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CIRCUIT COURT BR 2  
DANE COUNTY, WI

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STATE OF WISCONSIN	CIRCUIT COURT BRANCH 3	CIRCUIT COURT BR 2 DANE COUNTY, WI	DANE COUNTY
WILLIAM NOREM	<b>RECEIVED</b>		
Plaintiff,	MAR 16 1999		
vs.	PERSONNEL COMMISSION	MEMORANDUM DECISION	
STATE OF WISCONSIN PERSONNEL COMMISSION		Case No. 98-CV-2499	
Defendant.		D36	

Plaintiff, William Norem, ("Norem"), brings this action pursuant to §19.37 Stats., and the Wisconsin Supreme Court's decision in *Woznicki v. Erickson*, 202 Wis. 2d 178 (1996). Norem seeks de novo review of a notification of intent to release public records in the custody of the defendant, State of Wisconsin Personnel Commission, ("Commission").

**BACKGROUND**

Mr. Norem received a letter dated August 31, 1998 from the General Counsel of the Wisconsin Personnel Commission that the Commission had received an open records request for the Commission's files relating to sexual harassment allegations brought by a state employee against the Department of Industry, Labor, and Human Relations ("DILHR"), Norem, and other named DILHR employees. The Commission stated its intent to release the records of two cases known as case no. 89-0078-PC-ER and case no. 90-0025-PC-ER. Norem interposed no objection to the release of the latter file. Therefore, this action relates only to the 1989 file, 89-0078-PC-ER.

The 1989 file concerned a charge against Norem who was then the Administrator of the Safety and Buildings Division of DILHR, and who has since returned to the private sector. The file contains specific allegations of sexual harassment made against Norem, and additional allegations of discrimination against other DILHR officials. The file also contains notes of the interviews of the accuser and other individuals related to the allegations conducted by the Commission's Equal Rights Officer. The file also contains inter-office communications between the DILHR legal staff and the Commission staff, including work product strategic advice and an assessment of the evidence. The file also contains contemporaneous newspaper articles detailing accounts of the allegations. After carrying out its investigation, the Commission found that there was no basis for the allegations and dismissed the charges.

The 1989 file was the subject of an open records request in 1990 and was released without objection. Mr. Norem now seeks to enjoin the release of the 1989 file, asserting that the reputational damage he will suffer greatly outweighs any benefit the public might derive from this record being made public at this time.

#### STANDARD OF REVIEW

In *Woznicki v. Erickson*, 202 Wis.2d 178 (1996), the Supreme Court recognized a cause of action for an individual who is subject to an open records request to initiate a circuit court action to block the release of a public record where the individual's privacy and reputational interests are implicated. *Id.* at 193.

In the typical public records case, the reviewing court's inquiry is two-fold:

[T]he first question is whether the custodian's denial was "made with the requisite specificity" - that is, whether it is sufficiently specific to provide a basis for judicial review [citation omitted]. If it is, the court next examines the stated reasons for the denial to

determine whether they are sufficient to outweigh the strong public policy favoring disclosure.

*Munroe v. Braatz*, 201 Wis.2d 442, 446 (Ct. App. 1996). Here there has been no denial by the Commission for this court to review. Therefore, this court inquiry is limited to balancing the public interest in disclosure against the public interest in confidentiality, recognizing an individual's reputational and privacy interests as an aspect of the public interest to be balanced.

### ANALYSIS

Norem advances several arguments for why the balancing test favors non-disclosure and why the records should not be released: that the allegations of harassment were never corroborated, that the personal nature of the allegations would damage Norem's reputation and privacy, that the passage of time exacerbates the damage Norem would suffer since he has long since left the public sector, and that to release the records detailing such allegations would be contrary to the public policy of maintaining incentives for employees to work for the government.<sup>1</sup>

The records at issue concern the investigation of serious allegations of sexual harassment against a government official. While his government tenure is years behind him, the public still has a strong interest in knowing how its officials allegedly behaved, and how its government responded to serious allegations of misconduct.

The public has a particularly strong interest in being informed about public officials who have been "derelict in [their] duty." *Youmans*, 28 Wis.2d at 685; see, also, *Shorewood School Bd.*,

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<sup>1</sup> Norem also raises concerns over the motivation of the records requestor, an unregistered Wisconsin corporation with the name SAVWALCO. A request cannot be denied merely because a requestor is unwilling to be identified or to state the purpose of the request. §19.35(1)(i) Stats. Accordingly, this court will disregard the anonymous nature of the requestor.

186 Wis.2d 443, 459 (citing 74 Op. Att'y Gen. 14, 16 (Wis. 1985)). When exposing such misconduct, "the fact that reputations may be damaged would not outweigh the benefit to the public interest in obtaining inspection." *Youmans*, 28 Wis.2d at 685.

*Wis. Newspress v. Sheboygan Falls Sch. Dist.*, 199 Wis.2d 768, 786 (1996).

While Norem argues that the passage of almost ten years increases the damage to his reputation, the Wisconsin Supreme Court has viewed such circumstances differently, noting that the risk of unwarranted harm to reputation is highest while an investigation is ongoing. "Once the investigation is complete, however, the danger of warrantless harm to reputation is reduced." *Id.* at 788.

Norem's assertion that the allegations contained in these records are uncorroborated is similarly unavailing. Specific allegations of sexual harassment are usually uncorroborated, at least until investigated, and as we have noted, such matters are precisely the sort of information that the public is entitled to in evaluating the conduct of its government.

As for Norem's concern over the detailed and personal nature of the specific sexual harassment allegation, this file contains very little of a salacious nature that has not already been reported in the press, and nothing that has not already been released to the public when the 1990 public records request was granted.<sup>2</sup> In that light, the release of these records only completes the picture, fragments of which appeared in public almost ten years ago. Similarly, while Norem fears damage resulting from uncorroborated allegations, this file does not deceptively enhance the credibility of the charges, in fact, it demonstrates precisely the level of corroboration that was not present.

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<sup>2</sup> This court has conducted an *in camera* inspection of the records at issue in this case.

Finally, Norem contends that to disclose records such as these would deter employees from working for the government. While this may be true, this fact does not outweigh the public interest in knowing what its public officials have been accused of and how those allegations have been investigated and handled.

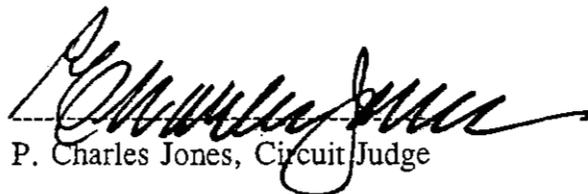
While Mr. Norem's reputational and privacy fears are serious and undoubtedly sincere, they are unavailing. It is unfortunate that he continues to be troubled by these allegations almost ten years later, but the records sought to be released go to the very heart of the sort of information that must be available in the public interest: serious allegations against a public official, and the government's response to those allegations. Accordingly, I find that Norem's reputational and privacy concerns do not outweigh the public interest in disclosure. Therefore, the Motion for a permanent injunction is DENIED and the temporary injunction is dissolved, and this action is DISMISSED.

#### ORDER

For the foregoing reasons, Norem's Motion for a permanent injunction is DENIED, the temporary injunction is dissolved, and this action is DISMISSED.

Dated: March 8, 1999

BY THE COURT:

  
P. Charles Jones, Circuit Judge