

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

EDUCATION ACTION GROUP FOUNDATION, INC.

Kyle Olson
801 West Norton Avenue, Suite 1
Muskegon, MI 49441

and

PAUL E. BUCHER
Bucher Law Group, LLC
355 Austin Circle, Suite 110
Delafield, WI 53018

Petitioners,

Case No. _____
Code No. 30952

v.

ISMAEL OZANNE
District Attorney – Dane County
Dane County Courthouse
215 South Hamilton Street, Room 3000
Madison, WI 53703

Respondent.

PETITION FOR WRIT OF MANDAMUS

To the Circuit Court of Dane County, State of Wisconsin:

The petition of Education Action Group Foundation, Inc., by BUCHER LAW GROUP, LLC, by Attorney Paul E. Bucher, respectfully asserts the following:

1. Co-petitioner Paul E. Bucher has been retained as legal counsel by petitioner Education Action Group Foundation, Inc. in this matter.

COPY

RECEIVED

NOV 15 1954

LIBRARY

NOV 15 1954

LIBRARY

NOV 15 1954

LIBRARY

NOV 15 1954

LIBRARY

NOV 15 1954

LIBRARY

NOV 15 1954

LIBRARY

NOV 15 1954

LIBRARY

NOV 15 1954

LIBRARY

NOV 15 1954

LIBRARY

NOV 15 1954

LIBRARY

NOV 15 1954

LIBRARY

NOV 15 1954

LIBRARY

NOV 15 1954

LIBRARY

NOV 15 1954

LIBRARY

NOV 15 1954

LIBRARY

NOV 15 1954

LIBRARY

NOV 15 1954

LIBRARY

NOV 15 1954

LIBRARY

NOV 15 1954

LIBRARY

NOV 15 1954

LIBRARY

NOV 15 1954

LIBRARY

NOV 15 1954

LIBRARY

NOV 15 1954

LIBRARY

2. Respondent Ismael Ozanne is the District Attorney for Dane County, Wisconsin.

3. Pursuant to information and belief, the respondent is the record custodian, in that he is an elected official and is a legal custodian of the records contained within the Dane County District Attorney's Office. Petitioner is unaware whether respondent has designated an employee of his staff to act in the capacity of legal custodian under §19.33(1) Wis. Stats.

5. The petitioners assert that the respondent has failed to respond to an Open Records Request directed to the respondent in accordance with §19.35 Wis. Stats.

6. In support of and incorporated as part of this petition is the Affidavit of Paul E. Bucher, which directly identifies the documentation and information requested in said Open Records Request directed to respondent.

WHEREFORE, petitioners pray that a peremptory writ of mandamus may be issued by the court pursuant to Chapter 783 of the Wisconsin Statutes commanding the respondent to release the records indicated in the attached Affidavit of Paul E. Bucher and requested by petitioners pursuant to §19.35 Wis. Stats.

Dated this 8th day of June, 2011.



Paul E. Bucher
State Bar No. 1014958

BUCHER LAW GROUP, LLC
355 Austin Circle, Suite 110
Delafield, WI 53018
(262) 303-4916
(262) 303-4079 Fax

EDUCATION ACTION GROUP FOUNDATION, INC.

Kyle Olson
801 West Norton Avenue, Suite 1
Muskegon, MI 49441

and

PAUL E. BUCHER
Bucher Law Group, LLC
355 Austin Circle, Suite 110
Delafield, WI 53018

Petitioners,

Case No. _____

Code No. 30952

v.

ISMAEL OZANNE
District Attorney – Dane County
Dane County Courthouse
215 South Hamilton Street, Room 3000
Madison, WI 53703

Respondent.

AFFIDAVIT OF PAUL E. BUCHER

STATE OF WISCONSIN)
) ss
COUNTY OF WAUKESHA)

Paul E. Bucher, being first duly sworn under oath, deposes and states as follows:

1. That affiant is an attorney licensed to practice law in the State of Wisconsin and is the owner and president of Bucher Law Group, LLC
2. Your affiant was retained to represent the interests of Education Action Group Foundation, Inc.
3. Attached hereto as Exhibit A is correspondence dated April 7, 2011, that was remitted by petitioner Bucher - acting in the capacity of legal counsel for petitioner Education Action Group Foundation, Inc. – to respondent as an Open Records Request,

pursuant to §19.35 Wis. Stats. Said request for records was sent via certified mail – return receipt to respondent, requesting the following:

a. letters, memoranda, emails, reports, cell phone records, voice mails, texts and any and all other correspondence and communication within the possession, custody and control of the Dane County District Attorney’s Office relative to the following Dane County cases:

1. 2011CV1244 – Ismael R. Ozanne v. Jeff Fitzgerald et al.
2. 2011CV1175 – Dane County et al. v. State of Wisconsin et al.
3. 2011CV1421 – Laborers Local 236 AFL-CIO et al. v. State of Wisconsin, et al.

Said correspondence was received in the Dane County District Attorney’s Office On April 8, 2011.

4. No response to the request was received by petitioner Bucher to said request for records.

5. Attached hereto as Exhibit B is correspondence dated May 10, 2011, that was remitted by petitioner Bucher to respondent as a second request for the records indicated in paragraph 4. Said correspondence was received in respondent’s office on May 11, 2011, and signed for by Andrew Rice of the Dane County District Attorney’s Office. This letter made clear that petitioner was again demanding copies of any records relative to petitioner’s initial Open Records request.

6. As of the date of this Petition, no response has been received from the legal custodian of records of the Dane County District Attorney’s Office or the respondent, who is the District Attorney of Dane County and an elected official, indicating that the requested records either do not exist, are exempt from disclosure or, based upon the request, additional time was necessary to search for said records, redact said records or, in any fashion, acknowledge that said records exist and would be disclosed in some fashion. No response whatsoever has been received relative to this Open Records request.

7. Petitioner is unable to request the District Attorney for enforcement action, as the records are in the custody and control of the District Attorney, who is the respondent in this action.

8. Petitioners believe the records referenced in Exhibits A and B are in the custody and control of the respondent and are subject to disclosure pursuant to the Wisconsin Open Records Law, and are not exempt from disclosure as prosecutorial records under prevailing case law in the State of Wisconsin.

9. Petitioner Education Action Group Foundation, Inc. has suffered damages, costs and fees, and specifically requests the Court to order the respondent to release the

requested records to petitioners or, in the alternative, to release the records to the Court for in-camera review. Further, petitioners request the Court assess costs, fees and damages pursuant to 19.37(2) Wis. Stats. of not less than One Hundred Dollars (\$100.00), the filing fee and statutory damages.

10. The petitioners further request reasonable fees, damages and attorney fees.

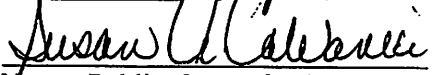
11. Petitioners respectfully request that the Court find that the respondent has arbitrarily and capriciously delayed or denied response to this request. Therefore, the petitioners further request an award of punitive damages to the petitioners in the amount of Fifty Thousand Dollars (\$50,000).

12. Petitioners requested said records as a means to determine various aspects of the three aforementioned cases filed by the respondent, and to allow petitioner to possibly intervene in the above actions or seek other judicial relief relative to the actions listed in paragraph 4(a), but have been unable to do so based on respondent's failure and refusal to respond to the requests for records listed above. As a result, petitioners have suffered costs, attorney fees and other damages as a result of the respondent's refusal to comply with a clear statutory mandate pursuant to the Wisconsin Records Law.

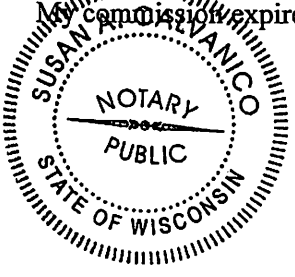
Dated this 8th day of June, 2011.


Paul E. Bucher

Subscribed and sworn to before me
this 8th day of June, 2011.



Notary Public, State of Wisconsin
My commission expires 3/22/15





Bucher Law Group, LLC

Delivery via Certified Mail – Return Receipt

April 7, 2011

The Honorable Ismael Ozanne
Dane County District Attorney's Office
Dane County Courthouse, Room 3000
215 South Hamilton Street
Madison, WI 53703

Dear District Attorney Ozanne:

Please accept this letter as a written Open Records Request pursuant to §19.35 Wis. Stats. for copies of any documentation and correspondence, - including letters, memoranda, emails, reports, etc. - and any communication – including any cell records, voice mails, texts, and any and all other correspondence and communication in your possession, custody and control between you any individual and/or group relative to litigation in the following Dane County cases:

2011CV1244 – Ismael R. Ozanne v. Jeff Fitzgerald et al.

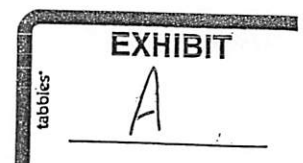
2011CV1175 – Dane County et al v. State of Wisconsin et al.

2011CV1421 – Laborers Local 236 AFL-CIO et al. v. State of Wisconsin et al.

This Open Records Request encompasses any and all of the aforementioned correspondence and communication between you and any other individual or group relative to your decision to bring an action that is not investigatory in nature. This is a continuing request for copies of any documents as they are produced relative to these matters.

I am familiar with the decision of State v. Faust. However, that case does not include non-prosecutorial documents such as emails, correspondence, cell phone records and voice mails and any other documents in existence, in whatever form of communication, is producible under the Open Records Law.

355 Austin Circle, Suite 110, Delafield, WI 53018 / (262) 303-4916 / (262) 303-4079
1011 North Mayfair Road, Suite 307, Wauwatosa, WI 53226



April 7, 2011
Page Two

I recognize you may have a significant amount of documentation to produce relative to this request. However, I would expect a response within thirty (30) days. We also demand that each document be produced in its original format, without redactions, editing or amendments.

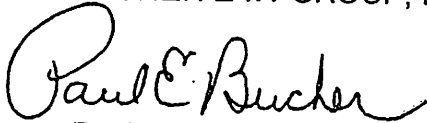
Further, if a complaint was filed, I would request the identity of the filer of said complaint and a copy of the complaint, as well as any other documents and correspondence, in whatever format, including any documents produced either on your personal computer or the computer provided by either Dane County or the State of Wisconsin, if any of these computers were utilized to produce and/or respond to any messages received.

Should there be a cost associated with this request, please notify me and I will immediately remit same.

Thank you for your courtesies in this matter.

Sincerely,

BUCHER LAW GROUP, LLC



Paul E. Bucher
Attorney at Law

PEB/sac

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:


The Honorable Ismael Ozanne
Dane Co. District Attorney
Dane Co. Courthouse - Room 3000
215 So. Hamilton Street
Madison WI 53703

2. Article Number

(Transfer from service label)

7009 2820 0003 3141 5184

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X  Agent
 Addressee

B. Received by (Printed Name) C. Date of Delivery
4-18/11

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes



Bucher Law Group, LLC

Delivery via Certified Mail – Return Receipt

May 10, 2011

The Honorable Ismael Ozanne
Dane County District Attorney's Office
Dane County Courthouse, Room 3000
215 South Hamilton Street
Madison, WI 53703

Dear District Attorney Ozanne:

I am following up my Open Records Request of April 7, 2011, delivered to your office via certified mail. As of the date of this letter, I have received no response to this request. We believe this to be an unreasonable denial of our Open Records Request and, therefore, we will be proceeding with a civil action within the next ten (10) days relative to the denial of this request.

As a previous prosecutor, I realize how busy you are and how difficult it can be to respond to cases. However, this is not an exception to not responding in a timely fashion under the Wisconsin Open Records Law.

To reiterate my previous demand, please accept this letter as a written Open Records Request pursuant to §19.35 Wis. Stats. for copies of any documentation and correspondence, - including letters, memoranda, emails, reports, etc. - and any communication - including any cell records, voice mails, texts, and any and all other correspondence and communication in your possession, custody and control between you any individual and/or group relative to litigation in the following Dane County cases:

2011CV1244 – Ismael R. Ozanne v. Jeff Fitzgerald et al.

2011CV1175 – Dane County et al v. State of Wisconsin et al.

2011CV1421 – Laborers Local 236 AFL-CIO et al. v. State of Wisconsin et al.

This Open Records Request encompasses any and all of the aforementioned correspondence and communication between you and any other individual or group

355 Austin Circle, Suite 110, Delafield, WI 53018 / (262) 303-4916 / (262) 303-4079
1011 North Mayfair Road, Suite 307, Wauwatosa, WI 53226

EXHIBIT

tabbles

B

May 10, 2011
Page Two

relative to your decision to bring an action that is not investigatory in nature. This is a continuing request for copies of any documents as they are produced relative to these matters. I am familiar with the decision of State v. Faust. However, that case does not include non-prosecutorial documents such as emails, correspondence, cell phone records and voice mails and any other documents in existence, in whatever form of communication, is producible under the Open Records Law.

Further, if a complaint was filed, I would request the identity of the filer of said complaint and a copy of the complaint, as well as any other documents and correspondence, in whatever format, including any documents produced either on your personal computer or the computer provided by either Dane County or the State of Wisconsin, if any of these computers were utilized to produce and/or respond to any messages received.

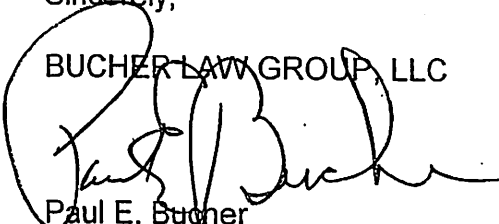
I recognize you may have a significant amount of documentation to produce relative to this request. However, I had certainly expected a response within thirty (30) days to my previous Open Records Request. Therefore, I would ask that a prompt response be provided to this office within ten (10) days. Should a response not be received in this office within ten (10) days, we will move forward appropriately with a civil action.

Should there be a cost associated with this request, please notify me and I will immediately remit same.

Thank you for your courtesies in this matter.

Sincerely,

BUCHER LAW GROUP, LLC



Paul E. Bucher
Attorney at Law

PEB/sac

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

The Honorable ISMAEL Ozanne
Dane Co. District Atty's OFFICE
Dane Co. Courthouse
215 So. Hamilton St., Room 3000
Madison, WI 53703

2. Article Number
(Transfer from service label)

7009 2820 0003 3142 1901

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X. *[Signature]* Agent
 Addressee

B. Received by (Printed Name) *Andrew Kiel* C. Date of Delivery *5/11/04*

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

EDUCATION ACTION GROUP FOUNDATION, INC.

Kyle Olson
801 West Norton Avenue, Suite 1
Muskegon, MI 49441

and

PAUL E. BUCHER
Bucher Law Group, LLC
355 Austin Circle, Suite 110
Delafield, WI 53018

Petitioners,

Case No. **11CV2671**
Code No. 30952

v.

ISMAEL OZANNE
District Attorney – Dane County
Dane County Courthouse
215 South Hamilton Street, Room 3000
Madison, WI 53703

Respondent.

WRIT OF MANDAMUS

Based upon the Petition for Writ of Mandamus and the Affidavits of petitioners filed in this matter;

IT IS HEREBY ORDERED that petitioners' Petition for Writ of Mandamus is hereby granted and respondent is ordered to produce the requested records indicated in the Petition for Writ of Mandamus to the Court for in-camera review, or that you show cause to the contrary before this Court, in Room _____, at the Dane County Courthouse on the _____ day of _____, 2011, at _____ a.m./p.m., or as soon thereafter as counsel can be heard.

You have received this writ. Return your execution of it, or provide a reason why you cannot or will not perform as commanded above. Failure to produce the requested records or show cause as to why such records cannot be produced may result in further sanctions by this Court.

Dated this _____ day of _____, 2011.

BY THE COURT:

Circuit Court Judge
Dane County Circuit Court

Drafted by:
BUCHER LAW GROUP, LLC
355 Austin Circle, Suite 110
New Berlin, Wisconsin 53151
(262) 303-4916
(202) 303-4079 Fax

Educatuion Action Group
Foundation , Inc. et al.,
Petitioners

COPY

vs.

Case No. 11 CV 2671

Ishmael Ozanne,
Respondent

ORDER

The petitioners have filed, in Branch 9 of the Dane County Circuit Court, a petition for writ of mandamus, an affidavit in support of the petition and a proposed writ of mandamus, all based upon the allegation that the petitioners have sought from the respondent, beginning April 10, 2011, certain materials alleged to be public records. The proposed writ orders the respondent to produce the records in question or show cause as to why the records have not been produced. This is a matter to be scheduled before judge Richard Neiss and while it might be possible for the duty judge to schedule such a hearing in the temporary absence of Judge Neiss, there has been no showing that the petition has been served upon the respondent. The court declines therefore to issue the requested writ or to schedule the requested hearing.

By the court this 10th day of June, 2011.


Judge David Flanagan

Cc: Attorney Paul R. Bucher
District Attorney Ismael ozanne

G: 11CV2671.OR1

COPY