

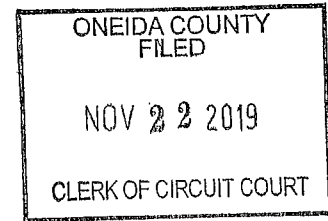
196F 646

Search Warrant Return
Oneida County Sheriff's Office, Rhinelander, WI

State of Wisconsin

Circuit Court

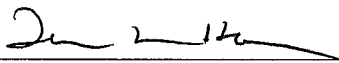
Oneida County



I hereby certify that by virtue of the within warrant, the warrant was served on November 21, 2019 at 9:25 at the Rhinelander City Hall and the following items were collected:


See attached list.

Dated this 22 day of November 20 19.



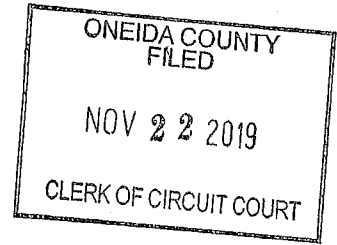
Captain Terri Hook
Oneida County Sheriff's Office

This warrant was duly returned and filed in my office this 22nd day
of Nov., 20 19, at 11:44 a. .m.



Honorable Judge Patrick O'Melia
Circuit Court Branch II

SEARCH WARRANT



STATE OF WISCONSIN, }

Oneida County

ss.

In Oneida County Court,
(MUNICIPAL COUNTY)

State of Wisconsin

Before Honorable Patrick F. O'Melia
(MUNICIPAL JUDGE-COUNTY JUDGE)

THE STATE OF WISCONSIN, TO THE SHERIFF OR ANY PEACE OFFICER OF SAID COUNTY:

WHEREAS, Captain Terri Hook has this day complained in writing, to the said court upon oath that on the 18th day of November, A.D., 2019, in and upon the premises in the City of Rhinelander in Oneida County, WI, located at 135 South Stevens Street and more particularly described as follows:

A multi-level red brick business building with a sign on the front entrance that reads "Rhinelander City Hall" to include the office of the City Administrator, the office of the Mayor, and the secured area in the basement of the building to include the locked room and the computer server within the locked room, and the archived emails or back up emails from 2019 within the computer server or held by The City of Rhinelander that are believed to be contained within the Barracuda program utilized by the City of Rhinelander to archive emails (public records).

There are now located and concealed certain things, to wit:

An email sent by Daniel Guild on January 31, 2019 at 4:58 PM to Jerry Deshane, Curt Witynski, Claire Silverman, Maria Davis.

An email from Daniel Guild on January 31, 2019 at 6:19 PM to Claire Silverman with Marie Davis carbon copied.

An email string beginning on February 6, 2019 at 11:40 by Daniel Guild to Claire Silverman, Jerry Deshane, with George Kirby, Carrie Miljevich, and Chris Frederickson carbon copied and Steve Sauer, Ryan Rossing, Andrew Larson, David Holt, Tom Kelly, and Sherrie Belliveau blind copied that contains the email from Guild on February 6, 2109, to the above persons, an email from Claire Silverman dated February 6, 2019 at 5:13 PM to Daniel Guild and Jerry Deshane, an email from Daniel Guild dated January 31, 2019 at 6:19 PM with the altered response, an email from Claire Silverman on January 31, 2019 at 6:06PM to Daniel Guild, Jerry Deshane, Curt Witynski with Marie Davis being carbon copied, an email from Claire Silverman dated January 31, 2019 at 5:06 PM to Daniel Guild, Jerry Deshane, Curt Witynski with Maria Davis carbon copied, and an altered email from Daniel Guild to Jerry Deshane, Curt Witynski with Claire Silverman and Maria Davis carbon copied.

Any emails between Daniel Guild, Ryan Rossing, Chris Frederickson, Steve Sauer, Andrew Larson or David Holt reference the original email, altered email, or the subject of a walking quorum or open meeting violation.

Any electronic devices that can access the server of the City of Rhinelander that are in the possession of Daniel Guild or in the office of the City of the Rhinelander City Administrator to include but not limited to cellular telephones, removeable media devices, and computers to include the information within the devices.

possessed for the purpose of evading or violating the laws of the State of Wisconsin and contrary to Section 946.12 (1) and 946. 12 (3) of the Wisconsin Statutes or, which things were used in the commission of or, may constitute evidence of a crime, to wit: Misconduct in Public Office.

Committed in violation of Section 946.12 of the Wisconsin Statutes and prayed that a search warrant be issued to search said person and motor vehicle for said property.

NOW, therefore, in the name of the State of Wisconsin you are commanded forthwith to search for the said items, and if the same or any portion thereof are found, to bring the same and the person in whose possession the same are found, and return this warrant within 48 hours before the said court (or, before the Circuit court for Oneida County), to be dealt with according to law.

Dated this 19 day of Nov, 2019.

Received by me this 19 day of Nov, 2019 at 3:42 P.m.

T M Hook

Teresa M. Hook, Captain
Oneida County Sheriff's Office

Patrick F. O'Melia

Patrick F. O'Melia
Branch II Oneida County Circuit Court Judge

AFFIDAVIT FOR SEARCH WARRANT

ONEIDA COUNTY
FILED

NOV 22 2019

CLERK OF CIRCUIT COURT

STATE OF WISCONSIN, }

In Circuit Court,

Ss

Oneida County

State of Wisconsin
Before Honorable Patrick F. O'Melia

WHEREAS, Captain Teresa M. Hook, on this date, being duly sworn, states that on November 19, 2019, in and upon the premises in the City of Rhinelander, located at 135 South Stevens Street, more particularly described as:

A multi-level red brick business building with a sign on the front entrance that reads "Rhinelander City Hall" to include the office of the City Administrator, the office of the Mayor, and the secured area in the basement of the building to include the locked room and the computer server within the locked room, and the archived emails or back up emails from 2019 within the computer server or held by The City of Rhinelander that are believed to be contained within the Barracuda program utilized by the City of Rhinelander to archive emails (public records).

There are now located in and upon the person certain items to wit:

An email sent by Daniel Guild on January 31, 2019 at 4:58 PM to Jerry Deshane, Curt Witynski, Claire Silverman, Maria Davis.

An email from Daniel Guild on January 31, 2019 at 6:19 PM to Claire Silverman with Marie Davis carbon copied.

An email string beginning on February 6, 2019 at 11:40 by Daniel Guild to Claire Silverman, Jerry Deshane, with George Kirby, Carrie Miljevich, and Chris Frederickson carbon copied and Steve Sauer, Ryan Rossing, Andrew Larson, David Holt, Tom Kelly, and Sherrie Belliveau blind copied that contains the email from Guild on February 6, 2019, to the above persons, an email from Claire Silverman dated February 6, 2019 at 5:13 PM to Daniel Guild and Jerry Deshane, an email from Daniel Guild dated January 31, 2019 at 6:19 PM with the altered response, an email from Claire Silverman on January 31, 2019 at 6:06PM to Daniel Guild, Jerry Deshane, Curt Witynski with Marie Davis being carbon copied, an email from Claire Silverman dated January 31, 2019 at 5:06 PM to Daniel Guild, Jerry Deshane, Curt Witynski with Maria Davis carbon copied, and an altered email from Daniel Guild to Jerry Deshane, Curt Witynski with Claire Silverman and Maria Davis carbon copied.

Any emails between Daniel Guild, Ryan Rossing, Chris Frederickson, Steve Sauer, Andrew Larson or David Holt reference the original email, altered email, or the subject of a walking quorum or open meeting violation.

Any electronic devices that can access the server of the City of Rhinelander that are in the possession of Daniel Guild or in the office of the City of the Rhinelander

Affidavit for Search Warrant –City of Rhinelander- Emails

Date: November 19, 2019

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City Administrator to include but not limited to cellular telephones, removeable media devices, and computers to include the information within the devices.

possessed by the record custodian, Daniel R. Guild, M/W, 12/09/79, in support of the crime of Misconduct in Public Office, in violation of the laws of Wisconsin, contrary to Sect. 946.12 (1) and 946 (3) of Wisconsin State Statutes.

The Facts tending to establish grounds for issuing a search warrant are as follows:

1. I am a Captain employed by the Oneida County Sheriff's Office and assigned to the Detective Bureau. My assignment has included the investigation of major crimes to include all felony investigations. I have been a law enforcement officer for twenty-four and have been assigned to the Detective Bureau for the last fourteen years. My jurisdiction includes Oneida County and the City of Rhinelander.
2. I have also attended numerous hours of training in the area of felony crimes as well as specific training on Wisconsin public records laws. These training include training from the Wisconsin Department of Justice, Fox Valley Technical College, Milwaukee Area Technical College, Wisconsin Office of Justice Assistance, Children's Hospital of Wisconsin, University of Wisconsin Oshkosh, the Wisconsin State Crime Lab and the Oneida County Sheriff's Office. I have arrested person for felony crimes and these arrests have led to convictions in State Court. Based upon my training, my participation in other investigations involving death investigation and my conversations with experienced investigators, I know that:
 - a.) Public records are defined in Wisconsin statute 19.32(2) as "any material on which written, drawn, printed, spoken, visual, or electromagnetic information of electronically generated or stored data is recorded or preserved, regard less of physical form or characteristics, which has been created or is being kept by an authority. Personnel records fall into this definition of a record.
 - b) The City of Rhinelander is an authority as defined in Wisconsin Statute 19.32(1).
 - c) The Northwoods River News is a "requester" as defined by Wisconsin Statute 19.32(3).
 - d) Wisconsin Statute 19.33(4) allows every authority to designate in writing the employee of the authority that is the legal custodian of records.
 - e) Wisconsin Statute 19.21(1) requires the legal custodians of records to keep safe and preserve all records that are kept in the officer's office or which are in the possession or control of the office or the officer's deputies.
 - f) Wisconsin Statute 19.21(4)(b) requires public records be kept for 7 years.
 - g) If a document is created on a computer, there will be a record of the document with as a saved document or on a keystroke logger. Many governmental agencies will put keystroke logger.

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- h) The owner of a government email is the custodian of that record and must release that record when provided with a valid open records request.
 - i) When a person blind copies someone in an email, the blind-copied address will only show up on the original creator of the email.
 - j) It is possible to alter an email that you have received or sent by selecting the email and using editing features to delete or add text.
 - k) An email that is sent by a public official must be released in an open records request without being altered.
 - l.) Providing documents requested by an official open records request is a mandatory duty of a city administrator.
3. On March 4, 2019, Investigator Robert Hawn of the Price County Sheriff's Office was assigned to assist the Oneida County Sheriff's Office with an investigation into what was being reported as an open records violation and possibly the crime of tampering with public records. A complaint had been filed by Gregg Walker who is the owner of the Northwoods River News. His employee, Jamie Taylor also provided information to Investigator Hawn about the violation. Taylor reported during several open records requests, he received two documents that appear to be similar but not the same. The emails have the same date and time on them, but not all the text is the same. Taylor provided Investigator Hawn with a copy of the two emails as well as a number of other documents that Taylor had received as part of open records requests. Walker and Taylor are believed to be truthful and reliable in that they have provided truthful information in the past about open records and open meetings violations made by members of the government in Oneida County.
4. On November 6, 2019, I was assigned to review the case and request a search warrant in reference to the investigation completed by Investigator Hawn. Documents and reports prepared by Investigator Hawn are believed to be truthful and reliable in that they are documents that were created and collected during an official criminal investigation.
5. As part of his investigation, Investigator Hawn spoke with Rhinelander City Attorney Carrie Miljevich. Miljevich explained to Investigator Hawn that there had been an issue at the January 28, 2019 city council meeting where City Council President George Kirby would not take his seat on the council and instead insisted on being recognized as a citizen of Rhinelander. Miljevich reported Kirby had requested to have the purchase of \$13,000 of furniture for Guild's office placed on the agenda and Guild did not do it.

Miljevich reported she was informed that Ryan Rossing, Steve Sauer, Chris Frederickson, Andrew Larson, and David Holt had presented a letter to Kirby on January 30, 2019 in which they asked Kirby to step down from the President's position. Miljevich reported

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this letter came to her attention when Chris Frederickson told Miljevich about the letter but Frederickson had not told Miljevich that Frederickson was one of the signers of the letter.

Miljevich reported that the City of Rhinelander received an open records request from the media asking for a copy of the letter and the media specifically asked Miljevich if this was a violation of open meetings laws. Miljevich reported she spoke with Guild about the open records request and question about the open meetings violation. Miljevich reported Guild told Miljevich she would tell the media it was not an open meetings violation. Miljevich reported Miljevich told Guild that Miljevich would not lie. Miljevich reported that Guild told Miljevich that her client was the City of Rhinelander and it was Miljevich's job to protect the City of Rhinelander. Miljevich reported that Miljevich would not lie and instead told the media that it was not her decision to determine whether or not it was an open meetings violation.

Miljevich reported to Investigator Hawn the Miljevich did not know about the email from Guild to the League of Wisconsin Municipalities until she had been speaking with Silverman about another matter and Silverman brought up that she was aware there were issues going on with the Rhinelander City Council. Miljevich said Silverman told Miljevich that Kirby and Guild had been in contact with Silverman. Miljevich said that Miljevich requested Silverman send Miljevich the email from Guild as well as the responses back and forth. Miljevich received the email from Silverman on February 5, 2019.

Miljevich reported that on February 6, 2019 at 11:40 PM, she received the email that she had received from Silverman again in an email chain from Guild to Silverman where Guild had carbon copied Miljevich, Kirby, and Frederickson. Miljevich reported to Investigator Hawn that the email from January 31, 2019 at 4:58 PM that was within the chain was missing words that had been in the original email. Along with a few other words, the specific words that were missing were "he" "we" and "us". Miljevich reported she was also aware the response from Guild had been altered to, "Thank you Claire. I appreciate being co promptly informed."

Miljevich told Investigator Hawn that she believed that Guild blind copied others when Guild sent out the altered email to Kirby and Miljevich. Miljevich reported that when Miljevich was reviewing documents for another open records request, Miljevich observed the altered email in Ryan Rossing's documents. Miljevich reported that Miljevich had not seen Rossing's name on the email string.

When asked about who would be able to access employee email, Miljevich told Investigator Hawn that Miljevich had believed that the owner of an email account would be the only one who could access an email account. Miljevich reported that this belief had changed when she received several emails from Guild. Miljevich provided two emails in regards to access to employee email accounts. One email was from Guild to Miljevich asking if it would be permissible for Guild to access emails of past employees. The second email was from Guild to Peggy Schauer (the City's IT person) with Miljevich carbon copied where Guild tells Schauer to leave open the email account of a city alderperson Sherri Belliveau) who is no longer in office so it was accessible.

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6. In reviewing the documentation provided by Investigator Hawn, Investigator Hawn had requested the original email sent on January 31, 2019 at 4:58 PM by Daniel Guild to employees of the League of Wisconsin Municipalities seeking information about how to properly remove the City Council President from Silverman on June 10, 2019. Silverman provided Investigator Hawn a copy of the email from her email address. In reviewing this email, Guild carbon copied other employees of the League of Wisconsin Municipalities. Guild received several emails from Claire Silverman in response to his email with the final one from Silverman at 6:06 PM. At 6:19 PM on January 31, 2019, Guild responded to Silverman, "Thank you Claire. I know there are people here in Rhinelander who will appreciate being so promptly informed." (Attachment 1)
7. On November 11, 2019, I requested Silverman send me the original email sent to her on February 6, 2019 at 11:40 PM titles "RE: Can Rhinelander get some advice quick?". Silverman forwarded the email to me from her email account. Her copy included Kirby, Miljevich, and Frederickson being carbon copied. (Attachment 2)
8. In reviewing documents provided by Investigator Hawn, there is a documentation that on February 6, 2019, the Northwoods River News made an open records request for "any written communication between Frederickson, signed by the mayor and alderpersons Steve Sauer, Andrew Larson, David Holt and Ryan Rossing to alderperson George Kirby asking him to step down as council president". As part of this release of documents, the City of Rhinelander released a copy of the email chain containing the altered email. On this copy, there are blind copies of the email sent to Steve Sauer, Ryan Rossing, Andrew Larson, David Holt, Tom Kelly, and Sherrie Belliveau (though the email address for Sherrie is not present as it is for the rest of the recipients). These blind copied addresses were not present on the copy obtain from Silverman nor the copies received from Miljevich. (Attachment 3)
9. In reviewing documents provided by Investigator Hawn, there is documentation that on February 8, 2019, the Northwoods River News made an open records request for "a copy of any and all emails between Daniel Guild, Carrie Miljevich, Mayor Chris Frederickson, Council President George Kirby and Claire Silverman, legal council with the League of Wisconsin Municipalities between the date of January 31, and February 7, 2019".

In response to the request, Guild provided Val Foley with a letter and ten attached emails. His letter said, "I am not aware of any other related and relevant records being in my possession pertaining to this request." Guild included only the original email that Guild sent to Silverman and her colleagues. Guild did not include Silverman's response, Guild's response to Silverman, nor the string of emails between Guild and Silverman that were carbon copied to Frederickson, Miljevich and Kirby as well as blind copied to Rossing, Larson, Sauer, Holt, Kelly, and Belliveau that contained the altered email and altered response. These emails occurred within the scope of this request and were found among the responses from Miljevich and Kirby.
10. In reviewing documentation from Investigator Hawn's investigation, there is documentation that on March 29, 2019, Price County Investigator Robert Hawn submitted an open records request to Rhinelander City Administrator Guild and Rhinelander City

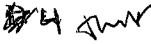
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Clerk Valarie Foley. Foley fulfilled the request on the part of the request that was made specifically to Foley on March 29, 2019. Investigator Hahn left the open records request for City Administrator Guild with Foley as Investigator Hahn attempted to give it to Guild but Guild was not in his office. Investigator Hahn also attempted to contact Guild by phone but Guild did not answer.

On June 10, 2019, Investigator Hahn contact Guild's Attorney, Kevin St. John, by email to determine whether Guild was going to fulfill the open records request Investigator Hahn had left for him on March 29, 2019. On June 13, 2019, St. John responded by email stating Guild believed Foley had already responded to the open records request, but St. John was including an attachment with Guild's response. In this attachment was only the original email and response to Silverman. The altered email and altered response were not included in the documents provided by Guild through his attorney, St. John.

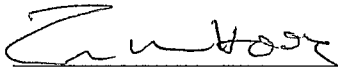
11. In June of 2019, Investigator Hahn delivered his investigation to the Oneida County Sheriff's Office. Investigator Hahn had recommended criminal charges of Tampering with Public Records and Notices be filed against Guild. This file was then forwarded to Forest County District Attorney Charles Simono for Simono's review as Simono was requested by District Attorney Schiek to be the Special Prosecutor on this case.
12. On November 8, 2019, Oneida County District Attorney Schiek contacted Forest County District Attorney Simono by email and told Simono that Schiek had received additional information so Schiek was asking for the referral back so that Schiek could reevaluate it. Schiek told Simono in the email that Schiek did not need Simono to provide a decision about the case.
13. On November 18, 2019, Forest County District Attorney Simono sent Guild a letter that he also electronically carbon copied to Oneida County District Attorney Schiek and the Lakeland Times. In the letter Simono, Simono states, "Upon completing my review of the law enforcement referral, I have determined that no criminal charges will be filed against you in reference to this matter. Please note that the changing of such emails, especially given your public position, is always suspect and opens the door to greater concerns regarding your conduct and the work within your office." Later in the letter, Simono documents the differences between the two emails and does not believe that the changes were "done with the intent to injure or defraud destroy, damages, removes or conceals any public record." Attachment 
14. I know that Misconduct in Public Office is a felony crime described in Wisconsin State Statute 946.12 (1) and 946 (2).

Affidavit for Search Warrant –City of Rhinelander- Emails

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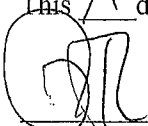
WHEREAS, the said Teresa M. Hook, prays that a search warrant be issued to search such premises for the said property, and to bring the same, if found, before the said court (or, before the Circuit court Oneida County,) to be dealt with according to law.



Teresa M. Hook, Captain
Oneida County Sheriff's Office

Dated this 19 day of Nov, 2019

Subscribed and sworn to before me on
This 19 day of Nov, 2019



Patrick F. O'Melia
Oneida County Circuit Court, Branch I
State of Wisconsin

Robert Hawn

From: Claire Silverman <cms@lwm-info.org>
Sent: Tuesday, June 11, 2019 12:03 PM
To: Robert Hawn
Subject: FW: Can Rhinelander get some advice quickly?

Importance: Low

Investigator Hawn,
The emails you identified and requested in connection with your investigation are below.

Claire Silverman, Legal Counsel
League of Wisconsin Municipalities
131 W. Wilson St. (Suite 505)
Madison, WI 53703
608-267-2380
(fax) 608-267-0645
www.lwm-info.org

You can register NOW!
[League's Local Government 101](#)

The information contained in this email is provided solely for a general information purpose. It should not be interpreted as legal advice and does not constitute an attorney client relationship. The League's attorneys do not provide legal representation to individual municipalities or officials, and we always encourage our member municipalities to consult their municipal attorneys on questions of law.

From: Daniel Guild <cityadministrator@rhinelandercityhall.org>
Sent: Thursday, January 31, 2019 6:19 PM
To: Claire Silverman <cms@lwm-info.org>
Cc: Maria Davis <mdavis@lwm-info.org>
Subject: RE: Can Rhinelander get some advice quickly?
Importance: Low

Thank you Claire. I know there are people here in Rhinelander who will appreciate being so promptly informed.

Regards,

Daniel Guild
Chief Administrative Officer
City of Rhinelander, WI
135 S Stevens Street
Rhinelander, WI 54501
(715) 365-8600 desk
(715) 906-7692 mobile
cityadministrator@rhinelandercityhall.org
www.rhinelandercityhall.org

From: Claire Silverman <cms@lwm-info.org>

Sent: Thursday, January 31, 2019 6:06 PM

To: Daniel Guild <cityadministrator@rhinelandercityhall.org>; Jerry Deschane <jdeschane@lwm-info.org>; Curt Witynski <witynski@lwm-info.org>

Cc: Maria Davis <mdavis@lwm-info.org>

Subject: RE: Can Rhinelander get some advice quickly?

Hi, Daniel.

I did not find any former League opinions addressing this but I think the answer is that since the council selects the council president under Wis. Stat. sec. 62.09(8)(e), the council can remove the council president at pleasure under Wis. Stat. sec. 17.12(1)(c)1. It's my opinion that the council would have to remove the common council president before it could select another person to serve in that position. Please share this with Attorney Miljevic before relying on it as it is her responsibility and prerogative as City Attorney to advise the Council and she may differ with my opinion or be aware of some local rules/provisions that I am unaware of.

Sincerely,

Claire Silverman, Legal Counsel
League of Wisconsin Municipalities
131 W. Wilson St. (Suite 505)
Madison, WI 53703
608-267-2380
(fax) 608-267-0645
www.lwm-info.org

From: Claire Silverman

Sent: Thursday, January 31, 2019 5:06 PM

To: Daniel Guild <cityadministrator@rhinelandercityhall.org>; Jerry Deschane <jdeschane@lwm-info.org>; Curt Witynski <witynski@lwm-info.org>

Cc: Maria Davis <mdavis@lwm-info.org>

Subject: RE: Can Rhinelander get some advice quickly?

Hi, Daniel.

I don't think we have looked at this before so I will need to do some research. I will try to look at it first thing tomorrow and I can call your municipal attorney to discuss it with her.

Claire Silverman, Legal Counsel
League of Wisconsin Municipalities
131 W. Wilson St. (Suite 505)
Madison, WI 53703
608-267-2380
(fax) 608-267-0645
www.lwm-info.org

From: Daniel Guild <cityadministrator@rhinelandercityhall.org>

Sent: Thursday, January 31, 2019 4:58 PM

To: Jerry Deschane <jdeschane@lwm-info.org>; Curt Witynski <witynski@lwm-info.org>

Cc: Claire Silverman <cms@lwm-info.org>; Maria Davis <mdavis@lwm-info.org>

Subject: Can Rhinelander get some advice quickly?

Importance: High

Jerry et. al.

On behalf of Mayor Frederickson and members of the Rhinelander Common Council, we need to get some information quickly.

Simply put, how does the Common Council remove the Council President from this position, after he has been appointed to it?

Could the Council simply choose to vote and select a new President, or must the current President be removed from his position, first.

We are not looking to remove him from elected office, just the Council Presidency.

This matter is time sensitive for us. Can you help?

Regards,

Daniel Guild
Chief Administrative Officer
City of Rhinelander, WI
135 S Stevens Street
Rhinelander, WI 54501
(715) 365-8600 desk
(715) 906-7692 mobile
cityadministrator@rhinelandercityhall.org
www.rhinelandercityhall.org

Terri Hook

From: Claire Silverman <cms@lwm-info.org>
Sent: Monday, November 11, 2019 2:56 PM
To: Terri Hook
Subject: FW: Can Rhinelander get some advice quickly?

Importance: High

Captain Hook,
The email you have requested is below.

From: Daniel Guild <cityadministrator@rhinelandercityhall.org>
Sent: Wednesday, February 6, 2019 11:40 PM
To: Claire Silverman <cms@lwm-info.org>; Jerry Deschane <jdeschane@lwm-info.org>
Cc: George Kirby <district1@rhinelandercityhall.org>; Carrie Miljevich <CMiljevich@rhinelandercityhall.org>; Chris Frederickson <mayor@rhinelandercityhall.org>
Subject: RE: Can Rhinelander get some advice quickly?
Importance: High

Claire (Jerry),

Thanks for your email. We have had some struggles here in Rhinelander this week. However, we have also had some hard conversations, and have put the work in to reach forgiveness, reconciliation, and a renewed commitment to moving the City forward. We are all aware of recent contacts made between Rhinelander people and the League, which have been part of our conversations. As you can see, I have copied Council President George Kirby, Attorney Carrie Miljevich, and Mayor Chris Frederickson in on this email. Everyone should have access to the string of emails, below, and additional correspondence going forward. I encourage you to read this recent news article from this afternoon.

Rhinelander Officials Make Amends After Dispute Over Bills

<http://www.wxpr.org/post/rhinelander-officials-make-amends-after-dispute-over-bills>

As Jerry knows, the Rhinelander Common Council, as a team and body politic, has struggled to form the type of effective relationships, between elected officials, and between elected officials and senior management, necessary for good government these past years. The City does have a current group of officials who although imperfect also want to find tools to resolve conflicts and heal legacy wounds. George and I have recently found our way back to common understandings, but there are still many frayed relationships on the Council. I spoke with Jerry about this previously, and I believe, the City would benefit greatly from any League resources to help with relationship re/building.

Any thoughts or ideas you have would be greatly appreciated.

Regards,

Daniel Guild
Chief Administrative Officer
City of Rhinelander, WI
(715) 906-7692 mobile
cityadministrator@rhinelandercityhall.org

Rhinelander City Hall

135 S Stevens Street
Rhineland, WI 54501
(715) 365-8600
www.rhinelandercityhall.org

From: Claire Silverman <cms@lwm-info.org>
Sent: Wednesday, February 6, 2019 5:13 PM
To: Daniel Guild <cityadministrator@rhinelandercityhall.org>
Cc: Jerry Deschane <jdeschane@lwm-info.org>
Subject: RE: Can Rhineland get some advice quickly?

Hi, Daniel.

I have had a request from George Kirby for the email you sent me last Friday. Our policy governing League legal services contains the following paragraph regarding confidentiality:

Confidentiality: In general, we do not consider our conversations with municipal officials or employees confidential. It is important that Municipal officials and employees understand that there is no attorney-client relationship between League attorneys and municipal officials or employees that call seeking assistance. Our client is the League of Wisconsin Municipalities, acting through the League's Board of Directors. If you request that our conversation be kept confidential, we will attempt to honor your request, but we do not guarantee confidentiality. We will be unable to honor your request if a dispute later arises regarding what we told you or what we understood the facts relevant to your inquiry to be.

It has long been our practice to be open and transparent when dealing with officials from member municipalities. Since your email was a request on behalf of the mayor and the common council and George Kirby is a member of the council, I see no reason not to share your email with him. I intend to do so tomorrow morning unless you can explain why that would be inappropriate.

Sincerely,

Claire Silverman, Legal Counsel
League of Wisconsin Municipalities
131 W. Wilson St. (Suite 505)
Madison, WI 53703
608-267-2380
(fax) 608-267-0645
www.lwm-info.org

From: Daniel Guild <cityadministrator@rhinelandercityhall.org>
Sent: Thursday, January 31, 2019 6:19 PM
To: Claire Silverman <cms@lwm-info.org>
Cc: Maria Davis <mdavis@lwm-info.org>
Subject: RE: Can Rhineland get some advice quickly?
Importance: Low

Thank you Claire. I appreciate being so promptly informed.

Regards,

Daniel Guild
Chief Administrative Officer

City of Rhinelander, WI
135 S Stevens Street
Rhinelander, WI 54501
(715) 365-8600 desk
(715) 906-7692 mobile
cityadministrator@rhinelandercityhall.org
www.rhinelandercityhall.org

From: Claire Silverman <cms@lwm-info.org>
Sent: Thursday, January 31, 2019 6:06 PM
To: Daniel Guild <cityadministrator@rhinelandercityhall.org>; Jerry Deschane <jdeschane@lwm-info.org>; Curt Witynski <witynski@lwm-info.org>
Cc: Maria Davis <mdavis@lwm-info.org>
Subject: RE: Can Rhinelander get some advice quickly?

Hi, Daniel.

I did not find any former League opinions addressing this but I think the answer is that since the council selects the council president under Wis. Stat. sec. 62.09(8)(e), the council can remove the council president at pleasure under Wis. Stat. sec. 17.12(1)(c)1. It's my opinion that the council would have to remove the common council president before it could select another person to serve in that position. Please share this with Attorney Miljevic before relying on it as it is her responsibility and prerogative as City Attorney to advise the Council and she may differ with my opinion or be aware of some local rules/provisions that I am unaware of.

Sincerely,

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Subject: RE: Can Rhinelander get some advice quickly?

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I don't think we have looked at this before so I will need to do some research. I will try to look at it first thing tomorrow and I can call your municipal attorney to discuss it with her.

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From: Daniel Guild <cityadministrator@rhinelandercityhall.org>
Sent: Thursday, January 31, 2019 4:58 PM
To: Jerry Deschane <jdeschane@lwm-info.org>; Curt Witynski <witynski@lwm-info.org>
Cc: Claire Silverman <cms@lwm-info.org>; Maria Davis <mdavis@lwm-info.org>
Subject: Can Rhinelander get some advice quickly?
Importance: High

Jerry et. al.

On behalf of Mayor Frederickson and members of the Rhinelander Common Council, need to get some information quickly.

Simply put, how does the Common Council remove the Council President from this position, after President has been appointed?

Could the Council simply choose to vote and select a new President, or must the current President be removed from the position, first.

not looking to remove from elected office, just the Council Presidency.

This matter is time sensitive. Can you help?

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Rhinelander, WI 54501
(715) 365-8600 desk
(715) 906-7692 mobile
cityadministrator@rhinelandercityhall.org
www.rhinelandercityhall.org

Attachment 3

From: Daniel Guild
To: "Claire Silverman"; Jerry Deschane
Cc: George Kirby (District1@rhinelandercityhall.org); Carrie Miljevic (CMiljevic@rhinelandercityhall.org); Chris Frederickson
Bcc: Steve Sauer (District7@rhinelandercityhall.org); Ryan Rossing (District8@rhinelandercityhall.org); Andrew Larson (District2@rhinelandercityhall.org); David Holt (District6@rhinelandercityhall.org); Tom Kelly (District4@rhinelandercityhall.org); Sherrie Belliveau
Subject: RE: Can Rhinelander get some advice quickly?
Date: Wednesday, February 6, 2019 11:39:00 PM
Importance: High

Claire (Jerry),

Thanks for your email. We have had some struggles here in Rhinelander this week. However, we have also had some hard conversations, and have put the work in to reach forgiveness, reconciliation, and a renewed commitment to moving the City forward. We are all aware of recent contacts made between Rhinelander people and the League, which have been part of our conversations. As you can see, I have copied Council President George Kirby, Attorney Carrie Miljevic, and Mayor Chris Frederickson in on this email. Everyone should have access to the string of emails, below, and additional correspondence going forward. I encourage you to read this recent news article from this afternoon.

Rhinelander Officials Make Amends After Dispute Over Bills

<http://www.wxpr.org/post/rhinelander-officials-make-amends-after-dispute-over-bills>

As Jerry knows, the Rhinelander Common Council, as a team and body politic, has struggled to form the type of effective relationships, between elected officials, and between elected officials and senior management, necessary for good government these past years. The City does have a current group of officials who although imperfect also want to find tools to resolve conflicts and heal legacy wounds. George and I have recently found our way back to common understandings, but there are still many frayed relationships on the Council. I spoke with Jerry about this previously, and I believe, the City would benefit greatly from any League resources to help with relationship re/building.

Any thoughts or ideas you have would be greatly appreciated.

Regards,

Daniel Guild
Chief Administrative Officer
City of Rhinelander, WI
(715) 906-7692 mobile
cityadministrator@rhinelandercityhall.org

Rhinelander City Hall
135 S Stevens Street
Rhinelander, WI 54501
(715) 365-8600
www.rhinelandercityhall.org

Regards,

Daniel Guild
Chief Administrative Officer
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Rhineland, WI 54501
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Subject: RE: Can Rhineland get some advice quickly?

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Sent: Thursday, January 31, 2019 5:06 PM
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From: Claire Silverman <cms@lwm-info.org>
Sent: Wednesday, February 6, 2019 5:13 PM
To: Daniel Guild <cityadministrator@rhinelandercityhall.org>
Cc: Jerry Deschane <jdeschane@lwm-info.org>
Subject: RE: Can Rhinelander get some advice quickly?

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I have had a request from George Kirby for the email you sent me last Friday. Our policy governing League legal services contains the following paragraph regarding confidentiality:

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It has long been our practice to be open and transparent when dealing with officials from member municipalities. Since your email was a request on behalf of the mayor and the common council and George Kirby is a member of the council, I see no reason not to share your email with him. I intend to do so tomorrow morning unless you can explain why that would be inappropriate.

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Subject: RE: Can Rhinelander get some advice quickly?
Importance: Low

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Cc: Maria Davis <mdavis@lwm-info.org>

Subject: RE: Can Rhinelander get some advice quickly?

Hi, Daniel.

I don't think we have looked at this before so I will need to do some research. I will try to look at it first thing tomorrow and I can call your municipal attorney to discuss it with her.

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Cc: Claire Silverman <cms@lwm-info.org>; Maria Davis <mdavis@lwm-info.org>

Subject: Can Rhinelander get some advice quickly?

Importance: High

Jerry et. al.

On behalf of Mayor Frederickson and members of the Rhinelander Common Council, need to get some Information quickly.

Simply put, how does the Common Council remove the Council President from this position, after President has been appointed?

Could the Council simply choose to vote and select a new President, or must the current President be removed from the position, first.

not looking to remove from elected office, just the Council Presidency.

This matter is time sensitive. Can you help?

Regards,

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Rhinelander, WI 54501
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cityadministrator@rhinelandercityhall.org
www.rhinelandercityhall.org



Charles J. Simono

Forest County District Attorney

200 E. Madison Street
Crandon, WI 54520
Phone: 715-478-3511
Fax: 715-478-3490

November 18, 2019

Daniel Guild, City Administrator
135 S. Stevens Street
Rhineland, WI 54501

Attachment 4

RE: Open Record Investigation
Emails from January 31, 2019 at 4:58 p.m.

ORIGINAL

Dear Mr. Guild:

Please be advised that I am the Special Prosecutor that has reviewed the above listed investigation into your conduct and potential violation(s) of Wisconsin Statute § 946.72(1), Tampering with Public Records and Notices. The investigation surrounds emails sent by you in your capacity as the City of Rhineland Administrator. Specifically, the investigation determined that on January 31, 2019 you created an email at 4:58 p.m. and another email at 6:09 p.m. and that you then altered each email at a later time but kept the original time stamp for each respectively.

The concerns arose through several steps including one or more Open Record Requests. The concept behind the Freedom of Information Act which allows for the Open Record requests to be made is because all of us that are in public positions, especially positions of authority and power, must always be transparent in everything we do. The public has a right, given several exceptions, to inspect what we do at any time upon their proper requests.

Upon completing my review of the law enforcement referral, I have determined that no criminal charges will be filed against you in reference to this matter. Please note that the changing of such emails, especially given your public position, is always suspect and opens the door to greater concerns regarding your conduct and the work within your office. I suggest that you consult with your city attorney or your personal attorney on a best practice moving forward in regards to emails so that you may avoid such allegations in the future.

Please note that your cooperation and participation in the investigation would have been helpful to expediting the entire matter. Despite repeated efforts by law enforcement to communicate with you, their efforts to obtain your insight into the matter went unanswered.

The referred offense involves Wisconsin Statute §946.72(1) reads as follows:

946.72 Tampering with public records and notices.

(1) Whoever with intent to injure or defraud destroys, damages, removes or conceals any public record is guilty of a Class H felony.

(2) Whoever intentionally damages, alters, removes or conceals any public notice, posted as authorized by law, before the expiration of the time for which the notice was posted, is guilty of a Class B misdemeanor

January 31, 2019 4:58 p.m. email, Version ONE read as follows:

“ Jerry et al.

On behalf of Mayor Fredrickson and members of the Rhinelander Common Council, need to get some information quickly.

Simply put, how does the Common Council remove the Council President from this position, after President has been appointed?

Could the Council simply choose to vote and select a new President, or must the current President be removed from the position, first.

not looking to remove from elected office, just the Council Presidency.

This matter is time sensitive. Can you help?

Regards, “



ORIGINAL

January 31, 2019 4:58 p.m. email, Version TWO reads as follows:

“ Jerry et al.

On behalf of Mayor Fredrickson and members of the Rhinelander Common Council, we need to get some information quickly.

Simply put, how does the Common Council remove the Council President from this position, after he has been appointed to it?

Could the Council simply choose to vote and select a new President, or must the current President be removed from the position, first.

We are not looking to remove from elected office, just the Council Presidency.

This matter is time sensitive for us. Can you help?

Regards, “

Upon comparing both emails I am to decide if the changes in wording, which include "We", "he" in place of President, "to it", "We are", "for us" were done with the with intent to injure or defraud, destroy, damages, removes or conceals any public record. Firstly, your work related emails are a public record. Based on the entirety of the investigation, coupled with the reading of both 4:58 p.m. emails, the slight change in wording does not remotely give rise to any appearance to injure or defraud as the content of both messages are essentially the same. Thus, although the intent was to remove someone of their title as Council President, the intent was clear and unchanged in both versions. Lastly, it is clear that you altered the public record but it was not a public notice and therefore I do not see a violation as related to the 4:58 p.m. emails.

January 31, 2019 6:19 p.m. email, Version One reads as follows:

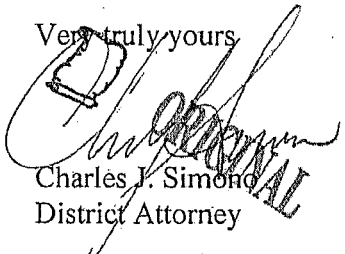
Thank you Claire, I appreciate being so promptly informed.

January 31, 2019 6:19 p.m. email, Version Two reads as follows:

Thank you Claire. I know there are people here in Rhinelander who will appreciate being so promptly informed.

Upon comparing both emails I am to decide of the changes in wording that include "know there are people here in Rhinelander who will appreciate" was done with the with intent to injure or defraud destroy, damages, removes or conceals any public record. Once again, based on the entirety of the investigation, coupled with the reading of both 6:09 p.m. emails, the slight change in wording does not remotely give rise to any appearance to injure or defraud as the content of both messages are essentially the same. Lastly, it is clear that you altered the public record but it was not a public notice and therefore I do not see a violation as related to the 6:09 p.m. emails.

Very truly yours


Charles J. Simond
District Attorney

cc: Mike Schiek, Oneida County District Attorney (via electronic mail)
The Lakeland Times (via electronic mail)
File



Quick Property Receipt

COPY



Print Date/Time: 11/22/2019 09:37
Login ID: kadam

ONEIDA COUNTY SHERIFFS OFFICE
ORI Number: W10440000

Entry Date/Time	Officer	Case Number	Property Code(s)	Property Type	Description	Facility	Location/Other	Tag/Item Number
11/21/2019 09:25	WOLOSEK	2019-00017255	EVIDENCE	DOCUMENTS (PERSONAL OR BUSINESS)	E1 - COPY OF COURT DOCUMENTS 2019CV000172 ADDRESSED TO CHRIS FREDERICKSON MARKED "FILED 07/31/19" (LOCATED IN MAYOR'S OFFICE IN BOTTOM LEFT DESK DRAWER BY WOLOSEK)	PROPERTY ROOM	OTHER	/1
11/21/2019 09:25	WOLOSEK	2019-00017255	EVIDENCE	DOCUMENTS (PERSONAL OR BUSINESS)	E5 - COURT DOCUMENTS 2019CV000172 ADDRESSED TO CHRIS FREDERICKSON MARKED FILED "07/31/19" (LOCATED IN MAYOR'S OFFICE IN TOP MIDDLE DESK DRAWER FACING DOORWAY BY WOLOSEK)	PROPERTY ROOM	OTHER	/1
11/21/2019 09:25	WOLOSEK	2019-00017255	EVIDENCE	DOCUMENTS (PERSONAL OR BUSINESS)	E6 - LETTER TO MR. TOM MANN DATED 09/11/19 FROM DANIEL VARLINE CC: MAYOR FREDERICKSON (LOCATED IN MAYOR'S OFFICE IN MIDDLE TOP DESK DRAWER FACING DOORWAY BY WOLOSEK)	PROPERTY ROOM	OTHER	/1
11/21/2019 09:25	BARBOUR	2019-00017255	EVIDENCE	COMPUTER HARDWARE OR SOFTWARE	E10 - SAN DISK FLASH DRIVE (LOCATED IN ADMINISTRATOR'S OFFICE ON DESK BEHIND MONITORS BY BARBOUR)	PROPERTY ROOM	OTHER	/1
11/21/2019 09:25	WOLOSEK	2019-00017255	EVIDENCE	DOCUMENTS (PERSONAL OR BUSINESS)	E13 - DOCUMENTS FROM CASE 2019CV000172 "FILED 10/02/19" (LOCATED IN MAYOR'S OFFICE TOP MIDDLE DRAWER RIGHT OF DESK BY WOLOSEK)	PROPERTY ROOM	OTHER	/1
11/21/2019 09:25	BARBOUR	2019-00017255	EVIDENCE	COMPUTER HARDWARE OR SOFTWARE	E15 - LEXAR BRAND FLASH DRIVE (LOCATED IN ADMINISTRATOR'S OFFICE ATTACHED TO SURFACE BY BARBOUR)	PROPERTY ROOM	OTHER	/1



Quick Property Receipt



Print Date/Time: 11/22/2019 09:37

Login ID: kadam

ONEIDA COUNTY SHERIFFS OFFICE

ORI Number: W/0440000

Entry Date/Time	Officer	Case Number	Property Code(s)	Property Type	Description	Facility	Location/Other	Tag/Item Number
11/21/2019 09:25	6570 - BARBOUR	2019-00017255	EVIDENCE	COMPUTER HARDWARE OR SOFTWARE	E17 - RETAIL COACH BRAND FLASH DRIVE (LOCATED IN ADMINISTRATOR'S OFFICE IN DESK DRAWER UNDER PHONE BY BARBOUR)	PROPERTY ROOM	OTHER	/1
11/21/2019 09:25	6570 - BARBOUR	2019-00017255	EVIDENCE	COMPUTER HARDWARE OR SOFTWARE	E18 - DATA STICK PRO BRAND FLASH DRIVE (LOCATED IN ADMINISTRATOR'S OFFICE IN DESK DRAWER UNDER PHONE BY BARBOUR)	PROPERTY ROOM	OTHER	/1
11/21/2019 09:25	6570 - BARBOUR	2019-00017255	EVIDENCE	COMPUTER HARDWARE OR SOFTWARE	E19 - YELLOW IN COLOR AMAZON FIRE BRAND TABLET (LOCATED IN ADMINISTRATOR'S OFFICE ON HEAT REGISTER BY BARBOUR)	PROPERTY ROOM	OTHER	/1
11/21/2019 09:25	6570 - BARBOUR	2019-00017255	EVIDENCE	COMPUTER HARDWARE OR SOFTWARE	E20 - WHITE AND TAN IN COLOR IPAD (LOCATED IN ADMINISTRATOR'S OFFICE ABOVE DESK BY BARBOUR)	PROPERTY ROOM	OTHER	/1
11/21/2019 09:25	6570 - BARBOUR	2019-00017255	EVIDENCE	COMPUTER HARDWARE OR SOFTWARE	E21 - MICROSOFT SURFACE W/CORD (LOCATED IN ADMINISTRATOR'S OFFICE ATTACHED TO MONITORS ON DESK BY BARBOUR)	PROPERTY ROOM	OTHER	/1
11/21/2019 09:25	6570 - BARBOUR	2019-00017255	EVIDENCE	PORTABLE ELECTRONIC COMMUNICATNS	E22 - BLACK IN COLOR IPHONE (LOCATED IN ADMINISTRATOR'S OFFICE ON TABLE ON PAPERS BY HOOK)	PROPERTY ROOM	OTHER	/1
11/21/2019 09:25	6570 - BARBOUR	2019-00017255	EVIDENCE	PORTABLE ELECTRONIC COMMUNICATNS	E23 - WHITE IN COLOR IPHONE (LOCATED IN ADMINISTRATOR'S OFFICE ON TABLE ON PAPERS BY HOOK)	PROPERTY ROOM	OTHER	/1



Quick Property Receipt

COPY



Print Date/Time: 11/22/2019 09:37

Login ID: kadam

Entry Date/Time Officer

Case Number Property Code(s)

Property Type Description

Facility

Location/Other

Tag/Item Number

ONEIDA COUNTY SHERIFFS OFFICE

ORI Number: W10440000

11/21/2019 09:25 1670 - HOOK

2019-00017255 EVIDENCE

COMPUTER
HARDWARE OR
SOFTWARE

E26 - SAMSUNG BRAND
FLASH DRIVE (INSERTED BY
MCGHEE AND REMOVED
FROM SERVER LOCATED IN
LOCKED SERVER ROOM IN
BASEMENT BY WANTA)

PROPERTY
ROOM

OTHER

/1

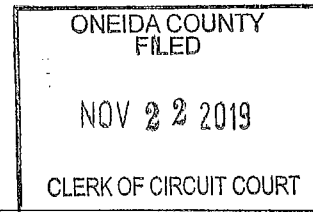
Submitted By

Date

Property Officer

Date

**MOTION TO COMPEL ACCESS
TO SERVER/BACKUP SERVER OF
CITY OF RHINELANDER BY
PEGGY SCHAUER AND TARA TESSMANN**



NOW COMES the State of Wisconsin, by and through District Attorney Michael Schiek, and moves the court for an order directing Peggy Schauer and/or Tara Tessmann, the Information Technology staff for the City of Rhineland, to provide the password and/or other necessary information to permit law enforcement officers to access the server/backup server of the City of Rhineland located in the basement area of the Rhineland City Hall, in conjunction with two search warrants that are being served by the Oneida County Sheriff's Office on the City of Rhineland namely the person of interest the City Administrator, Daniel Guild. The State bases this motion upon Wis. Stat. §§ 753.03 and 968.13(1)(d) and (2), as well as other supplementary authority cited below.

**I. THE CIRCUIT COURT HAS THE AUTHORITY TO ORDER THE
DEFENDANT TO PROVIDE ACCESS TO THE SERVER AND BACKUP
SERVER**

A circuit court has inherent authority to "issue all writs necessary in aid of its jurisdiction." Wis. Const. Art VII § 8. It is clear that circuit courts in Wisconsin have the power to issue subpoenas, authorize search warrants upon a finding of probable cause, and grant writs of mandamus, habeas corpus and certiorari upon a proper showing by the moving party. The Wisconsin Statutes provide additional power to the courts:

[The Circuit courts] have power to issue all writs, process and commissions provided in article VII of the constitution or by the statutes, or which may be necessary to the due execution of the powers vested in them...and they have all the powers, according to the usages of courts of law and equity, necessary to the full and complete jurisdiction of the causes and parties and the full and complete administration of justice, and to carry into effect their judgments, orders and other determinations....” Wis. Stat. § 753.03.

Wis. Stat. § 968.13(1)(d) authorizes the seizure of

Documents which may constitute evidence of any crime, if probable cause is shown that the documents are under the control of a person who is reasonably suspected to be concerned in the commission of that crime under s. 939.05 (2).

Wis. Stat § 968.13(2) defines “documents” as, among other things and without limitation, “computer or electronic data.”

The State’s Motion is equivalent to a petition for a writ of mandamus, which courts can issue under Wisconsin law. The case is properly within the jurisdiction of the court; On November 19, 2019, the Honorable Patrick F. O’Melia found probable cause to support a search warrant finding probable cause to believe evidence of the crime of Tampering with Public Records and Misconduct in Public Office could be located on the above described server or backup server.

Having determined that the court can issue such an order, the next step is to determine whether the State can demonstrate sufficient evidence to support such an order.

II. THE STATE CAN DEMONSTRATE THAT THE SERVER/BACKUP SERVER ARE OWNED BY THE CITY OF RHINELANDER AND UTILIZED BY DANIEL GUILD AND THAT PROBABLE CAUSE EXISTS TO BELIEVE THAT CONTRABAND OR DOCUMENTS CONTAINING EVIDENCE OF A CRIME ARE LOCATED WITHIN THE SERVER OR BACKUP SERVER.

A. THE CITY OF RHINELANDER OWNS THE SERVER AND BACKUP SERVER TO BE SEARCHED

The Affidavit in Support of Search Warrant authorized by Honorable Patrick F. O'Melia on November 19, 2019 clearly demonstrates that the server/backup server are owned by the City of Rhinelander and the documents within the server and backup server are public documents. In the Affidavit in Support of the Search Warrant, Captain Terri Hook of the Oneida County Sheriff's Office stated under oath that the following incidents occurred, all of which were within her direct knowledge or based on statements of a fellow police officer from the Price County Sheriff's Office, upon whom Captain Hook has relied on in the past and found to be truthful and reliable.

On October 23, 2019, Captain Hook and Captain Tyler Young of the Oneida County Sheriff's Office interviewed Rhinelander City Clerk Valerie Foley. Foley reported to law enforcement that the City of Rhinelander server is located in a locked room in the basement of City Hall. Foley confirmed that City employees use emails to communicate and these are considered open records. This type of information would be contained on the server. During this interview, Foley reported Tara Tessmann is the City of Rhinelander's Information Technology Manager.

On March 29, 2019, Price County Investigator Robert Hawn interviewed Carrie Miljevich who had been the City of Rhinelander Attorney at the time. While speaking with Miljevich, Miljevich confirmed that city employees use email accounts to communicate and these emails are considered public records. Miljevich reported that the City of Rhinelander employs Peggy Schauer as one of their Information Technology employees.

B. DANIEL GUILD IS AN EMPLOYEE OF THE CITY OF RHINELANDER.

On November 20, 2019, Captain Terri Hook viewed the City of Rhinelander. Daniel Guild is identified as the City Administrator for the City of Rhinelander. Hook also viewed a Facebook

Page titled Daniel Guild- City of Rhineland. On this page, Hook verified that picture on the page was that of Daniel Guild, the person of interest in the Search Warrant. Under the Intro title and above the picture, it states “Chief Administrative Officer at the Rhineland City Hall”. Upon viewing the Rhineland City Hall Facebook page, there is a notice for a public meeting on November 25, 2019 that is signed by Daniel Guild, Rhineland City Administrator.

C. PROBABLE CAUSE EXISTS TO BELIEVE THAT ELECTRONIC DATA CONTAINING EVIDENCE OF A CRIME IS LOCATED WITHIN THE SERVER AND BACKUP SERVER OF THE CITY OF RHINELANDER.

Guild, the person of interest in reference to the search warrant, is reported to have committed various acts that could be determined to misconduct in public office and tampering with public document. As outlined in the search warrant, Guild has engaged in various acts including failure to release public records in response to requests by the media and law enforcement as well as altering email content to present it as the original.

The State is familiar with servers and networks used by government agencies and knows that the password protection is used on these networks and Information Technology Managers and staff have access to passwords for the system that will allow access to all employee data. This type of password is nearly impossible to obtain other than through the Information Technology Manager or staff. If this information is not provided, a server or backup server may have to be removed from City Hall and this could cause a disruption of services to the citizens of Rhineland.

III. THE CITY OF RHINELANDER’S ACT OF UNLOCKING THE SERVER/BACKUP SERVER DOES NOT VIOLATE THE PRIVILEGE AGAINST SELF-INCRIMINATION

The Fifth Amendment provides that “[n]o person . . . shall be compelled in any criminal case to be a witness against himself.” U.S. CONST. Amend. V. Nevertheless, “the Fifth Amendment does not independently proscribe the compelled production of every sort of incriminating evidence.” Fisher v. United States, 425 U.S. 391, 408, 96 S.Ct. 1569, 1579, 48 L.Ed.2d 39 (1976). Instead, “the privilege protects a person only against being incriminated by his own compelled testimonial communications.” *Id.*, 96 S.Ct. at 1580. Although the privilege applies typically to verbal or written communications, an act that implicitly communicates a statement of fact may be within the purview of the privilege as well. United States v. Hubbell, 530 U.S. 27, 36, 120 S.Ct. 2037, 2043, 147 L.Ed.2d 24 (2000); Doe v. United States, 487 U.S. 201, 209, 108 S.Ct. 2341, 2347, 101 L.Ed.2d 184 (1988) (Doe II).

It is helpful to look to the federal courts for guidance, because the US Government has used a federal statute, referred to as the All Writs Act, in order to compel production of passwords, provide unencrypted computer hard drives, or otherwise compel access to electronic data in furtherance of a court order. 28 U.S.C. § 1651. That Act provides, in part, “The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.”

More specifically in the context of this case, “[a]lthough the contents of a document may not be privileged, the act of producing the document may be.” United States v. Doe, 465 U.S. 605, 612, 104 S.Ct. 1242, 1242, 79 L.Ed.2d 552 (1984) (Doe I). The contents of the server or backup server are not, and are not claimed to be, privileged. *See Doe I*, 104 S.Ct. at 1241-42 (documents that are prepared or compiled voluntarily lack the element of compulsion and are not protected by the Fifth Amendment); In re Grand Jury Subpoena to Boucher, 2009 WL 424718 at *2 (D. Vt. Feb. 19, 2009) (same, with respect particularly to contents of a laptop computer). Production itself

acknowledges that the document exists, that it is in the possession or control of the producer, and that it is authentic. Hubbell, 120 S.Ct. at 2043.

A limited number of federal court decisions address the Fifth Amendment issues implicated by compelling a witness or defendant to provide a password to an encrypted computer or otherwise permit access to its unencrypted contents. The reasoning of US District Court Judge Robert E. Blackburn in a case in the District of Colorado is quite helpful. *See* “Order Granting Application Under the All Writs Act Requiring Defendant Fricosu to Assist in the Execution of Previously Issued Search Warrants,” United States v. Fricosu, Case No. 10-CR-00509 (January 23, 2012). In that order, Judge Blackburn wrote:

In In re Grand Jury Subpoena to Boucher, 2007 WL 4246473 (D. Vt. Nov. 29, 2007) (Boucher I), a laptop computer was found in the defendant’s car during a search incident to his crossing the border from Canada into the United States. During the initial search, an officer opened the computer and without entering a password was able to view its files, revealing thousands of images of what appeared to be, based on the names of the files, adult and some child pornography. An agent of the Bureau of Immigration and Customs Enforcement (“ICE”) was called in, who asked the defendant to show him where these images were located on the computer. The defendant had acknowledged that he sometimes downloaded child pornography unknowingly from online newsgroups, but stated that he deleted all such files when he realized their contents. The defendant navigated to a drive “Z,” which contained several images of child pornography. After the defendant was arrested and the laptop seized, the computer was found to be password protected. When agents were unable to decrypt the computer, the grand jury issued a subpoena demanding the defendant produce any documents reflecting any passwords associated with the computer. Boucher I, 2007 WL 4246473 at *1-2. Noting that under prevailing Supreme Court precedent, a defendant cannot be compelled to reveal the contents of his mind, the magistrate judge found that the act of producing the password was testimonial and, therefore, privileged. *Id.* at *4-*6. *Accord* United States v. Kirschner, 2010 WL 1257355 at *3-4 (E.D. Mich. March 30, 2010). On appeal of that decision, the grand jury revised its request to require the defendant to produce, not the password itself, but rather an unencrypted version of the Z drive. In re Grand Jury Subpoena to Boucher, 2009 WL 424718 at *2 (D. Vt. Feb. 19, 2009) (Boucher II). Because of the revision to the request, the district court denied the motion to quash. The court noted

that “[w]here the existence and location of the documents are known to the government, no constitutional rights are touched, because these matters are a foregone conclusion,” that is, they “add[] little or nothing to the sum total of the Government’s information.” *Id.* at *3 & *4 (quoting Fisher, 96 S.Ct. at 1581) (internal quotation marks omitted). Likewise, the defendant’s production was not necessary to authenticate the drive because he had already admitted possession of the computer, and the government had agreed not to use his act of production as evidence of authentication. *Id.* at *4. Accord United States v. Gavegnano, 2009 WL 106370 at *1 (4th Cir. Jan. 16, 2009) (where government independently proved that defendant was sole user and possessor of computer, defendant’s revelation of password not subject to suppression). There is little question here that the State knows of the existence and location of the phone’s files. The fact that it does not know the specific content of any specific documents is not a barrier to production. See Boucher II, 2009 WL 424718 at *3 (citing In re Grand Jury Subpoena Duces Tecum Dated Oct. 29, 1992) (United States v. Doe), 1 F.3d 87, 93 (2nd Cir. 1993), *cert. denied*, 114 S.Ct. 920 (1994)).

Here, the circumstances are similar to those of the federal cases described above. The State received authority to search the server/backup server as part of a search warrant, and the only means by which to obtain the data is through the Information Technology Staff of the City of Rhineland taking steps to provide access to the server or backup server. The State knows the City of Rhineland is the owner of the server/backup server and compelling the password would not indicate the City of Rhineland’s ownership of the phone as there is sufficient independent evidence showing the City of Rhineland’s ownership of the server/backup server. Further, the State is not attempting to undergo a ‘fishing expeditions’ for evidence, as there exists sufficient independent evidence showing the server/backup server was used during the period of time the violations were occurring. Therefore, under the ‘foregone conclusion’ doctrine, the State has demonstrated independent knowledge of the contents of the server/backup server and compelling the password is therefore not a testimonial issue.

IV. CONCLUSION

The City of Rhineland is the owner of the server/backup server, which is the subject of a search warrant signed on November 19, 2019 by Honorable Patrick F. O'Melia. Probable cause exists to believe that the server/backup server contains contraband or other evidence authorized for seizure in the search warrant approved by Honorable Patrick F. O'Melia on November 19, 2019. The passwords are necessary to retrieve any evidence, whether inculpatory or exculpatory, from the server/backup server. Without an Order to Compel being granted by the Court, any evidence contained on the server/backup server will remain unexamined and require the server/backup server to be removed from the City of Rhineland thus causing difficulties for the staff of the City of Rhineland in performing their duties for the citizens of Rhineland.

The Court has the authority to issue orders to facilitate compliance with its jurisdiction and consistent with prior orders authorized by fellow Circuit Court judges in Wisconsin. The Court orders the Information Technology Staff for the City of Rhineland specifically Tara Tessmann and Peggy Schauer to go to the Rhineland City Hall when requested to by deputies from the Oneida County Sheriff's Office to provide the password or other means by which the Oneida County Sheriff's Office can access the internal data in the server/backup server to obtain evidence authorized for seizure. If Peggy Schauer or Tara Tessmann do not cooperate or comply with this order, they shall be arrested for contempt.



Patrick F. O'Melia
Oneida County Circuit Court, Branch I
State of Wisconsin