 N. 34th Street, Milwaukee, WI 53210, is the person who gave birth in the Milwaukee County Justice Facility on July 14, 2016.

2. The Respondent, David A Clarke Jr. (“Clarke”), Sheriff, Milwaukee County Sheriff's Office (“MCSO”), with offices located at 821 West State Street, Milwaukee, WI 53233, is the Milwaukee County Sheriff.

3. The Respondent, Catherine Trimboli (“Trimboli”), Captain, Milwaukee County Sheriff’s Office (“MCSO”), with offices located at 821 West State Street, Milwaukee, WI 53233, is the custodian of all records and documents connected with and possessed by the MCSO relative to Swayzer.

VENUE

4. Venue is proper pursuant to Wis. Stat. §§ 801.50(2) and 801.50(3).

FACTS

5. That on July 6, 2016 Swayzer was booked into the Milwaukee County Justice Facility (“CJF”) on a probation hold.

6. That on July 6, 2016, Swayzer was eight and a half months pregnant.

7. That on July 6, 2016, prior to being booked into CJF, Swayzer was taken to Columbia St. Mary’s Hospital by the Glendale Police Department.

8. That on July 6, 2016, Swayzer’s deceased child was viable and Swayzer’s pregnancy was progressing as normal.

9. That on July 6, 2016, the Milwaukee County correctional staff, medical staff, and mental health staff were well aware that Swayzer was eight and a half months pregnant.

10. That on July 7, 2016, despite being pregnant and diagnosed with severe mental illness, Swayzer was housed in the Maximum Security Unit at the CJF.

11. That on July 14, 2016, at approximately 12:00 am, Swayzer went into labor while in her cell on the Maximum Security Unit.

12. That on July 14, 2016, at approximately 12:15 Swayzer informed an unknown correctional officer that her water had broken and that she was in labor.

13. That said unknown correctional officer laughed at Swayzer and ignored her request for medical attention.

14. That on July 14, 2016, Swayzer gave birth at approximately 4:00 a.m. in her cell by herself to a child that born alive, cried profusely, and was breast fed by Claimant Swayzer.

15. That on July 14, 2016, at approximately 6:00 am, almost six hours after Swayzer went into labor and two hours after the child had been born, correctional staff discovered that the Swayzer had given birth.

16. That Swayzer's child died on July 14, 2016, in the Milwaukee County Justice Facility.

17. That on September 22, 2016, Petitioner, through her counsel, sought records regarding her incarceration pursuant to the Freedom of Information Act, 5 U.S.C. § 552 and W.S.A. 19.31, et seq., and the Wisconsin open records law(s) ("September Records Request"), requesting:

All records in your possession concerning Shade A. Swayzer and employees of the Milwaukee County Sheriff's Office as it relates to their care, treatment, incarceration, involvement, processing, and observations of Shade A. Swayzer from January 1, 2012 to the Present.

(Jankowski Affidavit ¶3, **Ex. 1**).

18. That Petitioner's September 22, 2016, records request also included a request for all emails exchanged between "any employee or agent of the Sheriff's department regarding Shadé Swayzer." (Jankowski Affidavit ¶3, **Ex. 1**).

19. That Petitioner's September 22, 2016, records request also included a request for all medical records in possession of the MCSO regarding Shadé Swayzer. (Jankowski Affidavit ¶3, **Ex. 1**).

20. That at all times relevant and material hereto, Armor Correctional Health Services, Inc. ("Armor"), was a private contractor who provided healthcare services at CJF and was in charge of the medical records for all inmates at CJF.

21. That on October 10, 2016, Armor responded to Petitioner's September Records Request by transmitting an invoice via facsimile informing Petitioner that Petitioner's medical records were ready and would be provided upon payment of \$54.80. (Jankowski Affidavit ¶4, **Ex. 2**).

22. That on October 11, 2016, Petitioner's Counsel contacted the MCSO Open Records Division via telephone to inquire as to the status of Petitioner's September Records Request.

23. That on October 11, 2016, Petitioner's Counsel was informed by MCSO Detective Cory Clark via telephone that there was no record of Petitioner's September Records Request in the MCSO computer system.¹

24. That upon learning this information from Detective Clark, Petitioner's counsel hand delivered a copy of Petitioner's September Records Request to Detective Clark at the MCSO.

25. That on October 12, 2016, Detective Clark emailed Petitioner's counsel and advised that the September Records Request would be best addressed by medical staff and that he had delivered said request to a nursing supervisor in the medical section at the jail. (Jankowski Affidavit ¶5, Ex. 3).

26. That on October 12, 2016, Petitioner's counsel responded to Detective Clark's email that the medical records department at CJF had already answered Petitioner's September Request and attached the October 10, 2016, invoice from Armor demonstrating that fact. (Jankowski Affidavit ¶6, Ex. 4).

27. That Petitioner's counsel's October 12, 2016, email further informed Detective Clark that the September Records Request sought records pertaining to Petitioner's, "**booking, classification, officers' names, housing logs, incident reports, internal affairs investigations, etc.**" (Jankowski Affidavit ¶6, Ex. 4).

28. That on October 13, 2016, Petitioner's counsel hand delivered a second open records to Detective Clark at the MCSO Open Records Division ("October Records Request"). (Jankowski Affidavit ¶7, Ex. 5).

¹ Petitioner's September Records Request had previously been responded to by Armor on October 11, 2016, which demonstrates that the MCSO had in fact previously received Petitioner's September Record Request.

29. That Petitioner's October Records Request informed the MCSO that the refusal to respond to Petitioner's September Records Request was unacceptable pursuant to the Freedom of Information Act and Wisconsin Open Records Law. The MCSO was also informed that if the records were not disclosed, Petitioner would be forced to file a Writ of Mandamus action seeking access to the records and emails concerning Petitioner and MCSO employees as it related to their care, treatment, incarceration, involvement, processing, and observations of Swayzer from January 1, 2012, until her release. (Jankowski Affidavit ¶7, Ex. 5).

30. That on October 14, 2016, Respondent Trimboli emailed Petitioner's Counsel a boilerplate response to Petitioner's Record Requests. (Jankowski Affidavit ¶8, Ex. 6).

31. That in Trimboli's October 14, 2016, email, Trimboli informed Petitioner's counsel that the Request was under review and that a response would be provided as soon as practicable and without delay. (Jankowski Affidavit ¶8, Ex. 6).

32. That as of the date of the filing of this Petition, the October 14, 2016, email from Respondent Trimboli to Petitioner's Counsel is the only response the MCSO has provided to Petitioner regarding the September and October Records Requests.

33. That as of the date of the filing of this Petition, the MCSO has refused to provide Petitioner access to the requested records in the MCSO possession and has failed to provide any explanation whatsoever as to why the documents have not been produced.

COUNT I
RESPONDENTS' VIOLATION OF THE WISCONSIN OPEN RECORDS LAW

34. Petitioner incorporates by reference all allegations set forth in the preceding paragraphs.

35. Under Wis. Stat. § 19.31 *et seq.*, ("Wisconsin Open Records Law"), it is declared the public policy of this state that every citizen is entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees of government.

36. The Wisconsin Open Records Law requires state authorities, including the MCSO, to provide information to requesters unless the custodian of the requested information can make a specific showing that there is a need to restrict public access. Wis. Stat. §19.35(1)(a), Right to Inspection, provides:

Except as otherwise provided by law, any requester has a right to inspect any record. Substantive common law principles construing the right to inspect, copy or receive copies of records shall remain in effect. The exemptions to the requirement of a governmental body to meet in open session under s. 19.85 are indicative of public policy, **but may be used as grounds for denying public access to a record only if the authority or legal custodian under s. 19.33 makes a specific demonstration that there is a need to restrict public access at the time that the request to inspect or copy the record is made.** (Emphasis added).

37. The presumption of the law is that records shall be open to the public unless there is a clear statutory exception, a limitation exists under the common law, or there is an overriding public interest in keeping the public record confidential.

38. Wis. Stats. §§ 19.32 to 19.37 shall be construed in every instance with a presumption of complete public access, consistent with the conduct of government business. The denial of public access generally is contrary to public interest, and only in exceptional cases may access be denied. *Zellner v. Cedarburg Sch. Dist.*, 2007 WI 53, ¶31, 300 Wis. 2d 290, 306, 731 N.W.2d 240, 247-48.

39. Respondents are in possession and control of full and complete records and information responsive to the Petitioner's Requests.

40. Respondents have violated the Wisconsin Open Records Law by failing to fully fulfill Petitioner's request, despite the fact that they have responsive documents and materials clearly specified and articulated in Petitioner's requests and email correspondence. (Jankowski Affidavit ¶¶3, 6, and 7; **Ex. 1, 4, and 5**).

41. Respondents violated the Wisconsin Open Records Law by failing to produce documents responsive to the Petitioner's request, "as soon as practical and without delay." Wis. Stat. § 19.35(4)(a).

42. Respondents' violations of the Wisconsin Open Records Law are arbitrary and capricious. By failing to fully respond to Petitioner's requests as required by the Wisconsin Open Records Law, the Respondents have caused and will continue to cause injury to the Petitioner by depriving her and the public of their rights under the law.

RELIEF REQUESTED

WHEREFORE, Petitioner respectfully requests that this Honorable Court grant the following relief pursuant to Wis. Stat. § 19.31 *et seq.*:

- a. A Writ of Mandamus directing the Respondents to produce to the Petitioner any and all records and responsive information concerning Petitioner's Records Requests by December 12, 2016. Wis. Stat. § 19.37(1)(a);
- b. An order declaring that the Respondents violated the Wisconsin Open Records Law. Wis. Stat. § 19.31 *et seq.* and Wis. Stat. § 806.04;
- c. An award to Petitioner of reasonable attorneys' fees, damages of not less than \$100, punitive damages, and other costs related to this Petition. Wis. Stat. § 19.37(2) & (3); and,
- d. Such other relief as this Honorable Court deems fair and equitable.

Dated at Wauwatosa, Wisconsin this 28th day of November, 2016

JUDGE LANG & KATERS, LLC.

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