FILED
04-28-2026
CIRCUIT COURT
DANE COUNTY, WI
2024CV001515

BY THE COURT:

DATE SIGNED: April 28, 2026

Electronically signed by Rhonda L. Lanford
Circuit Court Judge

THIS IS A FINAL ORDER FOR THE PURPOSE OF APPEAL.

STATE OF WISCONSIN **CIRCUIT COURT BRANCH 16** **DANE COUNTY**

INVISIBLE INSTITUTE, et al.,

Petitioners,

v. Case No. 2024CV1515

WISCONSIN DEPARTMENT OF JUSTICE,

Respondent.

DECISION AND ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

INTRODUCTION

In this public records case, Invisible Institute and the Badger Project (collectively, "Invisible") asked the Wisconsin Department of Justice (the "DOJ") to provide a list of all certified law enforcement officers in the State of Wisconsin. After the DOJ partially denied Invisible's request, Invisible commenced this action, seeking mandamus relief under Wis. Stat. § 19.37. The DOJ argues that it properly denied-in-part Invisible's request, given the public interest in nondisclosure of the requested information. Both parties now seek summary judgment.

BACKGROUND

The material facts are not in dispute. On November 6, 2023, Invisible made a written record request ("2023 Request") to the DOJ via its Office of Open Government. Resp't's Proposed Undisputed Facts (hereafter "RPUF"), Dkt. 39, ¶5. The request asked for records containing various categories of information about all certified Wisconsin law enforcement officers, including names, unique officer ID numbers, date of birth (or, if not releasable, year of birth or current age), certification dates, and current and previous departments or agencies. Pet'r's Add'l Undisputed Facts (hereafter "PAUF"), Dkt. 47, ¶14. Invisible is comprised of investigative journalists and filed the request with the intention of compiling and publicizing nationwide data about law enforcement, officer discipline, and "wandering officers." *Id.*, ¶12.

The DOJ took five months to respond to Invisible's request. *Id.*, ¶15. In the letter denying-in-part and granting-in-part the request, the DOJ denied the request "to the extent it seeks information on all officers in Wisconsin." Pet., Ex. C., Dkt. 2 at 21. However, it provided three narrower lists: (1) law enforcement officers decertified by the Law Enforcement Standards Board (LESB); (2) flagged officers, and; (3) DOJ Division of Criminal Investigation (DCI) special agents. *Id.*

The letter proceeded to explain why the other requested records would not be disclosed. Birthdates were withheld to protect against identity theft or other unauthorized use. *Id.* at 21-22. Entries of certain individuals and the contents of the "Employment Type" column were redacted in order to protect those who work undercover and avoid jeopardizing undercover operations. *Id.* at 22. And names of former DCI agents who have

since become federal law enforcement agents were withheld to preserve the integrity of federal investigations, comply with FOIA statutory exemptions, and protect the public interest in cooperating with federal law enforcement agencies. *Id.* at 22-23.

The remainder of the request was denied to protect what the DOJ referred to as various "public interests" including:

> maintaining confidentiality of the identities of persons serving as undercover officers; protecting the personal privacy of those officers who have been harmed or threatened in the line of duty; protecting the personal privacy of officers whose families and children have suffered harm or harassment due to the officer's status in law enforcement; maintaining confidentiality of officers who have received specialized tactical training; maintaining cooperative working relationships between local law enforcement agencies who provide information to DOJ; and in general, protecting officers and their families from being targeted for harm in what has become a very volatile environment in which officers must operate.

Id. at 24.

The DOJ's reasoning as to why near-complete nondisclosure was required to preserve these interests was that the "DOJ does not maintain up-to-date and complete records regarding officers' undercover status or other potential safety concerns," so providing the requested information could endanger the safety of officers. *Id.* at 25.

Invisible Institute previously submitted an almost identical public records request to the DOJ in August 2019 ("2019 Request"). PAUF, Dkt. 41, ¶1; RPUF, dkt. 39, ¶20. After receiving the 2019 Request, the DOJ's record custodian, Paul Ferguson, sent a letter to the heads of all local law enforcement and corrections agencies in Wisconsin who employ officers certified by the DOJ. RPUF, Dkt. 39, ¶20. In that letter, Ferguson asked each local agency head to review a list of all officers employed in their agency and indicate

whether the names of any officers should be redacted. *Id.*, ¶21. The letter stated that "public records law does not allow WDOJ to withhold officer names simply because of the generalized danger of serving as a law enforcement officer," but that the DOJ could withhold the names or identifying information of officers "if release of the information for an individual officer would harm the public interest due to the particularized safety or security concerns." PAUF, dkt. 47, ¶¶1-3. Accordingly, the letter directed the agencies to, "[i]f appropriate, provide the names of officers and information pertaining to officers in your agency that cannot be released to the public due to specific and articulable safety and security concerns." *Id.*, ¶4. 184 agencies responded. *Id.*, ¶5. 379 agencies refused to, including Milwaukee Police Department and Madison Police Department, Wisconsin's largest police departments. *Id*. The DOJ declined to follow up with the uncooperative agencies, and instead opted to deny Invisible's request for a comprehensive list: on June 3, 2020, the DOJ fulfilled in part and denied in part the 2019 request. *Id*.; RPUF, Dkt. 39, ¶28. Its response consisted of only three lists: (1) law enforcement officers decertified by the LESB; (2) flagged officers, and; (3) DOJ DCI special agents. Ferguson Decl., Ex. B., Dkt. 38 at 2.

Both the 2019 request and similar requests made by other agencies have been denied on substantively similar grounds as those listed in Ferguson's 2023 response letter. Resp't's Resp. to PAUF, Dkt. 59, ¶10-11. In response to the 2023 request, the procedure allowing records to be released without responses from agencies used for other requests, such as for flagged officer lists and for single departments, was not followed. *Id.*, ¶¶23-30.

PROCEDURAL HISTORY

On May 23, 2024, Invisible filed the present mandamus action, alleging that the DOJ has a blanket policy of denying requests for records containing lists of all law enforcement officers in the state. Compl., Dkt. 2, ¶27. Invisible claims that this is a violation of Wisconsin's Open Records Law, specifically Wis. Stat. § 19.35(1)(a). *Id.*, ¶¶28-61.

On March 19, 2025, the DOJ moved for summary judgment. Resp't's Mot. for Summary J., Dkt. 33. Invisible followed suit on April 18, 2025. Pet'rs' Mot. for Summary J., Dkt. 40.

LEGAL STANDARDS

A. Summary Judgment

Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Wis. Stat. § 802.08(2); *Schmidt v. N. States Power Co.*, 2007 WI 136, ¶ 24, 305 Wis. 2d 538, 742 N.W.2d 294. The mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment. *Baxter v. Wisconsin Dep't of Natural Resources*, 165 Wis. 2d 298, 312, 477 N.W.2d 648 (Ct. App. 1991). A factual issue is "genuine" if the evidence is such that a reasonable jury could return a verdict in favor of the nonmoving party. *Id.* The opponent of a summary judgment motion may not rest on mere denials, but must counter with evidentiary

submissions of his or her own demonstrating that there is a dispute. *Dawson v. Goldammer*, 2006 WI App 158, ¶¶ 30-31, 295 Wis. 2d 728, 722 N.W.2d 106.

Cross motions for summary judgment follow the standard summary judgment methodology. *Stone v. Seeber*, 155 Wis. 2d 275, 278, 455 N.W.2d 627, 629 (Ct. App. 1990). Courts examine each party's motion individually to determine whether any genuine issue of material fact precludes granting summary judgment as a matter of law to either party. *Godfrey v. Schroeckenthaler*, 177 Wis. 2d 1, 501 N.W.2d 812 (Ct. App. 1993).

B. Open Records Law

Wisconsin's Open Records Law provides the public with the right to inspect records. Wis. Stat. §19.35(1)(a) ("Except as otherwise provided by law, any requester has a right to inspect any record.") "Record" means any material on which written, drawn, printed, spoken, visual, or electromagnetic information or electronically generated or stored data is recorded or preserved, regardless of physical form or characteristics, that has been created or is being kept by an authority. Wis. Stat. §19.32(2). If an authority withholds a record after a written request for disclosure is made, the requester may bring an action for mandamus asking a court to order release of the record. Wis. Stat. §19.37(1)(a).

When responding to records requests, there is a strong presumption of openness and liberal access to public records. Wis. Stat. §19.31. "The denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied." *Id.* An exceptional case is one in which "the strong presumption favoring access and disclosure is overcome by some even stronger public policy favoring limited access or

nondisclosure." *Kroeplin v. DNR,* 2006 WI App 227, ¶13, 297 Wis.2d 254, 725 N.W.2d 286. Conducting this balancing test is "a fact-intensive inquiry, guided by the strong presumption favoring disclosure, intended to determine on a case-by-case basis whether the record sought to be released falls under the category of being an 'exceptional case' warranting nondisclosure." *Id.,* ¶37. A "blanket rule" is not a proper application of the balancing test. *Wisconsin State J. v. Blazel,* 2023 WI App 18, 407 Wis. 2d 472, 991 N.W.2d 450*; see also Wisconsin Newspress, Inc. v. School Dist. of Sheboygan Falls*, 199 Wis. 2d 768, 780, 546 N.W.2d 143 (1996) ("the balancing test must be applied in every case in order to determine whether a particular record should be released, and there are no blanket exceptions other than those provided by the common law or statute").

DISCUSSION

The parties do not dispute material facts. They dispute only whether the DOJ's partial denial of Invisible's open records request was lawful. Invisible alleges that the DOJ failed to engage in the public interest balancing test required of records custodians under Wis. Stat. § 19.35(1)(a), instead applying a blanket policy of refusing to release records identifying all certified law enforcement officers. Pet., Dkt. 2, ¶43. Invisible further claims that given the DOJ's proffered reasons for nondisclosure, application of the balancing test to the requested records necessitates their disclosure. *Id.,* ¶¶44-48. Pet'r's Br. in Supp., Dkt. 41 at 9-12. The DOJ disputes these claims. Resp't's Ans., Dkt. 10 at ¶¶30. To the contrary, the DOJ alleges that Invisible's records request was properly partially denied under the Wis. Stat. § 19.35(1)(a) balancing test. Resp't's Combined Br., Dkt. 57 at 5-23.

Accordingly, the sole question before the Court on summary judgment is whether, as a matter of law, the DOJ properly denied-in-part Invisible's record request:

> Where […] the relevant facts are undisputed, we review de novo a custodian's balancing decision of whether the public interest in nondisclosure of the challenged information outweighs the public interest in disclosure. It is the burden of the party seeking nondisclosure to show that "public interests favoring secrecy outweigh those favoring disclosure." Access is only to be denied "in an exceptional case."

John K. MacIver Inst. for Pub. Pol'y, Inc. v. Erpenbach, 2014 WI App 49, ¶¶ 13-14, 354 Wis. 2d 61, 70–72, 848 N.W.2d 862, 866–67 (internal citations omitted, cleaned up)

Based on the undisputed facts and the evidence submitted by both parties, the Court finds that the DOJ has not met its burden to show that this is an "exceptional case" warranting nondisclosure.

A. The DOJ applied a blanket denial.

In contrast to its 2019 approach, the DOJ made no effort to assess whether the specific information sought in Invisible's 2023 request would pose threats to individual officers. Instead, the DOJ's partial denial was automatic, based on difficulties cooperating with local law enforcement agencies in the past and a perceived inability to collect the information necessary to protect the safety of all officers. The DOJ has a pattern of denying similar requests for this reason: open records requests for the full list of law enforcement officers are consistently denied, each time based on substantially similar "safety" justifications as those listed in the response letter. Together, these facts establish that the partial denial of the 2023 request was not the product of a genuine, case-by-case balancing

analysis, but rather a habitual denial based on the DOJ's past inability to garner compliance from local agencies.

By failing to apply the balancing test to each unique request for the complete list of officers, the DOJ's conduct effectively amounts to a blanket denial that applies to all requests for a comprehensive list of law enforcement officers. This is plainly a violation of open records law. *Blazel*, 2023 WI App 18, ¶62 ("A 'blanket rule' is not a proper application of the balancing test.").

B. DOJ's proffered "safety" reasons for nondisclosure do not outweigh the strong presumption in favor of disclosure.

Even assuming the DOJ did not apply a blanket denial of requests for the full list of law enforcement officers, DOJ fails to establish that its application of the balancing test was lawful.

The presumption of disclosure is especially strong in this case, given that it concerns information about law enforcement officers. Law enforcement officers "necessarily relinquish certain privacy and reputational rights by virtue of the amount of trust society places in them and must be subject to public scrutiny." *Kroeplin*, 2006 WI App 227 (*citing State ex rel. Journal/Sentinel, Inc., Anne Bothwell v. Philip Arreola, Chief of Police, City of Milwaukee*, 207 Wis. 2d 496, 558 N.W.2d 670 (Wis. Ct. App. 1996)). The public's interest in disclosure in cases concerning law enforcement officers is particularly compelling, mitigating even more strongly against the officers' interests in privacy. *See, e.g. Kroeplin*, 2006 WI App 227, ¶46.

The DOJ's public interest reasons for nondisclosure consist of numerous general safety concerns about publicly identifying officers, which bear repeating here:

> maintaining confidentiality of the identities of persons serving as undercover officers; protecting the personal privacy of those officers who have been harmed or threatened in the line of duty; protecting the personal privacy of officers whose families and children have suffered harm or harassment due to the officer's status in law enforcement; maintaining confidentiality of officers who have received specialized tactical training; maintaining cooperative working relationships between local law enforcement agencies who provide information to DOJ; and in general, protecting officers and their families from being targeted for harm in what has become a very volatile environment in which officers must operate.

Pet., Ex. C., Dkt. 2 at 21.

These safety-based arguments, which the DOJ purports exempt the majority of Wisconsin's approximately 16,000 law enforcement officers from having their personal information disclosed, are far too broad to overcome Wis. Stat. §19.31's strong presumption. *See Milwaukee J. Sentinel v. Wisconsin Dep't of Admin.,* 2009 WI 79, 319 Wis. 2d 439, 768 N.W.2d 700 (rejecting a safety-based argument for exempting an entire group of individuals from having their names disclosed because it "cast too broad a net").

The DOJ argues that it has no alternative to nondisclosure, asserting that due to the lack of voluntary assistance from local agencies, "it would be reckless for DOJ to turn over the certified law enforcement officer list." Resp. Br., Dkt. 57 at 33. The DOJ further argues that past non-compliance by local law enforcement demonstrates that requests for assistance would be futile. *Id.*, ¶34.

The fact that local agencies in 2019 objected to releasing similar information about officers is not sufficient to permit nondisclosure in the present case. *See Kroeplin v. DNR,*

2006 WI App 227, ¶ 43 (rejecting the proffered reason for denying access to public records because it was not a reason "specific to the particular documents in th[e] case" and instead appeared to "apply generally to all disciplinary records"). The DOJ's burden is to establish why this particular request must be denied. *See Wisconsin Newspress, Inc.* 199 Wis. 2d 768, 780 ("the balancing test must be applied in every case in order to determine whether a particular record should be released.") It does not meet this burden by complaining of objections raised by local law enforcement agencies four years prior to the current request, which may or may not still be the position of local agencies.

The DOJ fails to overcome the strong presumption in favor of disclosure. General safety concerns and prior difficulties responding to similar requests do not render the 2023 request one of the "exceptional cases" in which nondisclosure is permitted, especially in light of the strong public interest in disclosures related to law enforcement and the weakened privacy expectations inherent in employment as a law enforcement officer.

CONCLUSION

Based on the undisputed facts and on evidence submitted by both parties, the DOJ's denial of Invisible's request for access to a list of all law enforcement officers was unlawful. Summary judgment granting Invisible's petition for a writ of mandamus is appropriate.

ORDER

For the reasons as stated,

IT IS ORDERED that Petitioner Invisible Institute's motion for summary judgement is granted.

IT IS FURTHER ORDERED that Respondent the Department of Justice's motion for summary judgment is denied.