

STATE OF WISCONSIN

CIRCUIT COURT

RACINE COUNTY

Wisconsin Professional
Police Association,

Plaintiff,

vs.

City of Racine,
Defendant.**FILED**

DEC - 9 2025

CLERK OF CIRCUIT COURT
RACINE COUNTY

Case No. 2024CV1423

DECISION AND ORDER

The above-styled matter is before this Court on a Petition for Writ of Mandamus compelling the City of Racine to turn over billing records regarding the City's interaction with the Wisconsin Professional Police Association (WPPA). The request for these records from the City of Racine was made pursuant to Wisconsin's Public Records law, Wis. Stat. § 19.31 *et seq.* The City of Racine has complied with the request, albeit with heavily redacted content based on the application of privileged attorney work product and/or privileged attorney/client communication privilege. This Court has ordered the City of Racine to provide a "privilege log" and unredacted versions of the materials provided in a redacted form to WPPA for *in camera* review.

LAW
Open Records

In creating Wisconsin Statute §19.31, the legislative act stated "[I]t is declared to be the public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them." Wis. Stat. § 19.31. Wisconsin case law has construed this to be one of the strongest declarations of policy found in the Wisconsin Statutes. *Zellner v. Cedarburg Sch. Dist.*, 2007 WI 53, ¶ 49, 300 Wis. 2d 290, 731 N.W.2d 240. This legislative policy favors the broadest practical access to government and its activities. *Hempel v. City of Baraboo*, 2005 WI 120, ¶ 22, 284 Wis. 2d 162, 699 N.W.2d 551. Courts have interpreted the public records law in light of this policy declaration to foster transparent government. *Milwaukee Journal Sentinel v. City of Milwaukee*, 2012 WI 65, ¶ 40, 341 Wis. 2d 607, 815 N.W.2d 367.

The purpose of the Wisconsin public record law is to shed light on the workings of government and the official acts of public officers and employees. *Bldg. & Constr. Trades Council v. Waunakee Cnty. Sch. Dist.*, 221 Wis. 2d 575, 582, 585 N.W.2d 726 (Ct. App. 1998). The goal is to provide access to records to assist the public in becoming an informed electorate. The public records law therefore serves a basic tenet of our democratic system by providing opportunity for public oversight of government. *ECO, Inc. v. City of Elkhorn*, 2002 WI App 302, ¶ 16, 259 Wis. 2d 276, 655 N.W.2d 510; *see also John K. MacIver Inst. For Pub. Policy v. Erpenbach*, 2014

WI App 49, ¶32, 354 Wis. 2d 61, 848 N.W.2d 862 (“Transparency and oversight are essential to honest, ethical governance.”). The denial of public access is generally contrary to the public interest, and only in exceptional cases may access be denied. Wis. Stat. § 19.31. *George v. Record Custodian*, 169 Wis. 2d 573, 578, 485 N.W.2d 460 (1992).

A requester need not give a reason for his or her request for public records. Wis. Stat. § 19.35(1)(i).

As identified by the City of Racine, Wisconsin has excluded from disclosure materials privileged under Wis. Stat. §905.03 “Lawyer-Client Privilege” *George v. Record Custodian*, 169 Wis. 2d 573, 582, 485 N.W.2d 460 (Ct. App. 1992); *Wis. Newspress, Inc. v. Sch. Dist. of Sheboygan Falls*, 199 Wis. 2d 768, 782-63, 546 N.W.2d 143 (1996) and records consisting of attorney work product, including the material, information, mental impressions, and strategies an attorney compiles in preparation for litigation. *Seifert v. Sch. Dist. of Sheboygan Falls*, 2007 WI App 207, ¶28, 305 Wis. 2d 582, 740 N.W.2d 177. The lawyer-client privilege belongs to the client rather than the attorney. *Swan Sales Corp. v. Joseph Schlitz Brewing Co.*, 126 Wis. 2d 16, 31-32, 374 N.W.2d 640 (Ct. App. 1985). Wisconsin common law has long recognized the privileged status of attorney work product, including the material, information, mental impressions and strategies an attorney compiles in preparation for litigation. See *State ex rel. Dudek v. Circuit Ct. for Milwaukee County*, 34 Wis. 2d 559, 589, 150 N.W.2d 387 (1967). The work-product doctrine set forth in *Dudek* is generally codified by Wis. Stat. § 804.01(2)(c)1. The *Seifert* case specifically stated that “The Open Records Law cannot be used to circumvent established principles that shield work product. Nor can it be used as a discovery tool.” 2007 WI App at ¶28.

The *Seifert* case clearly articulated that the legislature plainly saw a need to permit nondisclosure of records pertaining to potential litigation and provided an avenue to do so in Wis. Stat. § 19.35(1)(am)1. 2007 WI App at ¶ 33. The rubric to be applied requires a balancing of competing interests when evaluating the entire set of facts in relation to “specific demonstration” of need to withhold records against the circumstances of the case or proceeding. 2007 WI App at ¶ 33. *Seifert* was also a case in which the records custodian indicated that, had Seifert requested the district's law firm billing, they would have been disclosed. 2007 WI App at ¶38. The Court of Appeals agreed but found the issue moot as Seifert already had in his possession copies of the billing records.

Lawyer-Client Privilege Work Product Privilege

LAWYER / CLIENT PRIVILEGE

The attorney-client privilege, codified in Wis. Stat. § 905.03, “protects confidential communications between clients and their attorneys.” *Lane v. Sharp Packaging Sys., Inc.*, 2002 WI 28, ¶ 21, 251 Wis.2d 68, 640 N.W.2d 788.

Lawyer-client privilege “[o]nly encompasses confidential communications from the client to the lawyer, and those communications from the lawyer to the client if their disclosure would directly

or indirectly reveal the substance of the client's confidential communications to the lawyer." *State v. Boyd*, 2011 WI App 25, ¶ 20, 331 Wis.2d 697, 797 N.W.2d 546.

A "mere showing that the communication was from a client to his attorney is insufficient to warrant a finding that the communication is privileged." *Jax v. Jax*, 73 Wis.2d 572, 581, 243 N.W.2d 831 (1976).

The privilege also only "protects communications and not necessarily facts or evidence." *Jax* 73 Wis.2d at 579.

In *Lane*, Supreme Court of Wisconsin addressed whether attorney **billing invoices** are subject to the attorney-client privilege: "[b]illing records are communications from the attorney to the client, and producing these communications violates the lawyer-client privilege *if production of the documents reveals the substance of lawyer-client communications.*" (emphasis added) 251 Wis.2d 68, ¶ 40.

Generally other jurisdictions reviewed by this Court agree that billing statements that provide only general descriptions of the nature of services performed and do not reveal the subject of confidential communications with any specificity are **not** privileged. See *Juneay Cnty, Star-Times v. Juneay Cnty.*, 2011 WI App 150, ¶ 38, 337 Wis.2d 710, 807 N.W.2d 655.

Those claiming privilege have the burden of proof to substantiate it. A privilege log with boilerplate assertions of attorney-client privilege is insufficient. "It does nothing to explain why the many corresponding billed items would actually disclose a confidential attorney-client communication if not redacted." *Wisconsin Professional Police Ass'n. v. Marquette County*, 2015 WI App 58, ¶ 25, 868 N.W.2d 199 Unpublished Opinion.

Types of Confidential Communications privileged

1. Motive for seeking representation
2. Views of proposed litigation strategy
3. Request to research specific areas of law
4. Revealing legal strategies. *Id* at ¶ 26

WORK PRODUCT PRIVILEGE

The Court in *Wisconsin Professional Police* (2015 WI App 58, ¶ 29) stated "The parties do not cite to, and we have not found, any legal authority applying the attorney work product doctrine to the contents of billing invoices." The Court went on to address the issue "assuming" the privilege applies.

"The common law has long recognized the privileged status of attorney work product, including:

- The material,
- Information,
- Mental impressions
- Strategies an attorney compiles

- In preparation for litigation." *Seifert*, 305 Wis.2d 582, ¶ 28.

"[A] lawyer's work product consists of the information [the lawyer] has assembled and the mental impressions, the legal theories and strategies that [the lawyer] has pursued or adopted as derived from interviews, statements, memoranda, correspondence, briefs, legal and factual research, mental impressions, personal beliefs, and other tangible or intangible means." *State ex rel. Dudek v. Circuit Court for Milwaukee Cnty.*, 34 Wis.2d 559, 589, 150 N.W.2d 387 (1967).

Items considered not – privileged:

- Indications of starting or continuing to work on something that could potentially qualify as attorney work product, such as memorandum or a drafted brief, are not privileged. *Wis. Prof. Police* at ¶ 32
- No reason to believe that entries suggesting the creation of attorney work product have the effect of actually disclosing work product.

Discussion

In the present case, redactions were made based on either the lawyer-client privilege and/or work product privilege. The City's heavily redacted versions were submitted to WPPA and having found them wanting, WPPA has brought the present mandamus action. This Court then required the City to prepare a "privilege log"¹ specifically addressing the reason for their privilege claim, along with unredacted billings statements for review *in camera*. The City Attorney's office has complied with this Court's order in providing privilege logs. [Doc. 20, 21, 22, 28 & 29].

Document	Privilege Logs and Dates Covered
	Dates Covered
28	1/7/2020-12/7/20
22	1/8/2021-12/10/2021
29	1/11/2022-12/6/2022
21	1/10/2023-12/4/2023
20	1/4/2024-2/6/2024

All of the claimed privilege entries are either work product or attorney client communications. Due to the sheer volume of redactions and entries covering late 2019 through February 2024 this Court reviewed a sample of entries to determine the legitimacy of the privilege claims under the Wisconsin Open Records laws and the promulgated policy of providing the greatest possible access to information regarding the affairs of government.

¹ Privilege log or index of the documents has its genesis in Federal Rules of Civil Procedure 26(b)(5). It is also known as a "Vaughn Index" based on *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973) The practice of providing privilege logs and in camera inspection is a long-standing practice in Wisconsin.

In that context, this Court utilized Document 19, the redacted version of billing statements from December 14, 2019 through November 23, 2020, against the unredacted version of the same dates provided *in camera*, Document 23, and the privilege log provided covering those dates.[Doc. 28].

Document 19, the redacted billing statements from December 4, 2019 through November 23, 2020, consists of fifty-four pages and contains over three hundred and ninety insertions of either privileged work product or attorney-client privilege. This Court has found a wholesale misunderstanding and misapplication of the privileges asserted. The above-referenced case law limits the usage of the privilege in a restrictive rather than liberal manner. Wisconsin black letter law mandates that statutory evidentiary privileges should not be expansively construed but rather strictly construed. *See Sliwinski v. Board of Fire & Police Comm'rs*, 2006 WI App 27, ¶ 13, 289 Wis. 2d 422, 711 N.W.2d 271.

In the present case, the City Attorney's Office has conflated any mention of a case, topic, or subject matter with actual or inferential disclosure of specific information during such billing period. This action has resulted in the heavily redacted billing statements that were produced. Such actions cannot be accepted allowing wholesale redactions under Wisconsin's Open Records law and a strict construction of the privileges asserted.

A few examples demonstrate this Court's point.

Redacted Version

12/4/2019 MLO Continuation of review of *Privileged Attorney Client Work Product*, in preparation for draft of legal opinion which is to be issued to City.[Doc. 19 p. 1/54]

Unredacted Version

12/4/2019 MLO Continuation of review of correspondence and CBA's regarding status of health insurance for retired employees, in preparation for draft of legal opinion which is to be issued to City.[Doc. 23 p. 1/50]

The claimed privilege is work product and nothing in the above entry reveals a mental impression, legal theory, strategy or anything defined in the *Dudek* case. Although the entry discusses a collective bargaining agreement it does not identify which agreement is being reviewed. It does discuss correspondence but does not identify between whom or reveal the content directly or indirectly of the content of the reviewed correspondence. These vague references discuss an ongoing review toward drafting a legal opinion but does not reveal the specifics of any such opinion. Simply stated this entry is not privileged and must be disclosed.

Redacted Version

02/05/2020 MLO Review of letters which are to be sent to City retirees, advising of changes which are to be made to premium contributions by City retirees; conference with Assistant City Attorney to *Confidential Attorney Client Communication* [Doc. 19 p. 13/54]

Unredacted Version

02/05/2020 MLO Review of letters which are to be sent to City retirees, advising of changes which are to be made to premium contributions by City retirees; conference with Assistant City

Attorney to review same, and to review draft of legal opinions which have been provided to City Attorney regarding legal status of City changes to retiree health insurance benefits and premiums. [Doc. 23 p. 9/50].

The claimed privilege of attorney client communication does not reveal any specifics of the letter, the conference or the nature of the legal status of proposed changes. It does identify facts but simple identification of facts is not privileged. This entry is not privileged and must be disclosed.

Redacted Version

02/05/2020 MLO Conference with Assistant City Attorney to *Confidential Attorney Client Communication*; review of draft of legal opinion issues to City regarding *Privileged Attorney Client*. [Doc. 19 p. 15/54].

Unredacted Version

02/05/2020 MLO Conference with Assistant City Attorney to review pending issues relating to City health insurance revisions for current employees and retired City employees; review of draft legal opinion issues to City regarding same, in preparation for revision of legal opinion. [Doc. 23 p. 11/50].

The claimed privilege of attorney client communication does not reveal any specifics of the conversations. Nothing in this time entry discloses the specifics of the communications. The simple fact that the city discussed a subject matter with counsel is not privileged. It is the specific content of the conversation that is privileged. This entry is not privileged and must be disclosed.

The above is a small sampling of this Court's review of the claimed privileges made during the time period of December 4, 2019 through November 23, 2020. However, this Court did not find one legitimately privileged entry by comparing Document 19 with Document 23 and Document 28.

The Court reviewed the totality of the "privilege logs" provided by the City regarding the above mentioned entries. The City has chosen to provide justification for asserting privilege based on billing statement dates rather than specific billing entries. As such their justification for redaction and assertion of privilege is general rather than specific and contrary to this Court's order and their requirement in meeting their burden of proof. The submitted privilege logs consist of boilerplate assertions of why privilege is justified in their redactions and is legally insufficient. *See Wisconsin Professional Police Ass'n v. Marquette County*, 2015 WI App 58, ¶ 25, 868 N.W.2d 199 (unpublished opinion)

This Court finds that the privilege logs provided, Documents 20, 21, 22, 28, & 29, do not specifically address and justify the redactions made by the City of Racine.

Accordingly, upon all the files, pleadings and proceedings heretofore had in this matter,

IT IS ORDERED, that the City of Racine has not met its required burden for specifically asserting privileged redactions in the billing statements;

IT IS FURTHER ORDERED, that the City of Racine provide WPPA with unredacted versions of the billings statements previously requested under the Wisconsin Open Records law within 10 days of this decision and order.

Dated this 9th day of December, 2025,


Honorable Eugene A. Gasiorkiewicz



CC: File.
All parties via e-Filing.